

the scottish code of

GOOD HE GOVERNANCE

Report on the Steering Group's consideration of evidence

April 2013

Introduction

In June 2011, the Scottish Government established a panel to review Higher Education governance in Scotland under the convenership of Professor Ferdinand von Prondzynski. The task given to the panel was to produce an independent report (referred to hereafter as the Von Prondzynski Report) and to make recommendations for reform. The final report, submitted in February 2012, contained a number of unanimous recommendations and some made on a majority basis because of the dissenting opinion of one member. The final recommendation in the report was that the Scottish Funding Council should commission the drafting of a Code for Good Governance for Higher Education Institutions. On 28th June 2012, the Cabinet Secretary for Education and Lifelong Learning announced to the Scottish Parliament that, subject to finalising the membership, he had asked the Committee of Scottish Chairs of Higher Education Institutions to lead a group to develop a new Scottish Code of Good Governance. The membership and terms of reference of the resulting Steering Group are set out in Appendix A to this report.

Process followed by the Steering Group

The Steering Group has held four meetings, one of which included a session with Professor von Prondzynski. Two consultants with great experience of the sector, Kevin Clarke and Peter West, were appointed and have met on our behalf with the STUC, EIS, UCU and NUS (Scotland) and reported back on the issues discussed and points made. In addition, contact has been made with SFC, CUC, CBI (Scotland) and Scottish Government officials.

In December 2012 and January 2013, the consultants visited every Scottish Higher Education Institution meeting wherever possible separately with students, staff, lay governors and senior executive teams. A full list of attendance at these meetings has been published on the Steering Group's web-site. Over 80 meetings involving some 366 individuals were held, discussion focussing primarily on an Issues Paper which we had authorised to be circulated in advance. That paper took full account of the Von Prondzynski Report, and of the CUC Code presently followed by Higher Education Institutions throughout the UK and of international evidence. It posed a number of questions which proved to be a fruitful starting point to discussions which have provided us with a strong evidence base about opinion across Scotland and with numerous examples of good practice, which are quoted later in the report. We are most grateful to all those who contributed to these consultations and to those who shared their views with us in writing, including NUS (Scotland), Unite, EIS, UCU and the Royal Society of Edinburgh, as listed in Appendix B.

We are confident that the draft Scottish Code reflects the good practice we have found and will bear comparison with any such code in force anywhere else in Higher Education or in the corporate sector, which we have drawn upon for some sections. It incorporates significant changes to the UK CUC Code which impose requirements on governing bodies in respect of:

Principle 1

Ensuring sustainability; equality/diversity; academic freedom; accountability for public funds

Principle 2

Compliance with charity law, and defending academic freedom

Principle 5

The involvement of staff and student members of governing bodies in the appointment and appraisal of the Principal;

Principle 7

The introduction of a senior independent member of the governing body to lead the annual appraisal of the chair

Principles 9-11

A duty to keep the membership under review in respect of diversity and equality in the main principle; to appoint student members of the Nomination Committee; and to clarify the role of the Rector. Guidance on the remuneration of chairs and members and on the process of electing the chair.

Principle 14

On the conduct of meetings, guidance to promote external engagement, openness and transparency in the conduct of business and limit the attendance of officers

Principle 15

The whole governing body to determine remuneration policies, with a stronger emphasis on reporting on remuneration matters to the governing body; also guidance on publishing senior salaries.

The Recommendations of the Von Prondzynski Report

It was clear to us from the outset that a number of the changes proposed in the Von Prondzynski Report were outwith our gift, since they required changes in the statutory instruments governing Scottish Higher Education Institutions. There were also some recommendations which were directed elsewhere, to the Scottish Government or to the Scottish Funding Council. We have, in consequence, focussed our attention on areas of good governance which can be addressed within the framework of the existing charters and statutes. This approach has the advantage that the changes we propose can be implemented without delay, ideally for the 2013/14 session.

