Advice Paper 13-03
January 2013

THE SCOTTISH CODE OF GOOD HE GOVERNANCE: a response to the Steering Group appointed by the Committee of Scottish University Chairs

Summary

- *We welcome the evidence-based approach and consultation process being adopted by the Steering Group as it seeks to develop a new Scottish Code of HE Governance. We were concerned that the von Prondzynski Review panel had made many recommendations without setting out the supporting evidence and where evidence was presented, it was drawn very narrowly. We have expressed concern that the proposals are in danger of putting at risk the significant gains that have been made in governance practices in Scottish universities in recent years.*

- *While it would be reasonable for the Scottish Government to legislate to ensure that institutions pay due heed to a Scottish Code of HE Governance, the legislation should not go beyond this. The Scottish Code should operate on a 'comply or explain' basis. This approach would support the fundamental right and need for universities to enjoy autonomy in their strategies and operations.*

- *We would encourage universities to hold more public meetings. However, the recommendation from the Review panel that meetings of the governing body should normally be held in public could risk damaging good governance. Inevitably, governing bodies would be reluctant to discuss sensitive matters in public. This could lead to important decisions being made outwith the regular meetings of the governing body and not subject to the normal minuting and reporting standards.*

- *The role of the Chair of the governing body is crucial in terms of providing leadership and strategic oversight. A person specification, detailing the responsibilities, skills and characteristics required to hold the office of Chair should be made explicit. In order to ensure that the Chair has the full confidence of the members of the governing body, we believe the governing body should determine the best person qualified to fulfil the role.*

- *Once appointed, members of a governing body should operate on the basis of ad personam. Their responsibility is to the governing body and the institution as a whole, rather than to any other body that they may represent or be associated with. This is essential to maintaining the integrity, impartiality and the overall good operation of the governing body. It is crucially important that there continues to be direct representation of students and staff on governing bodies. However, for the reason stated above, we do not agree with the Review panel that student and staff members be nominated by their respective unions.*

- *Given the increasing amount of time which members are expected to commit to the work of the governing body, we believe lay members and the Chair should be entitled to claim expenses and any loss of wages. However, the Review panel's recommendation that Chairs should receive some form of remuneration is contentious and there are different perspectives on this matter. Much greater consideration of the implications of such a step is required.*

Background

1. The Royal Society of Edinburgh (RSE), Scotland's National Academy, welcomes the opportunity to make a submission to the Steering Group which has been appointed by the Committee of Scottish University Chairs (CSC) to develop a new Scottish Code of Higher Education Governance.

2. We recognise the Review of Higher Education Governance, Chaired by Professor Ferdinand von Prondzynski and which reported in February 2012, provides the background to the work of the Steering Group. In 2011, the RSE responded to the consultation undertaken by the von Prondzynski Review panel.[1] We have recently responded[2] to the Scottish Parliament Education and Culture Committee's consideration of the Post-16 Education (Scotland) Bill. The comments that follow have been informed by these relevant responses. Our comments have been framed with reference to the Steering Group's "Issues Paper"[3] although we have not responded to every aspect raised. We expect other responses, particularly those from the higher education institutions themselves, will be able to comment on the governance arrangements pertaining to the individual institutions. We would be pleased to discuss further any of the comments made in our response with the Steering Group and its external consultants.

Steering Group's Approach

3. We welcome the evidence-based approach being adopted by the Steering Group as it seeks to develop a new Scottish Code of Higher Education Governance. In the preface to the report of the von Prondzynski Review panel it was stated that "change needs to be

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[1] RSE response on the Governance of Higher Education in Scotland (September 2011) http://www.rse.org.uk/cms/files/advice-papers/2011/ad11_13.pdf
[2] RSE response on the Post-16 Education (Scotland) Bill (January 2013) http://www.rse.org.uk/cms/files/advice-papers/2013/AP13_01.pdf
[3] Steering Group Issues Paper http://www.scottishuniversitygovernance.ac.uk/consultation-process-2/

evidence based". However, we were concerned that the Review panel had made many recommendations without setting out the supporting evidence and where evidence was presented, it was drawn very narrowly. There has also been little explanation of how the changes proposed by the Review panel will improve the existing arrangements for university governance. We have expressed concern that the proposals are in danger of putting at risk the significant gains that have been made in governance practices in Scottish universities in recent years.

