

STUC Response to the Call for Evidence on the creation of a Code of Good Governance in Higher Education - January 2013

The STUC is Scotland's trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 632,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black/minority ethnic members, LGBT members, and members with a disability, as well as retired and unemployed workers.

Introduction

The STUC has long been concerned about the governance in both the Further Education (FE) and Higher Education (HE) sectors in Scotland. We were, therefore, pleased to take part in the Governance Reviews in each of these sectors and supported the findings of both the Griggs and the Von Prondzynski reviews.

The STUC is concerned, however, about the disconnect between the Von Prondzynski review and the work currently being undertaken on the code of good governance and is unclear how the work on this code fits with wider work going on in this sector, specifically the recommendations on governance in HE contained within the Post-16 Education (Scotland) Bill.

Further, this code is being developed in a manner that is contrary to principles of good governance and contrary to the Cabinet Secretary's Parliamentary statement on 28 June 2012, with representatives of both staff and students being excluded from the steering group. While trade unions have been involved in giving evidence to this review, we are concerned that there is no transparency within the process and it is difficult to understand how our evidence is being used. We are also concerned that there will not be an opportunity to give feedback on a draft code, as is normal practice.

Primarily, however, we are unclear why this review repeats many of the questions and issues considered as part of the Von Prondzynski review, which was conducted in a more transparent way with representatives from the whole sector involved. Equally, the code of governance seems a much narrower piece of work, which does not consider legislative change, despite the existence of the Post-16 Education (Scotland) Bill and the proposal to have a subsequent Bill focused on Higher Education.

The original call for evidence as part of the review led by Professor Von Prondzynski asked only 11 questions. This work, however, asks around 30 questions, and revisits much of the recommendations coming out of the original review. The STUC is at a loss to understand this approach, or why this review requires the evidence to be restated in its most basic terms, or why many of the questions seem to consider whether problems in the sector exist at all.

If change was not needed, why did the Government commission the original review, requiring significant time and effort from a range of organisations working in the sector? That review then proposed a range of recommendations the majority of which were supported by all those involved. It is a waste of time and effort to revisit this debate again here, particularly around the recommendations where agreement was reached. Much of this consultation could be avoided, if the starting point simply accepted that Von Prondzynski was a good report that will be implemented. As a supporter of the recommendations of the Von Prondzynski review, the STUC is, therefore, very uneasy about this work, the way it is being carried out and the starting point for many of the questions.

The EIS, UNISON and the UCU are all unions affiliated to the STUC. Each of them responded to the call of evidence that formed part of the Von Prondzynski review and each provided evidence of where governance is failing and where poor governance structures have manifestly caused problems for the sector. We feel this evidence is a useful reminder of why change is necessary in the sector and would recommend that this is revisited, if any doubt lingers as to the need for changes in the approach to governance in Higher Education.

On responding to this evidence, the STUC feels no need to reiterate any of the discussions that were had as part of the Von Prondzynski review, as we feel the review's final report sets these issues out succinctly and clearly.

We have, however, included a section at the end of this evidence, which gives a specific example of good practice with regard to governance within another sector in Scotland, which we feel could provide useful learning. While the questions in this consultation seem very far removed from the bread and butter of implementing a code of good governance, we hope that consideration will be given to the sorts of issues we highlight in this section. Further, if a specific meeting looking in more detail at this example would be useful, the STUC would be glad to facilitate this.

Specific questions posed

Q1) Is the present Act failing to achieve its objective of ensuring academic freedom? If so, would the Irish wording be preferable to the present Scottish wording?

The Von Prondzynski review recommended that:

“A definition of academic freedom should be incorporated in the statute governing higher education, based on the definition contained in Ireland’s Universities Act 1997, and applying to all ‘relevant persons’ as under the existing 2005 Act.

Scottish universities and higher education institutions should adopt a similar approach and that each institution should adopt, through appropriate internal processes, and present to the SFC, a statement on its implementation of the statutory protection of academic freedom.”

The STUC supports this recommendation and would like to see it implemented in full.

Q2) Is there a case for requiring each institution to adopt a policy on academic freedom similar to that of Trinity College Dublin and to present it to the Scottish Funding Council?

This is in line with the recommendation cited above. The case for this recommendation was made and accepted as valid during the Von Prondzynski review process. We see no reason to revisit this issue.

Q3) Is enough being done in all cases to encourage openness and transparency, or should further measures, including public meetings, be considered?

