



national union of students scotland

Developing a Scottish Code of Good HE Governance

NUS Scotland consultation response | January 2013

Key recommendations

- Depending on method of calculation, public funds account for between 27% and 43% of university funding, therefore there is need to see real moves towards more genuine 'responsible autonomy'
- Gender balancing and fair representation on governing bodies needs drastically increased, with the introduction of gender quotas as a starting point
- Meetings of governing bodies should be held openly and publically, with a greater emphasis put on their function as a place of genuine debate, not simply rubber stamping decisions made elsewhere
- Institutions should investigate the recommendations of the High Pay Commission with potential to implement them across the sector
- Staff and students should have full involvement in remuneration committees, with greater transparency placed on the setting of senior staff pay and benefits
- Appointment and appraisal of principals should ensure that it is representative of staff and student opinion, with both holding places on appointment and appraisal panels
- Vacancies for chairs of governing bodies, along with those for lay members, should be widely and publically advertised, with a transparent recruitment process in place, involving staff and students
- Governing body chairs should receive appropriate remuneration, and lay members should be reimbursed for expenses incurred, to ensure that these opportunities are open to candidates, regardless of their background
- Student involvement in governing bodies should have greater definition and recognition, and senior management involvement should be diminished. On senates, staff, student and "management" representatives should each make up a third of membership
- Institutions should agree, in consultation with student representatives, and adopt a statement of good practice in the setting and charging of fees
- Any non-compliance with a code of good governance should be detailed within outcome agreements, with a clear action plan for what steps will be taken to address failings

Introduction

NUS Scotland was, and remains, supportive of the VonProndzynski review into higher education governance. As a member of the group, we were central in forming its recommendations, however, it should be also noted that in some instances compromise was necessary, and we believe it could have gone further.

It has long been our view that, while we fully recognise and believe in the full and proper autonomy of our universities, as recipients of huge sums of public money it is important that they are fully transparent and accountable to their staff, students, and wider communities.

As the Cabinet Secretary has indicated, we do not believe the work underway through the CSC steering group is supposed to replicate the work of the previous review, but instead find a way within the sector to agree a code based firmly on its recommendations, through a code of shared principles. We fully respect and support every institution's desire to ensure that there is no undermining of autonomy; however, we equally support the attendant responsibility that becomes attached through the receipt of public funds.

In recent years we have seen university principals become some of the highest paid officials in the public sector, with a collective worth of £4,166,280 at year end 2011/12; little progress in Scotland's poor record on widening access; and high profile examples of course closures and staff redundancies, often in the face of great public pressure. We would argue that too often the value and principle of responsible autonomy, underpinned by transparency and accountability, has not been at the forefront of these developments.

We hope that, through the CUC's development of a common code based on the recommendations of VonProndzynski, and provided a legislative underpinning through the Post 16 Education (Scotland) Bill, we can have a significantly improved and enhanced university sector; one which has as its start and end an ethos of genuine responsible autonomy.

Finally, we believe that in order for any arrangements of good governance to be successful requires having strong student representation, with strong students' associations. We would want to ensure that every institution takes their responsibilities to achieving this seriously, and that students' associations are being funded appropriately, allowing them to undertake their responsibilities.

The public 'value' of higher education

It has been posited that there is greater justification for the governance measures seen in the post 16 Education (Scotland) Bill covering the college sector due to the differences in amount of 'direct' public funding making up their respective overall funding levels, through SFC grants. On average, some 75% of income in colleges comes through this source, compared to 27% in universities. However, we would argue that this is disingenuous for two reasons.

Firstly, while universities may see a smaller amount of their income coming from SFC grants, the overall amount they receive is over twice that which colleges receive. For financial year end 2011/12, universities received just over £1bn through SFC grants, an amount which clearly brings with it the need for greater transparency and accountability.

Moreover, this figure neglects the amounts which universities receive through tuition fee loans, both those paid by SAAS on students' behalf, and from RUK students. While there are those who would dispute the inclusion of these, given they are loans from an individual as opposed to cash from government, given the large public subsidy they attract we would argue they do still count as public funds. Indeed, the National Audit has recently begun a study, due to publish in the autumn, on the student loans system, which is expected to resolve this issue. If we were to count tuition fee loan payments (excluding non-home/EU fees) as part of the public funding received by universities, then the overall cash amount increases to just over £1.3bn (35% of overall income).

