

STUC Response to the Draft Code of Good HE Governance - June 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 code of good governance. The code of governance in many places contradicts or falls short of the recommendations of the Von Prondzynski review and the initial consultation process for this code revisited many of the issues looked at in the Von Prondzynski review – which had already been widely consulted upon and clear recommendations had been made. The STUC is concerned that the process of preparing the code of governance, a narrow piece of work conducted by the Chairs of Court, seems to have overtaken a much wider piece of work which drew on the expertise and experience of the whole sector.

It should be recognised that the majority of the Von Prondzynski review's recommendations were agreed unanimously. It is therefore not appropriate that this code of Governance should aim to do anything other than implement the recommendations of the Von Prondzynski review in full. The STUC is clear that this code falls short of this and in many cases there is no justification for a different approach being

proposed. For example the Von Prondzynski review clearly recommended that “*remuneration committees should include staff and student members*” yet this code makes no such recommendation when outlining the make-up of remuneration committees. The STUC is not clear why the Steering Group felt that they had a mandate to disregard clear recommendations from the previous review. There is no practical barrier to carrying out this recommendation; it is simply the case that the Steering Group did not agree with it. Yet their role was not to redefine the improvements that should be made in the sector, their role was simply to prepare a code of good governance in line with the specific recommendations of Von Prondzynski review.

As such this code remains out of step with the wider reforms that are ongoing in the sector. From the outset the Steering Group were clear that they would not consider any requirements that needed legislative change (and therefore would not consider some of the Von Prondzynski recommendations) despite the existence of the Post-16 Education (Scotland) Bill and the proposal to have a subsequent Bill focused on Higher Education, that could be used as mechanisms to make these changes. Equally the code makes no mention of outcome agreements, despite these agreements being key to the new reporting culture in the sector. The accumulative effect of this is that the code produced seems parochial and out of date and does not seem to have any link with the wider work that the Scottish Government is undertaking to improve the functioning of the Higher Education sector in Scotland.

Further, this code was 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 were involved in giving evidence to this review and we did meet the Steering Group to discuss the current draft on 16th May 2013, we are concerned that there is a general lack of transparency within this process and it is difficult to see where trade union input has been reflected in the draft code that has been produced to date.

As drafted, the code reflects the fact that it is prepared exclusively by managers. It is very much drafted to support management and allows a significant degree of latitude in any given situation. This means that even where the STUC agrees with the general principle being proposed in the code, it is not convinced that the code will result in any change or improvement of practice, as the supporting guidelines which accompany each principle are often extremely loosely presented and lack ambition.

Moreover, the code as drafted is often more limited than the current practice of many institutions and therefore does not represent any significant move forward for the sector.

Ultimately a code of good governance that does not support the development of good practice in the sector or present a firm steer to institutions on how good governance is achieved is of little value.

‘Comply and Explain’ and weak wording

The stated aim of the draft code (which is reflected in the explanatory notes to the Post-16 Education Bill currently before Parliament) is, “*The Scottish Funding Council will require Institutions to follow the Code as a condition of a grant of public funding.*”

The draft code, however, describes itself as “*a set of main principles supported by guidelines and examples of good practice*” and subsequently states “*that governing bodies will, wherever possible, comply with the Code*”. The draft code also states; “*Given the diversity of Scottish Higher Education Institutions it is possible that certain of the principles can be met by means different to those envisaged in the guidelines*”.

In this way much of the code is approached as a range of suggestions that might improve practice but there is often reluctance within the code to set out a clear explanation of what should be done as a minimum to meet the principles of good governance.

Further, the draft code’s “comply or explain” mechanism is flawed and will prevent the document from being a true condition of public funding.

The “comply or explain” principle sets out that:

“Institutions should report in the corporate governance statement of their annual audited financial statements (Annual Reports) that they have had regard to the Code, and that where an Institution’s practices are not consistent with particular provisions of the Code an explanation should be published in that statement.”

Practically, however, the delay in this reporting mechanism means that it is difficult to make a direct link between compliance with the code and the grant funding that the SFC provides an institution. The STUC believes that this mechanism should be revised so that any diversion from the code must be agreed by the governing body and the SFC must

be notified as soon as the minutes of the meeting where the decision was made are passed and available for public scrutiny.