A key reason why this work was undertaken in the first instance was the widely held belief that governance systems in universities lacked openness and transparency. The Von Prondzynski report recommended holding meetings in public, when it was appropriate to do so, as a way to improve the openness and transparency in the system. The STUC supports this recommendation.

Q4) Should students and staff be involved in the appraisal of the Principal? If so, how?

The Von Prondzynski report recommends:

“The appraisal of Principals should involve external governing body members, staff and students.”

The STUC supports this recommendation and believes that staff and students should be involved in bodies that appraise the Principal and that evidence from staff and students on how the Principal is performing should be considered as part of the overall process.

Q5) Should remuneration committee membership be widened to include staff and students?

The Von Prondzynski review recommended that:

“Remuneration committees should include staff and student members.”

The STUC supports this recommendation.

Q6) 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?

Evidence from STUC affiliated unions to the Von Prondzynski review emphasised the need to consider the pay of Principals and Senior Officers, which is often out of step with the pay of ordinary staff members. There is widespread concern that the pay of senior staff is rising at a much faster rate than the pay of staff members across the rest of the university, a situation which is neither justified nor sustainable. Equally, it was the experience of our affiliated unions that, when pay restraint was being imposed on staff further down the university, it was not necessarily being replicated at the most senior levels, which is again unfair, unjustified and unsustainable.

The STUC supports the Von Prondzynski report's recommendations with regards to pay and recommends that they are implemented in full.

Q7) Should the salaries of senior officers be published annually by SFC, as already happens in respect of Principals?

Transparency in the system is important and the publishing of salaries provides this transparency. The STUC, therefore, continues to support this recommendation.

Q8) Do you think your current arrangements for appointing the chair of the governing body are effective in being sufficiently rigorous and transparent?

The Von Prondzynski review recommends that:

“The chair of the governing body should be elected, thus reflecting the democratic ideal of Scottish higher education (recommended by a majority, one member dissenting).”

The Von Prondzynski review made this recommendation, as it received a significant amount of evidence that suggested the role of the chair was important and how they came to hold the post was equally important in terms of their legitimacy. The STUC believes that the current system of University Courts appointing their own members without clear appointment criteria or transparency is simply wrong, and that the current practices do not lead to informed, effective governance or oversight. There is a specific concern that governing bodies simply rubber stamp the proposals of management and there is insufficient scrutiny in the system to ensure good governance and, therefore, well functioning universities.

In his dissenting opinion, Alan Smith wrote:

“An election for the chair of the governing body as proposed in the Report is, in my view, flawed. If there were to be an election, there would be a danger that the different candidates would prepare manifestos, which could promote divisiveness in the institution and a politicisation of the process. We have commented in the report on how the election of Principals can be unsatisfactory in places where it occurs, such as Trinity College, Dublin, and that the governing body should be responsible for the appointment of Principals. The same is true for chairs of governing bodies.”

The STUC sees little substance in this objection. Essentially, he is concerned that elections are divisive and might politicise the process. The reality is that they make the process more transparent and they also allow input into the running of the university from staff and students. As a mature democracy, the people of Scotland are familiar with the concept of elections. They are also used to candidates proposing different positions which, far from creating disunity, actually create healthy debate and a degree of support for the direction of travel proposed by the winning candidate. Electing the chair, therefore, is a useful way to provide legitimacy and accountability into an otherwise opaque process.

The STUC, therefore, continues to support this recommendation.

Q9) Taking account of your institution’s governing instruments, are there ways you wish to propose to enhance the extent to which the chair might be seen to command the confidence of both the governing body itself and other stakeholders, for example, by advertising publicly any vacancy, and involving staff and students in the processes that lead to the selection of a new chair?

Elections provide legitimacy. This is why they are used to select Governments. Electing the chair of the governing body seems a reasonable proposal and there is no reason to believe that the other members of the governing body would not see a chair that has been democratically elected as legitimate.

Q10) Does the absence of remuneration for chairs of governing bodies restrict the range of candidates willing to take on the role?

In their evidence to the Von Prondzynski review, the UCU clearly shows that lay members are predominately from either a business background, or managers and directors in the public sector. Very few of the appointees to Court are from local communities, or represent civic Scotland.

It is accepted that offering some form of remuneration, in line with other public appointments of this kind, can go some way to encouraging a broader range of candidates.

The STUC therefore, continues, to support this recommendation.

Q11) If so, are there any mechanisms which could be used to address the issue, whilst ensuring compliance with other legal demands upon the institution?