We have incorporated the majority of the recommendations of the Von Prondzynski Report into the draft Code of Good Higher Education Governance, including the following:

- The importance of the role of Courts in defending academic freedom
- The desirability of including staff and student members in the appointing panels for principals;
- The involvement of staff and student members of the governing body in the process for appraising the performance of the Principal;
- The need for greater openness and transparency in the proceedings of governing bodies and their remuneration committees;
- The imperative of analysing the particular skills and attributes needed for members of Courts when vacancies occur and advertising such vacancies;
- Involving staff and student representatives in the interview and selection of Court members and Chairs;
- Having a clear lay majority on governing bodies and encouraging full participation by staff and student members;
- Measures, including each institution being expected to set itself clear measurable goals, to ensure that the membership of governing bodies reflects the diversity of the wider community;
- Effective induction and training programmes for all governors;
- Aiming to have at least two staff and student representatives on each governing body.

Several of the examples of good practice which we have identified provide methods of achieving these goals rapidly and effectively, such as paying child and other dependent care costs for court members to encourage a more diverse membership. In the case of other recommendations of the Review, we have identified good practice which, we believe, can address the underlying issues that were identified in equally or even more effective ways.

An example would be the perception that governing bodies are insufficiently open and transparent. We have concluded that there are better ways of dealing with that perception, which cannot and should not be ignored, than by opening meetings to the public which might inhibit debate and challenge and thus have the opposite effect to the one intended. Publishing agendas and most papers on the university's internal information system, inviting comment, and then issuing e-bulletins to every member of staff and student soon after every meeting seems to us a practical solution, which has already proved to work well within the Scottish system.

Our approach has been to accept that a response is needed to all the concerns that the Von Prondzynski Report has identified and we expressed these in a series of questions that were posed to every group that engaged with our consultants as they visited the Scottish Higher Education Institutions. In the sections that follow we summarise the arguments put forward in the meetings, identify relevant good practice and set out our evidence based conclusions on each point, which are carried forward into the draft Code of Good Practice.

Academic Freedom	
The Steering Group fully supported the Review's emphasis on the importance of academic freedom and identified a need to consider precisely how this should be expressed in a new code.	
Should the wording in Ireland's Universities Act 1997 be preferred over section 26 of the Further and Higher Education (Scotland) Act 2005?	
Should each institution adopt a policy on academic freedom similar to that of Trinity College Dublin (TCD) and present it to the Scottish Funding Council?	
FOR	AGAINST
<ul style="list-style-type: none"> A number of staff union representatives feel that it may address perceived threats to academic freedom in the form of a more managerial culture and more external direction from Government. 	<ul style="list-style-type: none"> Almost unanimous opinion amongst lay members, senior executives and most non-unionised staff that the Irish wording and the TCD approach do not reflect good practice and would be detrimental to the effective management of resources and staff Potential to cause reputational damage to institutions by increasing the scope of protection to activities outside the perusal of academic inquiry. Seen as wholly unnecessary; no evidence of difficulties with current policies or legislation on academic freedom Possible conflict with accountability requirements between universities and their stakeholders Could lead to conflict with the law in areas such as defamation and discrimination
EXAMPLES OF GOOD PRACTICE:	
None noted but suggested by one institution that the specific recommendation on adopting the TCD policy could be adapted to suggest that each institution might develop and adopt, through appropriate internal processes, a statement on its approach to protecting academic freedom, without the need for legislation. Precise phrasing and wording would need careful consideration. This would also allow institutions the flexibility to respond to changing circumstances.	
CONCLUSION:	
The defence of the freedom of academic staff to hold and express an opinion, question and test established ideas and received wisdom and present controversial or unpopular points of view is an essential part of the role of the governing body of a Higher Education Institution. It is not part of the CUC Guide but should become part of the Scottish code of good governance. [See Main Principle Number 1]	

The great majority of consultees (including staff representatives) expressed grave reservations at the Trinity College, Dublin policy which was thought likely to make managing research activity very difficult. Furthermore, concern was expressed in several institutions about broadening the definition to cover activities “outside the university” which, it was feared, could leave the governing body unable to disassociate itself from public statements by members of staff in the name of the institution.

Nevertheless, given the governing body’s clear responsibility to ensure compliance with both primary legislation and governing instrument provisions on academic freedom, Scottish HEIs should keep the wording of their internal policies on academic freedom under regular review, whether or not there have been any particular issues arising. Any principles on academic freedom must be consistent with the Magna Charta Universitatum.