4. The development of the UK CUC Governance Code of Practice has been influential in disseminating standards of good practice in relation to the governance arrangements for HEIs. All Scottish HEIs voluntarily observe the Code. This Code is currently under review throughout the UK and we therefore recognise the merits of the Committee of Scottish Chairs developing a new Scottish code of good higher education governance. While it would be reasonable for the Scottish Government to legislate to ensure that institutions pay due heed to such a Scottish code, the legislation should not go beyond this. The Scottish code should operate on a 'comply or explain' basis. This recognises that good governance is constantly evolving and that individual institutions will have developed innovative ways of improving both accountability and transparency.

5. This approach would support the fundamental right and need for universities to enjoy autonomy in their strategies and operations. While they have to be accountable to funders for outcomes, we are concerned that the current Post-16 Education (Scotland) Bill seeks to change the balance in ways we feel will be damaging to the vitality of the university sector.

6. It is important that the Steering Group engages widely with those who are able to offer views on good corporate and university governance. Key stakeholders will include HE institutions, staff, students and governing body members. We therefore very much support the consultation process which is being undertaken to ensure that each of the 19 Scottish higher education institutions is visited by the Steering Group's expert advisers. This will enable the Steering Group to take account of the range of views across the sector.

CONSULTATION ISSUES

Meetings in Public

7. In our view the main purpose of the governing body is to scrutinise and challenge all strategies of the institution, and it should carry ultimate responsibility for setting the university's strategic direction. While we would encourage universities to hold more public meetings, the recommendation from the von Prondzynski Review panel that meetings of the governing body should normally be held in public could risk damaging good governance. Inevitably, governing bodies would be reluctant to discuss sensitive matters in public. This could lead to important decisions being made outwith the regular meetings of the governing body and not subject to the normal minuting and reporting standards.

Appointment and Remuneration of Principals

8. The Principals of HEIs are currently appointed by the governing body. The Review panel had considered recommending that Principals should be elected but decided against

advocating this. Experience of European universities, in most of which university law requires Rectors (Principals) to be elected, not appointed, suggests that the Review panel was right not to recommend the election of Principals. One of the great strengths of Scottish HEIs, whose performance compared to their funding is amongst the very best in international terms, is their capacity to be flexible, to develop creative strategies and to implement them without unnecessary delay. Two factors are crucial in this: their autonomy and highly-motivated Principals able to influence and implement strategy. A weakness of the electoral system is that there are often "Rectoral strategies" that fade as the Rector demits office, but rarely "university strategies" that are sustained between successive Rectorates.

9.   In relation to the remuneration of Principals, Scottish universities operate within an international marketplace and while they should have regard to the remuneration factors referred to in the Review panel's report, this should not compromise institutional autonomy. The basis upon which pay is calculated should of course be transparent.

Chairing of Governing Bodies

10.   The role of the Chair of the governing body is crucial in terms of providing leadership and strategic oversight. In this regard, it is vitally important that the person appointed as Chair has the appropriate skills. A person specification, detailing the responsibilities, skills and characteristics required to hold the office of Chair should be made explicit. The CUC Code requires that, when selecting a new Chair, a full job specification should be produced and vacancies should be published widely. Given the qualities and responsibilities that are required of the Chair, and in order to ensure that the Chair has the full confidence of the members of the governing body, we believe that the governing body itself should determine the best person qualified to fulfil the role. This is endorsed by the CUC Code and we hope a similar approach will be taken by the Scottish Code.

11.   We note the Review panel did not provide any supporting evidence for its recommendation (by a majority) that the Chair of the governing body should be elected.