The present process is open to challenge on equality legislation and has to be modernised. Further, the Charity Act allows remuneration and OSCR defines how this can be achieved legally¹.

Q12) Are current mechanisms effective in ensuring that the governing body is well informed of the views of staff across the institution?

In their evidence to the Von Prondzynski review, each of the STUC's affiliated unions, EIS, UCU and UNISON gave evidence and examples of how this was not the case.

There is a very real concern that governing bodies are often unaware of any views outside of those of senior management and often do not have the chance to hear the alternative proposals that are being put forward by trade unions or others. As such, governing bodies are seen to do little more than rubber stamp the proposals of senior management.

¹ Section 5 Charity trustee remuneration. Guidance for Charity Trustees, OSCR
<http://www.oscr.org.uk/managing-your-charity/trustee-duties/trustee-remuneration/>

Improved contact with staff and students, including opportunities to discuss issues and alternative ways of working would improve this current failing.

Q13) *Having noted that the composition of the governing body will be prescribed by the governing instruments, are there effective mechanisms to ensure that the work of the governing body is transparent to all staff?*

Q14) *Is the present size of your governing body appropriate?*

Q15) *Would there be any implications for the effective size of your governing body arising from the Report's recommendations?*

Q16) *Would it be appropriate to require that up to two of your governing body members be alumni?*

Q17) *Should the Scottish Code set a quota for the proportion of female members of the governing body?*

Q18) *Are there mechanisms, other than imposing quotas, by which good practice in regard to equality and diversity can be achieved?*

Q19) *What provisions do you currently have for paying expenses?*

Q20) *Have you experienced any difficulties arising in connection with wages lost as a result of engagement in governing body activity?*

Q21) *Would the compensation of lost wages be the best way to address any issues arising?*

Q22) *Does the presence of senior managers attending your governing body inhibit the conduct of business?*

Q23) *Is the attendance of senior managers beneficial to the functioning of your governing body?*

Q24) Would there be merit in ensuring that the number of officers in attendance does not exceed the number of lay members present?

Q25) Are there effective ways of ensuring a proper balance of input with the need to maintain an ethos which is supportive of open and frank discussion?

Questions 13-25 are an attempt to separate out a package of recommendations proposed as part of the Von Prondzynski review, which are intended to work together to provide a different approach to governance in Scottish Higher Education Institutions and to create a different culture on the governing bodies.

The Von Prondzynski report recommends:

“Positions on governing bodies for lay or external members should be advertised externally and all appointments should be handled by the nominations committee of the governing body. Each governing body should be so constituted that the lay or external members have a majority of the total membership.

“There should be a minimum of two students on the governing body, nominated by the students’ association/union, one of whom should be the President of the Students’ Association and at least one of whom should be a woman. There should be at least two directly elected staff members. In addition, there should be one member nominated by academic and related unions and one by administrative, technical or support staff unions.

“The existing system of academic board representatives (called ‘Senate assessors’ in some universities) should also be continued. Governing bodies should also have up to two alumni representatives.

“The existing practice in some universities of having ‘Chancellor’s assessors’ should be discontinued.

“Each governing body should be required to ensure (over a specified transition period) that at least 40 per cent of the membership is female. Each governing body should also ensure that the membership reflects the principles of equality and diversity more generally, reflecting the diversity of the wider society.

“Governing bodies should be required to draw up and make public a skills and values matrix for the membership of the governing body, which would inform the recruitment of independent members of the governing body. The membership of the governing body should be regularly evaluated against this matrix.

“Expenses available to those who sit on the governing body should include any wages lost as a result of attending meetings.

“Senior managers other than the Principal should not be governing body members and should not be in attendance at governing body meetings, except for specific agenda items at which their individual participation is considered necessary, and for those agenda items only.”

The STUC supports the recommendations of the Von Prondzynski review and recommends that they are implemented in full.

Q26) Is the current size of your senate/academic board appropriate?

Q27) Would the Report’s recommendations improve the functioning of your academic board (if you have such)?

Q28) Would the academic functioning of the institution be enhanced or impaired if such constraints were placed on your academic board composition?

Q29) Are there alternative ways of ensuring that an appropriate balance of interests is represented on your academic board?

The Von Prondzynski report recommends:

“In line with existing legislation applying to the ancient universities, the academic board should be the final arbiter on academic matters.

“Apart from the Principal and the heads of School (or equivalent) who should attend ex officio, all other members should be elected by the constituency that they represent, and elected members should form a majority of the total membership.