Meetings in public

Is enough being done in all cases to encourage openness and transparency, or should further measures, including public meetings, be considered?

FOR	AGAINST
<ul style="list-style-type: none"> • A very small minority of staff and students consulted were supportive of public meetings of Court, whilst recognising the difficulties. • Might increase public confidence (although no evidence that public confidence in universities is lacking or that it is a priority issue for members of the public) 	<ul style="list-style-type: none"> • Might reduce the challenge necessary for effective and good governance • Very strong feeling that it would inhibit robust discussion and lead to more business being conducted in closed sessions, thereby reducing transparency • A large number of individuals from all groups cited the experience of NHS and Local Authority Boards as a key exemplar of why public meetings were not appropriate or useful (experiences suggested that frequently the only public attendance at NHS Board meetings was from members of the press) • Commercial nature of much of a university’s business would make public meetings very difficult. • Very little interest generated by previous public consultation meetings

	<ul style="list-style-type: none"> • May make Court membership less attractive to the skilled individuals that are needed to help institutions prepare for future challenges. • At least one enterprise agency in Scotland has experimented with public meetings and subsequently abandoned them. • Purpose of public meetings not clear i.e. first ask who are you trying to communicate with and what best way is to achieve that? Different institutions have a range of different external communities and professional groups with which they must engage.
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EXAMPLES OF GOOD PRACTICE:

- Deployment of modern IT solutions to aid and increase transparency and improve reporting on Court business and decisions taken
- Some institutions allow staff to attend meetings of Court (by prior arrangement) as part of staff induction and development
- Openness with Court agendas and papers and prompt publication of minutes aids transparency
- Membership of Court is sufficiently representative and FOI regulations are followed
- Use of various Community Forums throughout the year to engage with the local community – organised around strategic issues of interest to the local community – positive and effective public outreach is more effective and proactive than public meetings
- At one SSI, any member of staff or student may attend the meeting of the governing body. In practice they do not, except in times of perceived crisis. (May not be transferable to larger institutions)
- AGM hosted, to which external stakeholders are invited.
- Senior executives host meetings with union reps following Court /Governing Body meetings to discuss issues of importance
- Consultative committees with representation from key external stakeholders/industry sectors as a valuable form of outreach to the institution’ various external communities
- Pre-business meetings between the Principal and staff and student Court members enhanced engagement and openness (although this should not be allowed to prevent any key tensions/disagreements from being surfaced within Court meetings).

CONCLUSION:

Whilst there is unanimous support for openness and transparency in the conduct of the business of a governing body, there is considerable doubt about whether introducing mandatory public meetings of Court would be the best way of achieving this. Indeed there is widespread concern that it might have the opposite effect. It is generally accepted that admitting the public to meetings of bodies such as City Councils and Health Boards has resulted in many of the most sensitive issues, of greatest interest to the public, being dealt with elsewhere, out of the public gaze, instead of in the body with overall responsibility. The Freedom of Information (Scotland) Act 2002 ensures that the public has access to all but the most sensitive information and it has been argued that efforts to make the membership of the governing body more representative of the wider community is the best way of maintaining public confidence in the longer term.

Public meetings of Court should not be mandatory but neither should they be prohibited. A small number of institutions may see benefit in having the option to hold ad hoc public meetings during times of extraordinary tension or in response to specific issues.

We have found a number of examples of good practice in ensuring transparency within the institution, such as publishing some Court papers for comment before a meeting and the adoption of modern IT solutions to issue e-bulletins via an intranet as soon as possible after each meeting. The Scottish Code should recommend that all governing bodies review their policies to ensure that their proceedings are as open and transparent as possible to their staff and students. [See Main Principle Number 14]

The Appraisal of the Principal

Should students and staff be involved in the appraisal of the Principal? If so, how?

Should Remuneration Committee membership be widened to include staff and students?

Do the present arrangements in your university for setting the pay of Principals and Senior Officers and reporting the outcome meet the recommendations of the existing UK Code?

Should the CUC guidance on this matter be changed in the new Scottish Code

Should the salaries of senior officers be published annually by SFC?