Despite having a 'comply or explain' mechanism that is the basis of the code, which therefore ensures a degree of flexibility for institutions to deal with unexpected circumstances, the supporting guidelines that underpin each principle are very weakly drafted and are peppered with caveats which in reality make non-compliance with the code difficult to achieve. The STUC, as an outcome of our meeting with the Steering Group on the 16th May, prepared a paper which highlighted where the wording became so weak that it served to undermine the principles set out in the document.

Given these issues, however, the STUC is concerned that the code as drafted is not fit for purpose, and believes that it is unlikely to deliver any real change or be a driver of good practice across the sector.

Proposed amendment to the Comply and Explain Mechanism

“It is expected that governing bodies will comply with the Code. Any diversion from the code must be agreed by the governing body and the Scottish Funding Council must be notified as soon as the minutes of the meeting where the decision was made to differ from the code are passed and available for public scrutiny.”

The Election of Chairs and the Role of Rectors

While the proposed increased democracy in choosing chairs of governing bodies is a small step forward, it is not the election that was recommended by Von Prondzynski's Governance Review Report. Further, in five institutions the Rector is already elected by students to chair the Court. There is a danger that this new draft actually dilutes the important role of the Rector as the elected chair of the governing body in the five ancient universities. This cannot be changed without amendment of the statutes and Acts of Parliament dating back to 1889 and is possibly unlawful, which is surprising given the consultants knowledge of statutes and ordinances and their reluctance to include anything within the code that requires legislative change.

The STUC is concerned that the code's recommendations do not get to grips with some of the governance issues that exist in the sector at present. Currently, nomination committees for court membership tend to

be dominated by both the senior management team and existing lay members from the business community and tend to lead to similar people being appointed. There STUC recommends that as a minimum, staff and student representatives should be included on appointment committees. This will increase transparency of the appointments process and allow for a broader view to be taken in selecting and appointing candidates.

Ultimately the STUC still supports the Von Prondzynski review's recommendations that all chairs of court should be elected as is the case presently for Rectors and believes that this would do more to improve governance in the sector than the proposals in the current code.

Proposed amendments on the role of Rector.

Principle 7

The chair "*or elected Rector*" shall be responsible for the leadership of the governing body, and be ultimately responsible for its effectiveness. They shall ensure the Institution is well connected with its stakeholders, including staff and students.

Principle 11

At end of first paragraph

"Including where applicable the delineation between the roles of the convener of Court and Rector, as defined in the regulations and legislation."

The Supporting Guidelines should then be amended to read:

"Legislation provides that in the case of four universities (St. Andrews, Glasgow, Aberdeen and Edinburgh) the rector who is elected by the students (and, in the case of Edinburgh, also the staff) should preside at meetings of the governing body."

"This code recognises the legitimacy of student/staff elections as a way of selecting the chair of the governing body and therefore the Rector as the elected chair, as defined in the regulations and legislation, is expected to chair the court. In these universities a convener may also be selected but their role should not interfere with the duly elected representative."

"If the Rector is unable to take up his/her role as chair of the governing body, the normal procedure for electing a chair from within its own number, as laid down elsewhere in this code, should be followed."

“The governing body may wish to supply information to candidates for the post of Rector around their duties as the chair of the governing body before their election.”

The Role of the Secretary

The STUC believes that there should be a fully independent secretary who is responsible to the whole body not just the chair of court. However, the code proposes to give even greater managerial power to the Secretary role which increases the conflict of interest between the Secretary’s responsibility to the court and their membership of the senior management team. It is concerning that the code should increase the conflict of interest of the Secretary and again highlights how the code fails to understand and therefore effectively deal with some of the issues that exist around governance in the sector.

The Secretary should be an independent member of staff and solely responsible for the Court.

Equality

The inequalities in the makeup of governing bodies are not addressed by the draft code. The Von Prondzynski Review states:

“The panel therefore recommends that 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.”

We understand that reserved legislation may shape the way in which this recommendation can be taken forward. Nevertheless, the STUC believes that the code should be making strong recommendations about working towards gender balance on governing bodies. The STUC is clear that, as with most spheres of life (eg parliament, industry, judiciary), real change in gender representation (or other under-represented groups) is only made in a significant way where special measures to support progress are implemented.

The draft code fails to set any meaningful targets on equality stating:

“The governing body shall establish appropriate goals and policies in regard to the balance of its independent members in terms of equality and diversity, and regularly review its performance against those established goals and policies.”