Membership of Governing Bodies

12.   The evidence is, as confirmed by the Leadership Foundation for Higher Education[4], that the choice of members is crucial to the effectiveness of governing bodies. Their roles and responsibilities require them to identify the skills, knowledge, expertise and experience necessary for a balanced and effective governing body[5]. We support the approach set out in the CUC Code. This stipulates that appointments should be managed by a nominations committee, and that to ensure rigorous and transparent procedures, there should be a prior written description of the role and the capabilities required in a new member, paying attention to the balance of skills which already exists in the governing body.

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[4] Schofield A, (2009), What is an Effective and High Performing Governing Body in UK Higher Education?, The Leadership Foundation for Higher Education
http://www.lfhe.ac.uk/en/research-resources/publications/research-publications/governance.cfm

[5] Five Year Review of Fit for Purpose; The University of Hong Kong; Prepared by John Niland; May 2009
http://www0.hku.hk/general/5yearReview.pdf

13. Once appointed, members of a governing body should operate on the basis of *ad personam*. They are legal Trustees of the institution and their responsibility is to the governing body and the institution as a whole, rather than to any other body that they may represent or be associated with. This is crucial to maintaining the integrity, impartiality and the overall good operation of the governing body. It is also an important consideration in terms of ensuring compliance with charity legislation in Scotland.

14. It is crucially important that there continues to be direct representation of students and staff on governing bodies. However, for the reasons given in the preceding paragraph we do not agree with the Review panel that student and staff members be nominated by their respective unions.

15. In relation to the membership size of governing bodies, our view is that ensuring an appropriate balance of skills which correspond to the needs of the institution is much more important that prescribing the size of membership. We note that the CUC Code states that a governing body of no more than 25 members represents a benchmark of good practice, but following the influence of the corporate model, and given the difficult strategic decisions that are likely to be needed, we suggest that should be an absolute upper limit.

Setting a quota for the proportion of female members

16. The suggestions made by the Review panel in relation to increasing the proportion of female members of a governing body have considerable merit. While governing bodies should certainly have regard to this and the principles of equality and diversity more generally, it would be inappropriate to make the setting of quotas by governing bodies mandatory. It will be for the governing body to consider positive measures to encourage women to apply to be members, and to appoint individuals who can enhance and complement the existing skills base.

Presence of senior managers at governing body meetings

17. The report of the Review panel is inconsistent in that it recommends the opening-up of governing body meetings to encourage openness and transparency while also proposing that no senior management, apart from the Principal, should be allowed to attend. The governing body is an important means by which those in the senior management team can be held to account. Therefore, the proposal that they should not attend meetings of the governing body is difficult to comprehend.

Remuneration

18. Given the increasing amount of time which members are expected to commit to the work of the governing body, we believe lay members and the Chair should be entitled to claim expenses, including any wages lost as a result of attending meetings of the governing body.

19. The Review panel's recommendation that Chairs should receive some form of remuneration is contentious and there are different perspectives on this matter. Much greater consideration of the implications of such a step is required.

Induction, training and ongoing support

20. It is important that provision is made for induction, training and further professional development in order to maximise the input which members are able to make to the governing body, and to help ensure it operates as effectively as possible. This is recognised in the CUC Code and we are aware that the Leadership Foundation for Higher Education provides support and training events for members of governing bodies, including its Governor Development Programme.

Additional Information and References

This Advice Paper has been signed off by the RSE General Secretary.

In responding to this call for evidence the Society would like to draw attention to the following Royal Society of Edinburgh publications which are relevant to this subject:

- The Royal Society of Edinburgh's submission to the Scottish Parliament Education and Culture Committee, *Post-16 Education (Scotland) Bill* (January 2013)

- The Royal Society of Edinburgh's submission to the Scottish Government, *Report of the Review of Further Education Governance in Scotland* (February 2012)

- The Royal Society of Edinburgh's submission to the Scottish Government, *Putting Learners at the Centre* (December 2011)

- The Royal Society of Edinburgh's submission to the Review of HE Governance, *The Governance of Higher Education in Scotland* (September 2011)

Any enquiries about this Advice Paper should be addressed to the RSE Consultations Officer, Mr William Hardie (Email: evidenceadvice@royalsoced.org.uk)

Responses are published on the RSE website (www.royalsoced.org.uk).

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