FOR	AGAINST
<p>Principals' appraisal and membership of Remuneration Committees:</p> <ul style="list-style-type: none"> Lack of transparency and communication of Remunerations Committee discussions and decisions 	<p>Principals' appraisal and membership of Remuneration Committees:</p> <ul style="list-style-type: none"> Confidentiality issues may arise where Remuneration Committee remit covers large numbers of staff (e.g. c.250+ in one institution, c.700 at another)

<ul style="list-style-type: none"> • Remits of Remuneration Committee may be widening to include redundancy schemes, pension arrangements, etc., enhancing the case for the inclusion of staff • A small number of student reps in favour of their membership on Remunerations Committee and feel they have a good sense of VFM in regard to Principal's appraisal 	<ul style="list-style-type: none"> • Additional members other than lay members could lead to 'popularity contest' • Majority of student reps recognised potential problems with their political constituents if they were to sit on Remuneration Committees and agree pay rises for senior staff • Remuneration Committee must have the requisite skills and experience to fulfil its remit • One University's Statutes specifically prohibit student members of remuneration committees
<p>Principals' pay and publication of senior salaries:</p> <ul style="list-style-type: none"> • Wide acceptance that the process and criteria for determining senior pay should be made more transparent. This is currently being addressed in several institutions. 	<p>Principals' pay and publication of senior salaries:</p> <ul style="list-style-type: none"> • Principals must be empowered to take difficult decisions and pursue difficult policies in the long term interests of the institution – therefore setting of pay must remain with external members • Performance-related pay applies more widely within an institution than just the Principal and senior officers e.g. top research staff • 360 degree appraisal is inappropriate for review/salary setting • Performance and salary decisions must continue to be measured against agreed strategic objectives and KPIs • SFC not an appropriate body for the publication of salary information • All Scottish institutions operating in an (increasingly) internationally competitive market for staff – not the same as public bodies/local authorities

EXAMPLES OF GOOD PRACTICE:

Principals’ appraisal and membership of Remuneration Committees:

- Appraisal of the Principal includes structured interview between Chair and all Court members (360 degree feedback without the formalities). All parties satisfied with outcome and quality of information reported back to Court. Similar approaches identified at some institutions and wide ranging support from many others for this approach.
- Principal’s performance discussed during a designated session of Court where Senior Executive members are excluded
- At one institution, the Principal is included in the same standard professional development review (appraisal system) as other university colleagues. This adopts a focused and structured approach and the Chair of Court routinely consults colleagues
- Greater adherence to CUC guidance on remuneration would be a step forward in enhancing transparency
- UK Corporate Governance Code as good practice guide
- Remuneration committee attended by senior external/independent advisor/observer who reports separately to Court – provides transparency and objectivity
- Remuneration Committee’s policies are agreed by the entire Court membership

Principals’ pay and publication of senior salaries:

- One institution already discloses senior officer salaries in response to FOI requests.
- Publication of senior salaries in bands (perhaps with an indication in the annual report of which bands the salaries of key senior staff e.g. Secretary, Finance Director, etc. fell within)

CONCLUSION:

The Appraisal of the Principal

The recommendation that staff and student members of governing bodies should be involved in the Principal’s appraisal, in addition to external lay members, is widely accepted and should form part of the Scottish Code. Several examples of good practice involving staff and student members of Court being consulted in a structured process have been made known to us and deserve careful consideration in each institution to establish which will best suit their circumstances.[See the Supporting Guidelines to Main Principle no5]

There is also a strong case to be made for greater involvement of staff and student members of court in the process of appointing a new Principal. Several recent good practice examples were identified across the sector and existing guidance on good practice in this area should be considered.

Membership of Remuneration Committees

There is a wide variation between institutions in regard to the information provided by Remuneration Committees to the governing bodies. The best explain their reasoning, benchmarks, even the target quartile within the salaries paid by the comparator institutions. Others do not sufficiently meet the disclosure standard set out in the present CUC Guide. If all were to follow existing good practice and were, furthermore, to involve staff and student members of Court in the consultations on the review of the Principal, it would obviate the need to extend the membership of the Remuneration Committee which would, as many of the student representatives have told us, place them in a politically difficult position. [See Main Principle no15]