The recommendation as drafted, however, is relatively ambiguous as it gives no guidance on who should establish the equality goals, where they should be set out or how often they should be reviewed. Nor does it give any overall aim to work towards, which potentially means that the same equality requirements could be made and potentially met each year with no overall improvement sought.

It is indicative of the code that it fails to address such contemporary issues in suggesting such a weak statement and at that, only applies to independent members. The STUC believes much stronger and positive requirements should be included within the code to really ensure that governing bodies are taking action to address the woeful under representation of women on university Courts.

This section also encourages appointments to be made from the wider community and uses the term ‘appropriate members.’ However no explanation is given as to what this means or the overall aim that is trying to be achieved.

The STUC is also particularly concerned about the inclusion of this sentence within the equality and diversity section:

“Finally, particular care should be taken on the appointment of members to ensure that they understand the need to abide by both the standards expected of them under Main Principle 3 and the values of the Institution.”

The wider principle which looks at standards expected in public life is covered effectively in other parts of the code and should apply to all members of the governing body equally. There is no reason to believe that by appointing representatives of the local community or someone who falls into an equality group that you are appointing someone who is less aware of or less able to embrace the principles of *“selflessness, integrity, objectivity, accountability, openness, honesty and leadership.”* There is no need to take ‘*particular care*’ with these appointments, over and above the care taken with any other appointment. The inclusion of this sentence in the equality and diversity section speaks to a general dislike and mistrust of equality measures by the Steering Group, which

was also reflected in the discussions the STUC subsequently had with the Group around the draft, and perhaps explains why this section is drafted so vaguely and why it is so lacking in ambition.

Proposed amendment

“The governing body shall ensure (over a specified transition period) that at least 40 per cent of the membership is female by encouraging female members to apply to lay member positions and encouraging other constituent appointments to balance their representation.”

The Status of Trade Unions

Staff and student union representatives have a unique position within an institution, and are well placed to serve on governing bodies, given their representative position, the support of their respective constituencies, and their interest in the success of the institution. Yet unions do not feature at all in the code.

The current board members of higher education institutions tend to come from similar backgrounds and professions, which raises real questions about the balance of skills on boards. UCU Scotland, an affiliated union to the STUC conducted some analysis which illustrates that most lay governors are from management backgrounds and do not represent the diverse community in our universities, but rather a narrow business perspective. Further Von Prondzynski’s Report made a number of recommendations on developing more diverse governing bodies, which are largely ignored by this draft code.

The Von Prondzynski report made the following recommendation which states:

“The panel recommends that 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.”

In practice this already happens in many governing bodies by default and should be included in the code. Again it is not legitimate that the code simply ignores this recommendation.

It is also essential that the code recognises the role of trade unions as key stakeholders within the university and includes them when giving guidance to the governing body on partnership working and wider engagement. The role of trade unionists within the wider community should also be recognised and trade unionists (beyond the elected staff representatives already on the board and potentially, although not necessarily, from other trade unions who are not directly associated with the university) should be recognised as ‘appropriate members’ of the wider community and encouraged to apply for lay representative positions on the governing body. This could be particularly valuable for the governing body as trade unionists often have a useful insight into the wider labour market and tend to be involved in many aspects of the local community.

The Role of Staff and Student Reps

The STUC does not believe this draft code provides sufficient improvements with regard to the role of staff and student representatives. It fails to deliver any major reforms of governance structures, and the inclusion of staff and students within the draft code is minimal. The EIS, UCU and UNISON all gave evidence to the original review of governance highlighting the major and widespread concerns of staff on the stewardship of our universities, on the specific treatment of elected staff representatives on the governing body and the poor state of governance across the sector more generally. These major concerns cover many universities and have been highlighted on several occasions by our affiliated unions but seem to have been ignored by those compiling this code, again underlining that the code simply does not get to grips with the problems that exist in the sector.

This code talks of participation of staff and students but does not go beyond what already occurs in many institutions. Staff governors should be representative of all staff, whereas presently many so called “staff representatives” on governing bodies are often representing the management perspective. The code does not recognise or deal with this issue and even where it refers to the role of staff representatives there is no definition within the code this is a reference to “elected staff representatives” rather than other staff who hold positions on the board.

Equally the proposed code makes no proposals to increase representation of staff in important committees which make decisions on the appointment and appraisal of the Principal, appointments to the governing body, and remuneration for senior management, which are all fundamental recommendations of Von Prondzynski's Report.