In establishing the membership of the academic board, due regard should be given to the principles of equality, and the need for the body to be representative. This includes a requirement to ensure that there is significant (rather than token) student representation. Overall, academic boards should not normally have more than 120 members.”

The STUC supports the recommendations of this report and believes that they should be implemented in full.

Principles of good governance

The STUC believes that a code of good governance should improve the management and governance of universities in Scotland; restore the confidence of staff in the governing bodies; and strengthen the autonomy, democracy and collegiality of Scottish Higher Education Institutions.

In practice, this should mean that:

- university management undertakes proper and thorough consultation with staff, unions and NUS Scotland;
- the process of appointment to governing bodies is transparent and accountable, with key representative members being elected;
- governing bodies reflect the concerns of the wider university community, especially staff and students; and
- governing bodies properly scrutinise executive proposals and give due consideration to alternatives

The NHS Staff Governance Standard provides a useful model of governance that the Higher Education sector could learn from and which could achieve many of the aims set out above. However, it should be recognised that to implement this in Higher Education would require a significant change in approach. Partnership working, similar to that found in NHS Scotland, is essential to making an approach like this work. This would mean substantial change in the way university management currently communicates and negotiates with staff.

Governing bodies should, at the very least, ensure that there are appropriate Staff Governance Standards in place in their own institutions. Sector wide voluntary Staff Governance Standards, like that agreed between Scotland's Colleges and the STUC, also provide a basis on which governance could be improved, but the STUC feels that there is currently an opportunity to look at a more developed model, such as that highlighted below in the case study on NHS Scotland.

Good Governance Standards do not just improve the working lives of staff. They improve the efficiency and effectiveness of organisations. There is a range of evidence to show that involving staff in the design of services will make real and lasting difference to the functioning of the sector and the outcomes achieved.

Case Study: The Staff Governance Standard in the NHS

The Staff Governance Standard

The Staff Governance Standard focuses on how NHS Scotland staff are managed, and feel they are managed. It forms part of the governance framework within which NHS Boards must operate.

Work on good Staff Governance was given a legislative underpinning within the NHS Reform (Scotland) Act 2004. The Staff Governance Standard Framework is the key policy document to support the legislation, which aims to improve how NHS Scotland's diverse workforce is treated at work.

The Standard is currently in its fourth edition and was updated to take into account developments within NHS Scotland. Staff across NHS Scotland should continue to benefit from the positive changes that this Staff Governance Standard Framework brings to their working lives, but it also recognises that investment in staff is a direct investment in patient care, as positive staff experience provides positive experience for patients and service users.

Work to achieve the Staff Governance Standard is ongoing and NHS employers must demonstrate that they are striving to both achieve and maintain exemplary employer status. In order to be able to do this, they will be expected to have systems in place to identify areas that require improvement and to develop action plans that will describe how improvements will be made.

Staff Governance and its underpinning in legislation was a major achievement for NHS Scotland and a first for the United Kingdom. The development and implementation of this Framework demonstrates the proactive approach of trade unions and professional organisations, NHS employers and the Scottish Government to modernising employment practices based on the concept of partnership working.

A copy of this standard is available here:

<http://www.staffgovernance.scot.nhs.uk/more-information/latest-news/>

How the Standard Works

Research shows that partnership working is effective in bringing around organisational change and maintaining good working relationships between employers and staff. Partnership working is at the heart of this model of Governance.

Partnership Working

Trade unions have always worked in conjunction with employers in the NHS to negotiate terms and conditions for staff, but over the last 10 years, NHS Scotland and trade unions have taken significant steps to further develop the concept of partnership working. This has been recognised as critical to achieving the aspiration of a world-class health service designed from a patient's viewpoint. Positive employment relations and ongoing staff development within the sector are essential for achieving this aspiration and the staff Governance Standard plays a key role in this approach.

Current National Partnership Structures

There are two key bodies both representing partnership working at a national level, both are tri-partite, taking their membership from representatives of the Scottish Government's Health and Wellbeing Directorate, NHS Scotland employers and trade unions. Both bodies are also co-chaired and have formal constitutions. These are:

1. Scottish Partnership Forum (SPF)

The Scottish Partnership Forum exists to provide the Scottish Government, NHS Scotland employers and trade unions an opportunity to work together to improve health services for the people of Scotland.

It also provides a forum for all national key policy leads to engage with key stakeholders to inform thinking around national policies on health issues.

Normally, the SPF will discuss one or two topics in a workshop environment to allow for ideas and debate. These will be shared with the local Area Partnership Forums to ensure that local systems are aware of what is being discussed at National Level.