Publication of Senior Officer Salaries

All are agreed that the publication of salary information should be the responsibility of the institution and its governing body rather than of the SFC. There are concerns about Data Protection implications and about being forced to disclose information which may have the effect of increasing costs by encouraging competition for key staff. Nevertheless at least two institutions have been found to have a policy of disclosure in response to FOI requests in respect of their highest paid staff. Institutions already publish the numbers of senior staff within salary bands over and above a certain salary level in their annual financial accounts. This approach could be enhanced by identifying the specific salary bands that key officers (e.g. Secretary, Finance Director, etc.) fall in to. [See the Supporting Guidelines to Main Principle no15]

Chairing of Governing Bodies

Do you think your current arrangements, which usually involve a nominating committee established by the court, for appointing the chair of the governing body are effective in being sufficiently rigorous and transparent?

Should vacancies for Chairs and governing body members be advertised publicly?

Should staff and students be involved in the process that leads to the selection of a new Chair?

Should Chairs be remunerated?

FOR	AGAINST
<p>Nomination Committee membership:</p> <ul style="list-style-type: none"> • Increases transparency and benefits student and staff engagement • Ensures internal stakeholders have a say in the appointment of the Chair and new lay members 	<p>Nomination Committee membership:</p>

<p>Public advertisements:</p> <ul style="list-style-type: none"> • Helps ensure as wide a field of candidates as possible • More transparent approach 	<p>Public advertisements:</p> <ul style="list-style-type: none"> • Should not be limited to choosing from amongst the respondents to any advert as this could omit exceptional external candidates that would not normally respond to an advert.
<p>Remuneration of Chairs:</p> <ul style="list-style-type: none"> • Need to widen field to ensure that lower income groups put names forward – no one should be financially disadvantaged by attending Court meetings • Stated concern from some quarters that the established pool of early retired, semi-retired from professional backgrounds will dry up in light of pension changes • Those who did not wish to accept payment could donate it to the university scholarship fund, for example • Funds for remuneration could come from a centrally held and managed trust rather than direct from individual institutions –to overcome issue around independence of Chair 	<p>Remuneration of Chairs:</p> <ul style="list-style-type: none"> • Public service and philanthropic ethos seen as essential part of the role • You would need to pay other senior lay members as well, as in Health Boards. The sums could be considerable and may be inconsistent with Scottish charity legislation • Who would review the performance of a paid chair? • Would someone dependent on this income stream be willing to put it at risk by taking a stand on a difficult policy of long term interest to the institution? • Could blur the distinction between the executive and non-executive, leading to clashes between the executive team and the Court • Decision to remunerate a Chair (or other lay members) should be one for individual institutions, based on range of factors, rather than mandatory for all
<p>EXAMPLES OF GOOD PRACTICE:</p>	
<ul style="list-style-type: none"> • Inclusion of student representative on the Nominations Committee • Recent widespread and proactive campaign at one institution to recruit a new Chair, including the use of an external assessor and student involvement • One institution which favours external advertisement for members of Court had recently attracted 23 applicants in this way and was subsequently able to produce a strong shortlist of 3 men and 3 women. • Another institution cited the use of external ‘head-hunters’ to search for their new Chair – the Chair is always sourced from outside the existing Council membership 	

- Use of a skills matrix in filling lay vacancies is good practice but should not be religiously applied if an excellent candidate with a slightly different skill set is found, providing any skill gaps were filled over a period of time.
- The CUC Code provided good flexibility on the remuneration of lay members
- One institution had recently used a consultative approach involving trade unions and other staff and students when appointing a new Principal. It was thought that this same process could be used for the appointment of the next Chair.
- It was suggested that no one should lose income by assuming the role of Chair (this may be expensive to manage if the Chair is a QC, for example)

CONCLUSION:

Chairing of Governing Bodies

It is a cardinal principle of good governance that no institution or individual should be held accountable for something over which they have no authority. Courts are accountable for the performance of their chair, so they must have authority over the chair, including the choice of individual to hold that office and the decision on the period of office. It has been pointed out to us that the authority of the chair to hold the Principal accountable derives from having the confidence of Court, which requires that the Court rather than any other body has selected its chair. For these reasons, the overwhelming majority of those we consulted did not support the proposal to have the whole university elect the chair. However, we have proposed an alternative method of election which ensures that the staff and students are directly represented democratically in the election of the chair.