The STUC is also concerned about the supporting guidelines under Principle 6 which state that:

“Members nominated by particular constituencies should not act as if delegated by the group they represent.”

This principle seems to curtail the ability of staff and students to speak for their constituency which is deeply problematic. There is real value to having representation of staff, trade unions and students on governing bodies, as was recommended by Von Prondzynski. Their voices add to the diversity and legitimacy of the court and their insight into how decisions affect the welfare and work of staff and support the welfare and educational outcomes of students should be invaluable to the court as educational issues should be central within the governing body's considerations.

This principle also seems to contradict statements made in other parts of the code. For example on Page 23 looking at the reappointment of the chair states:

“Formal arrangements should be made, through the staff and student members of the governing body, to enable the views of staff and students to be taken into account before the final appointment is made.”

Here the code is giving both staff and students representatives a formal role to represent their constituencies and facilitate communication between them and the governing body despite having already set up a clear expectation that they should **not** represent or highlight the views of their constituency. The STUC believes that the code of governance has not thought through in any meaningful way the role that elected staff and student representatives play on the board and the value that they can bring to the discussion and the governance of the university. Rather in their haste to paint elected staff and student representatives as somehow problematic or vested interests, they have presented confusing and contradictory guidance, while also questioning the integrity of those who give up their time to support the governance of their institution.

The STUC strongly believes that there is a need to revisit all the parts of the code that mention staff and student representatives and to consider how these are functioning to support staff and student representatives and ultimately the governance of the institutions. There is also a need to revisit all of the Von Prondzynski recommendations and to ensure that these are adequately reflected in the codes recommendations.

Conclusion

The STUC is committed to achieving improved governance outcomes in the Higher Education sector. We are, however, uncomfortable with the approach this code has taken and we are unsure why it has felt able to change or disregard the clear recommendations of the Von Prondzynski review.

We would, however, be happy to continue to work on the code and to provide more detail on where changes should be made in wording or approach in order to achieve a well designed code that is fit for purpose. The STUC remains committed to the recommendations laid out in the Von Prondzynski review and is therefore clear that this code is a significant distance from what is needed to enact improved governance in the sector.

STUC SUGGESTED AMENDMENTS TO DRAFT SCOTTISH CODE OF GOOD HIGHER EDUCATION GOVERNANCE

Section 1: Revised wording on Rectors

This section looks at the specific concern around the code's recommendation on Rectors V Chairs of court. As stated at the meeting the STUC believes that the section as worded undermines the role of Rectors and their legitimacy as chair of the governing body. In this section the STUC's suggested wording departs quite far from the original intention of the code but as agreed at the meeting, it is useful for us to present a specific suggestion on how the code could deal with this issue.

Currently the code reads:

“Legislation provides that in the case of four universities (St. Andrews, Glasgow, Aberdeen and Edinburgh) the rector who is elected by the students (and, in the case of Edinburgh, also the staff) should preside at meetings of the governing body.

The Code describes how the chair of the governing body should be appointed and that it is the chair who is responsible inter alia for the leadership and effectiveness of that body in accordance with this Code.

In order to avoid confusion, each of these four universities should establish a clear protocol, whether by way of its standing orders and other procedures or otherwise, to distinguish the role of the rector from that of the chair, including in the conduct of Court meetings, representing the university and in relations with the Principal. It is recommended that in the information supplied to candidates for each post before their election, they are made fully aware of this important distinction.

As a member of the governing body, the rector can of course also be a candidate for appointment to the post of chair.”

STUC's suggested wording for this section- reflecting our view that an elected rector is a legitimate chair for the governing body- is as follows:

Principle 7

The chair “*or elected Rector*” shall be responsible for the leadership of the governing body, and be ultimately responsible for its effectiveness.

They shall ensure the Institution is well connected with its stakeholders, including staff and students.

Principle 11

At end of first paragraph

“Including where applicable the delineation between the roles of the convener of Court and Rector, as defined in the regulations and legislation.”

In supporting guidelines:

“Legislation provides that in the case of four universities (St. Andrews, Glasgow, Aberdeen and Edinburgh) the rector who is elected by the students (and, in the case of Edinburgh, also the staff) should preside at meetings of the governing body.