From the first meeting of the SPF in October 1999 to May 2011, the SPF met 45 times, with four meetings each year on average. Each meeting lasts approximately three hours.

2. The Scottish Workforce and Staff Governance Committee (SWAG)

SWAG addresses workforce issues that require Scottish-wide solutions, working in conjunction with the SPF to ensure that NHS Scotland operates as an exemplary employer. The intention in creating SWAG in 2006 was to improve the focus of the SPF on strategic health issues.

Negotiation of terms and conditions is taken forward separately through the Scottish Terms and Conditions Committee (STAC).

The Staff Governance Standard

The Staff Governance Standard applies to all staff employed by, or officials of, NHS Boards. The ethos of the Staff Governance Standard should also be reflected in the arrangements with private and independent contractors and partner agencies working with NHS Boards. In order to effectively embed staff governance and achieve the above aims, there is a need for ownership of, and accountability to, the Staff Governance Standard at all levels and across all staff groups. This includes individual staff and their representatives, managers at all levels and members/officials of Health Boards.

The Standard requires all NHS Boards to ensure that staff are:

- well informed;
- appropriately trained and developed;
- involved in decisions;
- treated fairly and consistently, with dignity and respect, in an environment where diversity is valued; and

- provided with a continuously improving and safe working environment, promoting the health and wellbeing of staff, patients and the wider community.

The Standard also requires all staff to:

- keep themselves up to date with developments relevant to their job within the organisation;
- commit to continuous personal and professional development;
- adhere to the standards set by their regulatory bodies;
- actively participate in discussions on issues that affect them either directly or via their trade union/professional organisation;
- treat all staff and patients with dignity and respect while valuing diversity; and
- ensure that their actions maintain and promote the health, safety and wellbeing of all staff, patients and carers.

Partnership working at the core of the approach

Nicolas Bacon of City University London and Peter Samuel of Nottingham University undertook a piece of research in 2012 looking at partnership working in NHS Scotland between 1999 and 2011. This research found that the way of working, developed as a result of the staff Governance Standard, brings significant gains for staff working in the NHS in Scotland, but also improves outcomes for employers and the Government by providing a method of dealing with problems, harnessing expertise and ideas from those working on the ground, and creating and maintaining a shared vision for the Health Service in Scotland.

In the report, Bacon and Samuel make the following observations:

“Partnership behaviours from all the participants have produced a cooperative partnership climate that involves an open approach to joint problem-solving and a search for optimal solutions to issues”.

“Partnership requires a set of structural arrangements that go beyond the traditional consultation and negotiation meetings found in the British public sector. Effective partnership places an emphasis on enhanced and early-stage staff involvement in developing plans that have traditionally been the prerogative of managers.

More forums are required for joint problem-solving meetings to enhance consultation arrangements, to agree the overall strategic direction of the organisation and then to develop, in partnership, the appropriate workforce policies to meet key delivery targets. In order to help all parties engage in genuine joint problem-solving rather than adopting traditional bargaining positions, partnership meetings should be separated as far as possible from any subsequent negotiations that may be required”.

“Mutual gains have resulted, with staff benefitting from the development of staff Governance Standards that underpin the workforce strategy and set high standards for health board employers, in particular employment protection during organisational change. The Scottish Government and employers have fostered staff representatives’ commitment to health policies and organisational restructuring, in order to improve patient care.”

Why this model is useful

The development of the Staff Governance Standard in the NHS, along with the focus on the development of meaningful and useful forums for partnership working and the widening out of issues where engagement with trade unions is routinely and genuinely sought, has reaped rewards for the NHS in Scotland. The NHS is one of the largest employers in Scotland and is delivering a vital service, where improving working practices can literally save lives.

While this may not be entirely replicated in Higher Education institutions, the model could still be a valuable one to consider. This form of partnership working seems to fit well with the collegiate approach to Governance, which has been the norm in the past and it also seems right that problem solving and consensus building, as well as using the knowledge and expertise that already exists internally, should be at the heart of any institution.

Conclusion

The STUC is committed to achieving improved governance outcomes in the Higher Education sector. We are, however, uncomfortable with the approach this consultation has taken and we are unsure why it is revisiting the recommendations of the Von Prondzynski review.

We would, however, be happy to provide more detail on the model of good governance highlighted above and would be happy to discuss practical applications of good governance that add to and complement the recommendations laid out in the Von Prondzynski review.

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31 January 2013