By the same token, the person selected by the Court to be its chair must be chosen by the whole Court and we have found some good practice involving the post being filled on the basis of a clear role definition and interviews carried out by a nomination committee including staff and student representatives on Court. The post has even been publicly advertised in some cases. In view of the growing importance of the position, we would favour treating appointments with the same rigour as appointments to the post of Principal, which commonly involve consultation with the whole university community about the qualities required and about names to be considered. We would envisage these consultations being carried out by the staff and student members of court who will become, under our proposals, members of the Nominations Committee. [See Main Principle Number 7]

In the case of those institutions with a post of rector, we were told that there were different arrangements in place governing which court business, if any, was chaired by the rector and that candidates for the post were not always clear about what was expected of them. We hold that there should be clarity about the exact role to be played by the holder and that whoever is chosen to chair the court must be capable of meeting the requirements of that role. [See the Supporting Guidelines to Main Principles Numbers 9-11]

Remuneration of Chairs

Opposition to remunerating chairs across all institutions and groups that we have met substantially outweighs support and there are currently questions over the attitude that the Scottish Charities Regulator would take to such a development. Nevertheless, the position may change, particularly if as some have suggested, changes in retirement age and pension arrangements make it difficult to find chairs of the right calibre on an unremunerated basis. The CUC Code already makes provision for the payment of lay members on case being made and it is proposed that this provision be retained in the Scottish Code. Whilst we therefore conclude that remuneration should not be introduced on a mandatory basis, the issue should be kept under review rather than being ruled out sine die. [See Supporting Guidelines to Main Principles Numbers 9-11]

Membership of Governing Bodies

Ensuring effective mechanisms so that the governing body is well informed of the views of staff

Ensuring that the work of the governing body is transparent to all staff

Appropriate size of the governing body

Implications for the effective governing body size recommended by the Report

Should up to two governing body members be alumni?

Should there be a quota for the proportion of female members of the governing body?

How else can good practice in regard to equality and diversity be achieved?

Payment of expenses to governing body members, including compensation for lost wages.

Presence of senior managers at Court

Comments:

Communication between governing body and staff:

- More could be done to enhance transparency and communication in a range of areas. Examples of good practice are listed above under 'Meetings in Public'.

Alumni membership:

- There was no tangible support for this proposition although it was noted that it might provide a way of recruiting younger Court members.

Gender quotas:

- Representatives were almost universally opposed to the idea of imposed gender quotas for membership of governing bodies, particularly as much of the Court is elected by other constituencies e.g. Senates, General Councils, Student Unions, etc. It was felt that appointments should reflect the need for specific skills and expertise and gender quotas were not conducive to this. Nonetheless, an appropriate gender balance should be an aspiration and Courts should have reference to the overall balance of equality and diversity of the membership where control over appointments is possible.
- Recent experience of proactively seeking female board members had highlighted some difficulties in covering all the required skills and attributes and simultaneously achieving an overall gender balance.
- One group of consultees proposed the possibility of recruiting governing body members on the basis of potential experience rather than always looking for long experience.
- Reimbursement for child and other dependent care costs could help in attracting a wide breadth of applicants
- Proactive advertisement and marketing could help in improving the diversity of Court membership
- Positive action generally preferred over positive discrimination.

Trade Union Representation:

- A majority felt that direct trade union representation on governing bodies was inappropriate and ran counter to principles of good governance e.g. the need to avoid vested interests, as required by the Nolan Principles,
- Trade union representation would also disadvantage non-unionised staff representatives or otherwise lead to 'double representation' of staff on Court
- Some institutions do not recognise staff unions for bargaining purposes and so union representation is not appropriate.
- An example from Germany of trade union representation on boards was cited. This had worked, to a point, but only by splitting business between supervisory and management boards and admitting trade union reps only to the former
- One Chair reflected that it had been tried before in the UK, following the Bullock Report, and then abandoned.

Student membership:

- At institutions where there is currently only one student member of Court, the case was strongly argued for two student members as good practice, as is the case in most institutions.