This code recognises the legitimacy of student/staff elections as a way of selecting the chair of the governing body and therefore the Rector as the elected chair, as defined in the regulations and legislation, is expected to chair the court. In these universities a convener may also be selected but their role should not interfere with the duly elected representative.”

If the Rector is unable to take up his/her role as chair of the governing body, the normal procedure for electing a chair from within its own number, as laid down elsewhere in this code, should be followed.

The governing body may wish to supply information to candidates for the post of Rector around their duties as the chair of the governing body before their election.”

Section 2: Improved wording within the supporting guidelines

In this section specific wording is considered throughout the code. The purpose of this is to strengthen the code as currently written- rather than question or improve the principles the code is based on. This is an additional piece of work to the STUC’s written submission to the consultation process and one that is designed to support the general

quality and usability of the code regardless of some of the final decisions that are taken around substance.

It should not, therefore, be seen as an endorsement of the principles of the code or as watering down any of the STUC's (or its affiliate's) suggestions on where the code should be changed or additional elements brought in to strengthen the principles.

Rather this document is designed to help the steering committee understand where the wording in the supporting guidelines becomes weak or lacks ambition so much so as to undermine the original principles as set out in the code at present.

There are five specific themes around the suggested changes to the document. These are:

- Loose requirements that are unnecessary because of the 'comply or explain' principle
- Good practice examples that are basic requirements required to meet the principles set out in the document rather than examples of stretching or inspiring practice.
- General ambiguity and a reluctance to firmly recommend actions.
- Lack of clarity about what the code expects in terms practice- particularly in the sections looking at equality, engagement and transparency.
- Inconsistencies (albeit relatively minor) between different sections of the code.

Page 3 First paragraph dealing with comply or explain principle

The code currently reads

"It is expected that governing bodies will, wherever possible, comply with the Code. Institutions should report in the corporate governance statement of their annual audited financial statements (Annual Reports) that they have had regard to the Code, and that where an Institution's practices are not consistent with particular provisions of the Code an explanation should be published in that statement."

As discussed at the meeting the STUC has concerns about the practical effect of the delay in reporting we therefore propose the following wording:

“It is expected that governing bodies will comply with the Code. Any diversion from the code must be agreed by the governing body and the Scottish Funding Council must be notified as soon as the minutes of the meeting where the decision was made to differ from the code are passed and available for public scrutiny.”

Page 9 Good practice example:

The STUC has some concerns about this a general approach but as a minimum, could the wording here be altered because as drafted seems slightly patronising.

Suggestion: Delete ‘Improving understanding of ‘ and insert ‘encouraging the participation of’

Sentence now reads:

“In one University the Principal meets with staff and student members of the Court before each meeting to discuss the business arising thereby encouraging the participation of those appointed from among those key groups.”

Page 11 Under Supporting Guidelines Paragraph 1

It is clear from other parts of the code that there are principles around who is at the meeting with a desire to always have a majority of lay reps. This therefore suggests that for a meeting to be quorate it is important to think about the category of members present. It may be worth making this point explicitly in this part of the code but as a minimum ‘if necessary’ should be deleted.

Sentence now reads:

“Members should attend all meetings where possible and the governing body should establish clearly the number and the category of members who constitute a quorum. “

Page 11 under Supporting Guidelines- last two sentences

There seems to be some ambiguity about who actually draws up the rules in this section. On the one hand the section says that the governing body should draw up standing orders to regulate the conduct of business. But it then says '*members of governing bodies should refer to their secretary for further information about the rules applying in their own institution*' which seems to suggest the secretary has a role in determining the rules.

Although it is not clear, I believe the point might refer to further rules that are contained in the myriad of statutes that can apply to universities. Perhaps it would be clearer if this was stated more explicitly, something along the lines of:

'Members of governing bodies should refer to their secretary for further information about any other statutory rules that apply in their institution. These should be taken into account when the governing body prepares its standing orders.'

Page 13- Final Paragraph above the Good practice example

The second sentence currently reads '*Committees must take care not to exceed their terms of reference and should be so advised by the secretary to the Governing body*'

Given that there is already a 'comply or explain' element to the code this should be firmer and simply read:

'Committees must not exceed their terms of reference and should be so advised by the secretary to the Governing body'

Page 13- Good practice example at bottom of page.