And, finally, this figure also excludes income from (publically funded) research councils and government research contracts. If this income is included, it brings the total amount of public funding universities receive to just over £1.6bn, or 43% of overall income.

It is clear that, while universities may receive levels of funding through private means which are well over and above that enjoyed by colleges, without publically funded sources - be it through direct grants or publically subsidised fees – there is little doubt that our universities would be as financially secure as they are.

Membership of governing bodies

NUS Scotland strongly welcomes the recommendation stemming from VonProndzynski of a defined quota for women's membership of boards. Indeed, not only is this a question of ensuring equality and genuine representation, but one of good governance and performance too, with the recent *Davies Report*¹ finding

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf

that the inclusion of women in workplace teams and on boards increases organisational performance and profitability, and improves corporate governance.

We believe that introducing gender quotas is the first step in challenging women's underrepresentation at the very top of Scotland's public and private organisations and that it could lead to a change in attitude across Scotland over the right of women to influence change and decisions. This is particularly important in our universities, a sector where women are, usually, in the majority yet hugely underrepresented in senior levels and top decision making.

At present women are hugely underrepresented on boards, despite them making up more than 50% of the university student population, and just fewer than 50% of university staff. Looking at the information presented in university financial statements, for year end 2011/12 (where the information is easily identifiable, which excluded three universities), of the 192 co-opted or lay members, just 40 are women. That means that, across Scotland, 74% of governing body members are men, and just 26% are women. Even more worrying, looking at the chairs of governing bodies, there are three "Lords" and two "Sirs" yet not a single woman chair.

On the issue of wider membership, we believe the recommendation that senior management should only be in attendance when required for specific items is long overdue. Too often, senior managers will make up a majority of those in attendance at meetings, and as such the majority of conversation. While we recognise they are non-voting, we are unaware of any major instances of votes actually being taken at governing bodies, and they do retain full rights to speak to agenda items. It is vital that the lay members and staff and student representatives are those who set the tone and direction of meetings.

We welcome the recommendation to formalise student representation on governing bodies. Students' association representatives have an important role to fulfil, and that representation should be enhanced. Having at least two student members recognises their unique skills and experience, and ensures that they are supported in their role, and can provide the best service. Indeed, it is comforting that, of the 18 HEIs in Scotland, 10 already include more than one students' association representative.

As we argue for chairs, we believe there is a strong case to be made for ensuring board members are reimbursed for expenses incurred. This could be through the provision of travel expenses and/or providing an honorarium, to compensate for time taken off work. The reasoning is the same as for chairs and to ensure that potential members from all backgrounds feel able to put themselves forward, and commit to the role.

Finally, we believe that there needs to be much greater transparency and formalisation of appointment and recruitment mechanisms for governing body members. A number of institutions do show best practice in this area, having formal and public recruitment processes, and this should be encouraged throughout all institutions. Unfortunately, however, it can often seem to be the exception to the rule, with many handpicked members, often with little perceptible transparency. At its core, this is an extremely important step to ensure good governance. If governing body members are handpicked, perhaps on the basis of pre-existing relationships, then it would seriously call in to question their ability to operate genuinely independently, and ensure they act as a critical friend.

Chairing of governing bodies

NUS Scotland recognises that substantive change to how chairs come to the role, or fundamentally what their role is, would require changes to statute; however, we also believe there are a number of positive improvements which could be made to what currently exists in Scotland.

For a start, at present there is a trend within institutions to simply appoint from within the governing body, which we believe should never necessarily be the standard. As a bare minimum, while it may not be the case that internal candidates are barred from applying, any vacancies for chair should be widely and publically advertised, ensuring the widest possible pool of candidates, from all backgrounds.

While it may at times it might be fully appropriate to appoint from within, to ensure a smooth transition, particularly at turbulent times, universities are ever evolving places, and this should include the evolution of the role of chair, ensuring that fresh talent is brought in. To do otherwise means we run the risk of creating a revolving door. Moreover, wider stakeholders often have little or no say in the appointment of lay-members, and this creates a perpetual cycle whereby they have no say in the chair, should they continue to select from their own. Nomination committees should, as best practice, always include staff and student representation, and there should be a transparent recruitment and appointment process for all lay members.