Senior Management Presence:

- A majority (including staff and students) agreed that Courts would find it difficult to function without the presence of senior executives and their informed expertise. They also had to be present to ensure accountability to the governing body. It was suggested by some that perceived issues could be addressed through the layout and shape of meeting rooms, ensuring that there is always a clear distinction between executive and non-executive members. Examples from the FE sector were cited as evidence of the negative effect of excluding senior managers from Court meetings.
- The presence of managers also allows Court members to see that the Principal is developing a coherent and competent senior team. It would be dangerous if all aspects of governing body business were mediated solely through the Principal.
- An example of excluding senior managers from the governing body of the University of Luxemburg was also cited. Board members had quickly complained at the lack of information available on finance/management/legal issues.

EXAMPLES OF GOOD PRACTICE:

- One institution selects staff members through nominations by a 'Joint Unions' committee. Members feel able to speak for their members whilst also seeing themselves as members of Court rather than union delegates.
- Conversely, another institution had recently abandoned this approach and the most recent election had yielded a wide field of 13 staff candidates.
- Lay majority on Court is vitally important but not all institutions are currently able to adhere to good practice
- Two student representatives on Court
- Court papers and agendas are published in advance of Court meetings
- One Court had recently introduced a standing business item which provided a regular opportunity for the Student Union President to update the Court on current student issues and activities
- Members of the governing body regularly visit parts of the university and this improves the visibility of governors and breaks down barriers between Court and the academic body.
- One institution has a mechanism for calling staff assemblies in times of particular stress and an annual meeting with representatives of the wider external community (also relevant in regard to public meetings recommendation).
- One university seeks as a matter of policy to ensure that the short lists for appointments to court reflect gender balance.

CONCLUSION:

Membership of Governing Bodies

Whilst there is general support for two student members of each Court, there is considerable reluctance amongst all parties consulted to limit the choice of members to one man and one woman. The students we have spoken to prefer, overwhelmingly, to have the freedom to choose the best candidates regardless of gender.

Similarly, the appointment of at least two directly elected staff members of the governing body is non-contentious, and the involvement of the recognised trade unions in putting forward candidates in those elections is warmly welcomed. However, once appointed, staff members of governing bodies have a duty to act for the best interests of their governing body as a whole. We believe that linking members formally to specific interests, such as trades unions, presents a material conflict of interest which should be avoided. We conclude that the proposal for places for members appointed directly by the trade unions should be rejected.

There are many alumni members of Scottish Courts, most notably in the ancient universities through General Council Assessors. Younger alumni are seen as a good source of future members to help achieve a better age balance. Nevertheless, the proposal to earmark up to two places for alumni is seen as restrictive and unnecessary.

Equality and Diversity

Every institution would welcome diversity in the membership of its court, reflecting the diversity of its community. It would be reasonable to expect each institution to set itself goals and policies for equality and diversity and to monitor progress each year, explaining what action has been taken to meet these goals. Measures which could assist here is a willingness to meet child and other dependent care costs and careful analysis of required skills and attributes to ensure they encouraged diversity. Any rigid quota which prevented the appointment of the candidate who best met the institution's skills needs at that time would, however, be unwelcome. [See Main Principles 9-11 and Supporting Guidelines]

Attendance of Senior Managers

It is accepted that the number of attending officers should be limited and should never exceed the number of lay members at a meeting. Thereafter it is for the chair to ensure that members are given their place and that those in attendance support the discussion with expert advice rather than ever dominating it. Seating members round a table with officers elsewhere is one way of ensuring that the distinction is clear, though some institutions prefer to avoid that division. [See Supporting Guidelines to Principle Number 14]