This example is not good practice. It is standard practice across the public and private sector for a list to be published of who is on a board with some information about them. It also seems to be minimum practice that the secretary of the board's email address is given as there should be a point of correspondence for the board. (However, the STUC still has a wider concern about the independence of the secretary and the increased conflict of interest that this code potentially creates)

Good practice in this area might be to give the contact details of every governing body member so that information or questions can be sent to them directly without going through the secretary.

It would seem poor practice however, not to publish the names of the governing body members and a main point of contact for the board, therefore it seems wrong to use this as an example of good practice example that should go further than the minimum expected.

Page 15- First Paragraph

The paragraph currently reads:

“An essential element of financial management is the annual budget. This quantifies expected income and plans expenditure in the context of income expectation. In many institutions the approval of the annual budget is a responsibility reserved under the constitution to the governing body for its collective decision, without delegation. The annual budget must be approved by the governing body before the start of the financial year.”

This is an ambiguous position. It is not clear if the code is recommending that annual budgets should be passed by the governing body without delegation to committee or not. A firmer statement on this would be useful. Alternatively it could be presented as a good practice recommendation that the governing body pass the annual budget directly. Simply stating that in some institutions the governing body takes a collective decision hints that this is a good thing but falls short of giving any firm direction on the issue.

Page 16 last bullet point

“to receive and approve the audited annual financial statements (this responsibility is usually reserved by the Institution’s constitution to the governing body for its collective decision, without delegation).”

Same issue as above, no firm position or guidance is expressed on the issue- just a statement of common practice.

Page 17- Good Practice Example

Again this does not seem like good practice. Rather it seems minimum practice that a register of interests be publically available on a website. It seems of limited value to maintain a register of interests that is not publically available. It's useful for the code to recommend that institutions make their register of interests available on their website (in the same way that Councils do) but this should not be held up as an example of good practice that goes beyond the minimum.

Page 18 Final Paragraph

The second sentence currently reads

“Policy on this matter should be defined in the governing body’s standing orders or equivalent”

Given that an earlier section of the code requires the governing body to write standing orders the ‘or equivalent’ should be deleted.

Page 22 First paragraph

It would be useful to make clear here that ‘*staff member*’ refers to ‘elected staff representatives’ rather than any other senior staff members that hold positions on the governing body.

Page 22 Third Paragraph

The second sentence currently reads:

“In addition, the issues of equality and diversity must be addressed, and a regular report should be presented to the governing body on progress made towards achieving previously established goals in regard to a balanced membership taking account of equality and diversity characteristics”

This is relatively ambiguous as it gives no guidance on who should establish the equality goals, where they should be set out or how often they should be reviewed. Nor does it give any overall aim to work towards, which potentially means that the same equality requirements could be made and potentially met each year with no overall improvement sought.

The STUC proposes the following amendment:

“The governing body shall ensure (over a specified transition period) that at least 40 per cent of the membership is female by encouraging female members to apply to lay member positions and encouraging other constituent appointments to balance their representation.”

The third sentence then reads:

“Furthermore, the question of inclusion of appropriate members of the local community should also be addressed.”

It is not clear what this means. Who is an appropriate member of the local community? (Equally who is an inappropriate member of the local community?). What is the overall aim that is trying to be achieved here?

The fourth sentence then reads:

“Finally, particular care should be taken on the appointment of members to ensure that they understand the need to abide by both the standards expected of them under Main Principle 3 and the values of the Institution.”

This sentence is not needed. The wider principle is covered effectively in other parts of the code which should apply to all members of the governing body equally. There is no reason to believe that by appointing representatives of the local community or someone who falls into an equality group that you are appointing someone who is less aware of or less able to embrace *“selflessness, integrity, objectivity, accountability, openness, honesty and leadership.”* There is no need to take ‘*particular care*’ with these appointments, over and above the care taken with any other appointment.

The inclusion of this sentence in a section designed to promote equality and diversity is unhelpful.

Page 22 Last Paragraph

The third sentence currently reads:

“Continuous service beyond three terms of three years, or two terms of four years, is not desirable (although exceptions, such as retention of a

particular skill or expertise, may be permitted). After this point members should normally retire and be replaced by new members”

There is some hesitation in this recommendation. This could be strengthened and clarified by the following wording (remembering that there is always the “comply or explain” principle to fall back on if governing bodies have an exceptional circumstance not anticipated by the code):

“Continuous service beyond three terms of three years, or two terms of four years should not be permitted (although an exception is possible in order to retain a particular skill or expertise essential for the functioning of the governing body which it would otherwise lack, and where no new applicants have been identified with the relevant skill set to replace the outgoing member). After this point members should retire and be replaced by new members.