As we discuss within membership of governing bodies, there is a genuine need to ensure that the widest possible talent pool is being tapped in to. Going along with this, chairs from all backgrounds should feel they would be able to undertake the role, and as such we would support chairs receiving appropriate remuneration and/or expenses reimbursement. There is a danger that keeping it non-remunerated would

mean that it continues to be the usual type of person who undertakes the role, i.e. someone typically retired, from business, who is on a comfortable financial footing.

While we recognise that there are worries around remuneration of chairs, and the relationship this could create between chair and institution, we would argue that if the chair is an appropriate (and appropriately independent) one, then this should not be born out.

Appointment, remuneration and appraisal of Principals

NUS Scotland would fully support the recommendations for the arrangements of both the appointment and appraisal of Principals to involve staff and students. We believe that this is important to ensure that the appointee enjoys the confidence of both – vital to the success of the institution. Student representatives are recognised as having unique skills and knowledge which are important for the institution, witnessed by their inclusion on governing bodies. This equally translates into the skills and knowledge they would bring to recruitment and appraisal.

As has been seen in both the private and public sectors, in recent years there has been an increasing divergence between senior staff pay and other staff. By having staff and student representatives as full members would result in a greater diversity on panels, balancing opinions and stakeholders. As we note above, university financial statements for year end 2011/12 show that the collective pay of university principals is over £4m, exclusive of benefits in kind and expenses. We would urge this review to consider the recommendations of the High Pay Commission's final report², many of which we believe could easily – and with vast benefits – be translated into the higher education sector.

For example, while current pay scales are a national matter, and outwith the scope of this exercise, a Scottish specific framework which includes Principals and senior level staff should be explored. Going in tandem with this, we believe there is merit in exploring options to ensure that senior staff do not enjoy any pay increases over and above those enjoyed by on-scale staff. Further, there could be scope as part of any benchmarking and/or review of senior staff pay to move towards pegging salaries to other occupations, organisations or individuals, or to ensure that there is a defined ratio between highest and lowest paid.

Equally, there is a need in recruitment and appointment to ensure that any new principal enjoys the confidence of staff and students, the single two most important stakeholders for any principal and

² http://highpaycentre.org/img/Cheques_with_Balances.pdf

university. By being involved fully on panels, staff and students will be better able to influence and have say over recruitment and appointment, based on their unique knowledge and expertise.

Similarly, with appraisal, staff and student involvement on any panels would mean that this distinct voice and perspective is brought to bear in discussions. We believe that one way to strengthen this would also be for institutions to consider greater use of 360-degree professional development reviews, with substantial staff and student input.

We believe that, again, there are minimum standards as a first step which would see us move towards achieving greater transparency around appraisal and remuneration. Currently, public information on senior staff salaries can differ widely from institution to institution. There should be a standard format for reporting senior staff pay, and this should be published annually, which separates out and details information such as core salary, payments in kind, and pension contributions and benefits.

Finally, where information is held on strategic objectives and performance management, these could and should also be made more widely available, and easier to find, ensuring that there is a greater understanding of the work principals and senior staff do.

Meetings in public

NUS Scotland believes that opening up the proceedings of governing bodies, and requiring institutions to hold open meetings, could go some way to improving transparency, and we would fully support the adoption and implementation of this recommendation. For many years, universities have (sometimes wrongly) been dogged by accusations of being 'ivory towers' cut off from their locality. As such, we believe that governing body meetings should be particularly advertised and open to members of the local community, to establish a link between the two and improve understanding on both sides.

We recognise that there may be those who feel unnerved by the idea of public meetings for fear that it would stifle debate and simply mean that important decisions are taken elsewhere, behind closed doors, prior to meetings. However, we would respond that, if this were the case, then it strikes to a much deeper issue with governance and would paint a particularly negative picture of any institution which sought to do so, or where this may be the rule as opposed to the exception. In recent years there is a general worry among staff and students that the role of governing bodies has become gradually more diluted, with many decisions and the most important debates taking place away from the governing body (and often away from

any formal committees or structures, for example closed 'pre-court' meetings), which often excludes lay, staff and students members. It is vital that governing bodies are a forum for genuinely open debate, where decisions are taken on the basis of this debate as opposed to a mere rubber stamping body.