Composition of the Academic Board
Appropriate size of Senates/Academic Boards
What would be the effect on the institution of constraints placed upon the composition of the Senate/Academic Board
How to ensure the appropriate balance of interests are represented on the Senate/Academic Board
<p>Comments:</p> <ul style="list-style-type: none"> • Some institutions saw benefit in regular joint meetings between Academic Boards and Governing Bodies as way of enhancing communications and involving lay governors in academic matters. This was not a view supported by all and at least one institution felt the business of the two should be kept separate. • Student suggestion for a 10% minimum student membership of Senate/Academic Board. • Some opposition to the Academic Board being wholly elected. • Strong feeling that the overall size of the Senate should be limited to ensure effectiveness. One institution has over 500 Senate members and the body is often not quorate. • No recommendation on a specific size as this will be different for all institutions but consideration should be given on how to suggest a limit.
EXAMPLES OF GOOD PRACTICE:
<ul style="list-style-type: none"> • Use of modern technologies to facilitate good communications amongst members of Senate and to ensure efficient functioning of the body. • In at least one institution, a lay governor attends meetings of the Academic Board • Use of Joint Policy, Planning & Resources Committee (joint committee comprised of members from both Court and Senate/Academic Council) to consider issues relating to finances, estates, information services and staffing and their integration with academic planning
CONCLUSION:
<p>Academic Boards</p> <p>We have found wide diversity in the size and composition of Senates/ academic boards, reflecting the diversity of institutions themselves, and are not persuaded that there is any merit in proposing a single maximum size or method of election/appointment. During the consultation with RGU Professor von Prondzynski noted that there was a drafting error in the Review Report in that it had not been the intention to exclude senior academic managers from membership of Academic Boards. The remaining issues relating to composition are beyond the scope of the Code but it was clear that there was support for a reasonable representation of students on academic boards, with 10 per cent being seen as a possible good foundation.</p>

Summary

Our remit was to produce a new Code of Governance for the Scottish Higher Education sector. We took as our starting point the existing CUC Code and the recommendations of the Review of Higher Education governance, consulted widely, engaged with staff, students, governors and management teams throughout Scotland and found much good practice which features prominently in our conclusions. The resulting draft code draws heavily on what already works in Scotland and on the current views of the key groups which make up the Scottish Higher Education system. We believe it bears comparison with any such code in force anywhere else in Higher Education or indeed in the corporate sector, which we have drawn upon in some sections.

As a final check to make sure that all the relevant evidence has been considered we now invite Scottish Higher Education Institutions, representative bodies and individuals with an interest in good governance to review the draft and through our website www.scottishuniversitygovernance.ac.uk to bring to our notice any new evidence which might have been overlooked and should be taken into account in finalising the Code. All such submissions of new evidence will be reviewed at our final meeting in June when we intend to conclude our work and issue the final Code for implementation right across the sector with effect from 1st August 2013.

On behalf of the Steering Group

Lord Smith of Kelvin
The Rt Hon Dame Elish Angiolini
Mr Eric Sanderson
Mr Simon Pepper
Mr David C H Ross
Mr Tony Brian

Special Consultee on behalf of the SSIs

Lord Vallance of Tummel

April 2013

Appendix A: Membership and remit of the Steering Group

Membership

The Committee of Scottish Chairs appointed a Steering Group to oversee the preparation of the new Scottish Code of Good Higher Education Governance. The membership of the Steering Group includes leading representatives from the private, public and third sectors, including a former university Rector, and is supported by an expert secretariat. The Steering Group operate within a published Terms of Reference. Members of the Steering Group:

- Lord Smith of Kelvin Kt (Chair)
- The Rt Hon Dame Elish Angiolini
- Mr Simon Pepper
- Mr Tony Brian
- Mr David Ross
- Mr Eric Sanderson
- Lord Vallance of Tummel

Remit

The remit of the Steering Group is to develop a new Scottish Code of Good Higher Education Governance which:

- takes account of the recommendations of the Review of Higher Education Governance;
- incorporates the standards of good practice existing in the Higher Education sector and elsewhere;
- makes proposals that are based on sound evidence;
- clearly identifies the separate duties and responsibilities of management and governing bodies;
- reflects both the inputs and the outputs required of governing bodies and governance;
- takes account of the importance of both the relationships and processes required to achieve good governance;
- considers the inter relationship which governing bodies should have with other bodies within their institutions concerned with governance ;
- is suitably flexible so that it can be applied to all institutions including the Small Specialist Institutions; and
- addresses if, and to what extent, the Code should apply to the Scottish operations of institutions based in other countries and to overseas operations of Scottish institutions.

Appendix B - Submissions of written evidence

Written submissions were received from the following organisations:

- STUC
- Unison, Edinburgh Napier University Branch
- UCU Scotland
- Royal Society of Edinburgh
- Lay members of Court of the University of Dundee
- Senior Management Team of the University of Dundee
- University of Aberdeen
- EIS Scotland
- NUS Scotland