The fifth sentence then reads:

“There should be no bar to a particularly valued member returning to office if a vacancy occurs in future years”

It seems odd to include the words *‘particularly valued’* here. All applications will be considered by the nominations committee in accordance with this code, and the balance of skills on the governing body will be considered. Either having been a member previously is a bar to service or it isn’t- it should not be a bar for some and not others, which the words *‘particularly valued’* suggests it would be.

Page 23 First Paragraph

The third sentence currently reads:

“However, the re-appointment of a chair beyond two terms of four years, or the equivalent, should be regarded as exceptional.”

The wording here should match the wording above *ie’ three terms of three years or two terms of four years’* (and *‘or the equivalent’* should be deleted). Equally it is not clear what the exceptional circumstance could be here? Why would it be necessary for the chair to exceed their term?

In the last section it was about retaining essential skills but here it is not clear why a chair would have to be kept on as chair (particularly since they could be kept on the governing body as an ordinary member under the last section if the individuals skills were required) If this clause is included more guidance is required.

Page 27- Supporting Guidelines

The second sentence of the first paragraph states:

“The agenda, draft minutes if cleared by the chair, and the signed minutes of governing body meetings, together with the papers considered at meetings, should generally be available for inspection by staff and students”

Why include the word ‘*generally*’? There is already a ‘comply or explain’ principle and the next sentence in the code deals with specific issues around confidentiality and therefore qualifies the availability of the papers in a specific circumstance. The word ‘generally’ only serves to weaken the principle further with no real justification and therefore should be deleted.

The final sentence of the first paragraph currently reads:

“Good practice might include placing copies of the governing body’s minutes on the Institution’s intranet and in its library, reporting on decisions in a newsletter, and ensuring that the Annual Report is circulated to academic departments and the students’ representative body”

It doesn’t seem consistent in one paragraph to say that staff and students should be able to see minutes and then refer to it as good practice in the next paragraph (which suggests that it isn’t a firm expectation that every institution should be doing this). All the activities listed seem like things this code should be recommending to fulfil its principle of transparency.

The sentence therefore should read:

“The governing body should place copies of the governing body’s minutes on the Institution’s intranet and in its library, report on decisions

in a newsletter, and ensure that the Annual Report is circulated to academic departments and the students' representative body”

The second paragraph states:

“The governing body should ensure that the Institution engages effectively with its diverse stakeholders. This may be done by public meetings, annual open meetings, economic or professional sector advisory committees, innovative use of information technology and engagement with local community planning bodies.”

This lacks a degree of direction that ultimately a code that sets out good governance principles should be providing. “*Stakeholders*” is a relatively meaningless term that can be interpreted widely. It is worth listing some of the key groups here, staff, students, trade unions, local community etc. to ensure that there is a degree of consistent understanding of who a governing body should aim to engage with. The ‘This may be done’ formulation is again very weak, a stronger wording like ‘The governing body should give consideration to how the following can be used to support their engagement work: public meetings ...’ would strengthen this point.

In the third paragraph:

Recommending that ‘*ways should be found*’ is not particularly enlightening. Perhaps a good practice example here would support this point and provide some inspiration for those trying to use the code.

In the fourth paragraph:

“Institutions should ensure that machinery exists whereby they maintain a dialogue with appropriate organisations in their communities. Institutions should also consider publishing their Annual Reports on the web.”

Again ‘*appropriate organisations*’ is not a very precise or enlightening term- some examples of who they might be would be useful to include. Also putting the annual report on the website should be a firm recommendation rather than something to consider doing. (After all the Annual report is designed to be a public document and it is 2013!) It

undermines the transparency of the institution and the governing body if this is not done.

The final paragraph reads:

“It is desirable for the effective conduct of meetings that key officers are in attendance to offer guidance and advice. However, the number of those in attendance should be constrained so as not to dominate the business of the governing body and normally should not exceed the number of independent members present. The chair should ensure that only members participate in formal decision-making.”

As discussed at the meeting the word ‘dominate’ should be changed to ‘direct’ or ‘unduly influence’ and the word ‘normally’ should be deleted – given that there is already a comply or explain principle.