Should meetings be held more publically, it would obviously still be acceptable to have 'reserved business' if that was required for particularly sensitive issues. Though, on the subject of reserved business, we do believe there is scope to review what items are included within this (particularly for student members) as there are some institutions would seem to take an overzealous and prescriptive approach. We would want to see all institutions ensuring that they take their student membership seriously (as full members), and fully include them in all discussions and decision making, with a relaxing on what is deemed 'reserved' business, and the role of student representatives in this. Going in tandem with this, as full members of governing bodies (as well as academic governing bodies/senates) we believe it is important that institutions provide student representatives the flexibility to bring papers and discussion items direct to meetings, via their own internal structures, as opposed to a university's.

As a bare minimum to achieving better transparency and understanding of governing body meetings, we do believe there should be much earlier advance notice of meeting papers, and quicker turnaround of (substantive and easy to read) minutes being written and published, something which often does not occur.

Composition of academic bodies

As with governing bodies, we welcome the commitment to having elected members make up the majority of academic bodies. It is important that direction is being set by those who will be expected to implement decisions on the ground, and therefore they should avoid being dominated by senior managers, and ensure that academics make up a significant number of members.

As part of this, we would welcome moves to define a minimum number of student representatives, potentially as a defined percentage of overall membership. We believe that there should be equal representation among the three key components of academic bodies: staff, students and senior officers and managers. We would welcome moves to formalise this, and see a third of academic bodies' membership made up of representatives of each, with elected members therefore being in the majority.

Good governance in regulating fees

On the basis of the most recent university financial statements, total fee income – across all levels of study for home, EU and international students – accounts for around one fifth of university income; £722.3m. This is a not insubstantial amount, and more worryingly from our perspective is that much of it remains unregulated, not least the single biggest component, non-EU fees (with a combined income from this source of £329.4m).

We believe that there is scope within the development of a new code of governance, or sitting alongside it, for a statement of good practice on the charging of fees. For instance, Edinburgh University, in response to a student campaign, recently announced that it would move to cap international student fees across the length of a degree. We believe that this is something which could easily be adopted by all universities, and indeed at a time when the UKBA is damaging the international reputation of higher education in the UK, would serve as an extremely positive move.

Equally, in the realm of PG and RUK fees there are a number of positive steps which could be taken to mitigate financial worries, and ensure that institutions are making positive statements which affirm their commitment to social mobility and the provision of good information, support and guidance. For example, we would encourage institutions to publically commit to defined levels for bursaries and student support for both, and ensure that fee levels are set through consultation with student representatives.

Ensuring compliance with good governance

We are pleased to see the proposed Post 16 (Education) Scotland Bill reference a possible code as the basis for the governance provisions within it. While we recognise there are concerns with the current drafting of the bill, we believe that it is important that there is a legislative underpinning for compliance with good governance arrangements, and therefore are glad that to see this being provided for. We would hope that the CSC code would be available at Stage 2 of the Post 16 bill phase, which may ease some of the current fears.

If it is the CSC's intention that the code would be produced on a comply or explain basis then we would fully expect this to be provided for in the guidance letter from the SFC, but still underpinned by legislation, with a detailed and clear explanation of any areas of the code which have not been met, and what steps will be taken to address these. We believe that there is scope for this to be done within the context of outcome agreements, which we would expect any future code to reference.

As good practice, governing bodies should ensure that they are taking a keen interest in the development and content of outcome agreements. We would expect them to be fully involved in setting strategic direction and priorities, and ensuring that institutions are being sufficiently ambitious with targets and outcomes. Therefore, we believe that by aligning compliance with good governance with outcome agreements would ensure that this oversight is occurring. Similarly, it is vital that governing bodies absorb overall responsibility for 'singing off' on outcome agreements, as well as regular oversight and scrutiny of progress towards outcomes. We believe there is scope for these to be a standing item on agendas, ensuring that they are taken seriously at the highest levels of an institution.

Finally, we believe that there is a real and pressing need to ensure that 'ownership' of any potential code is such that it balances the needs of all stakeholders. Our preferred option would be for the SFC to ultimately 'own' the code, which we believe is necessary should it become – as we wish to see, and as referenced within the Post 16 Education Bill – a condition of grant, with regular engagement on its content, and potential development or alteration, with relevant stakeholders.

For more information on anything contained within this submission, contact:

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