

The logo for the University Lecturers' Association (eis) is located in the top left corner. It consists of the lowercase letters 'eis' in a white, sans-serif font on a green background.

University
Lecturers'
Association

Large, stylized letters 'U' and 'A' are positioned at the top of the page. The 'U' is white with a green shadow, and the 'A' is dark blue with a white shadow.

**EIS SUBMISSION TO
THE REVIEW OF
HIGHER EDUCATION
GOVERNANCE**

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EIS Submission to the Review of Higher Education Governance

The EIS applauds the formation of the Review into Governance in Scottish Higher Education and urges the Government to act on the increasing concerns arising from the current university governance system. The EIS is therefore pleased to be responding to the Scottish Government's Review into Governance in Higher Education.

The EIS is the largest education union in Scotland with over sixty thousand members; including six thousand members in Further Education Colleges and fifteen hundred members as academics and academic related staff within Higher Education Institutions within Scotland.

Higher Education members of the EIS form a Self-Governing Association called the 'Educational Institute of Scotland University Lecturers' Association' which has its own Executive to deal with HE matters including HE policy for Institute. The EIS is therefore unique amongst trade unions in having HE policy matters determined solely in Scotland.

Higher Education has been devolved to Scotland for some time, and funded through the Scottish Parliament. However, the recent Browne Review and the decision to expand and increase tuition fees in England have accelerated the development of a separate Scottish HE system.

Scotland has a long and proud Higher Education tradition and history, with some of the oldest Universities in the English Speaking world. Today, despite a population of 5 million, Scotland has 5 Universities in the World top 200. This is an impressive achievement and yet many feel that the governance systems that exist within Scottish HEIs do not work as well as they should.

David Kirp¹ has concluded that "embedded in the very idea of the university... are values that the market does not honour: the belief in a community of scholars and not a confederacy of self-seekers; in the idea of openness and not ownership; in the professor as a pursuer of truth and not an entrepreneur; in the student as an acolyte whose preferences are to be formed, not a consumer whose preferences are to be satisfied."

The EIS believes that the purpose and role of the HE Sector needs to be considered together with governance. This 'Review into HE Governance' is an important opportunity to identify and amend the current HE Governance system in Scotland, so that it continues to nurture some of the best universities in the world.

While we welcome the positive aspects of entrepreneurial application that has always existed in the Scottish University sector, which consistently punches above its weight amongst global academia, the EIS does have concerns that current governance systems seem to offer HEI autonomy without democratic accountability, and that many University Courts of Governors have become emasculated by powerful University Executive Groups.

¹ 'Shakespeare, Einstein and the Bottom Line' David Kirp (Harvard University Press)

Scotland is not the only country to look at Governance in Higher Education, particularly with regard to accountability and governance effectiveness. The recent Review of Governance in Higher Education² in Wales proposes a stronger governmental structure for direct intervention within the Welsh HE sector.

The EIS has always acted for the “promotion of sound learning” and it believes that the governance in Scottish HEIs needs to be improved to provide more effective governance and to enable democratic scrutiny. The EIS does believe in HEI retaining the autonomy to govern and manage themselves, but that they should do within a coherent national strategy passed by parliament with a clear line of accountability to the Scottish Government/Parliament which is the primary funder of their work.

The 2011 EIS-ULA Annual Conference called on the Scottish Government to carry out a review into current HE governance arrangements, and the EIS is pleased that the Government has launched this review and it welcomes this opportunity to respond to the Scottish Government’s HE Review.

²Achievement and accountability: Report of the independent review of higher education governance in Wales.

The Review Panel into HE Governance's remit is to:

- consider whether current institutional governance arrangements in the higher education sector in Scotland deliver an appropriate level of democratic accountability given the level of public funding institutions receive;
- identify and examine proposals for change which observe the benefits of an autonomous sector but will also consider the importance of full transparency;
- and the effectiveness of management and governance, the clarity of strategic purpose and its efficient implementation.

The Review's consideration should encompass:

- The purpose of university governance in Scotland in the 21st century.
- The different forms governance takes across all Scotland's higher education institutions.
- Where governance works well, where it does not and what standards of good practice should all governing bodies observe.

In this context the Review is asked to consider the following areas:

- The current engagement of institutions with their communities and stakeholders and specifically to examine the case for a supervisory council or forum representing such interests, its make-up, its remit and the role it might perform in improving institutional governance.
- The current size and composition of governing bodies and whether changes need to be made to enable them to fulfil their role.
- The arrangements for the appointment of Principals and governing body members and the potential for involvement of a supervisory council or forum in that process.
- The case for the introduction of a rector at all institutions.
- The current arrangements surrounding governing body effectiveness reviews and any changes required to deliver greater accountability.
- The effectiveness and transparency of information sharing between the executive and the governing body.
- The effectiveness of communication within institutions between staff, the executive and the governing body.
- The current arrangements and case for representation of students on all governing body committees.
- The current arrangements for the induction, training and ongoing support of lay governing body members and whether specific Scottish provision is needed.

Questions set by the Review Panel in the “Call for evidence”

1. How do institutions currently engage with their communities and stakeholders? Do you think there is a case for a supervisory council or advisory forum representing these interests? If so, how should it be made up, what remit should it have and what role might it perform in improving institutional governance?
2. What works and what could be improved with governing bodies as they are currently constituted? Specifically, what changes could be made to enable them to better fulfil their role? Is there an ideal size and composition of a governing body?
3. How could we improve the arrangements for the appointment of Principals and governing body members? If you think there is a case for establishing a supervisory council or forum, is there a role for it in this process?
4. Do you think all institutions should have a rector? Do you have any comments to offer on the role or remit?
5. What do you think about the existing arrangements surrounding governing body effectiveness reviews? Are they suitably transparent and achieving what is required? If not, what changes might be made?
6. What do you think about the relationship between the executive and the governing body? Does this help deliver accountable governance? Is the relationship suitably transparent?
7. How does communication within institutions between staff, students, the executive and the governing body work? What examples are there of good practice and what could be done better?
8. How are students currently represented on governing body committees? What examples are there of this working well and what could be improved?
9. What are the current arrangements for the induction, training and ongoing support of lay governing body members? Where could these be improved?
10. Should the governance and management of all universities be regulated by a single statute?
11. Finally, are there any other issues relating to HE Governance that you would like to raise?

**EIS RESPONSE TO THE 11 QUESTIONS SET BY THE REVIEW PANEL
IN THE 'CALL FOR EVIDENCE'**

1. How do institutions currently engage with their communities and stakeholders? Do you think there is a case for a supervisory council or advisory forum representing these interests? If so, how should it be made up, what remit should it have and what role might it perform in improving institutional governance?

The EIS believes that different Scottish HEIs engage to different levels with their local communities and stakeholders. The EIS believes that this is mainly due to the way in which different HEIs see their roles.

For example, some ancient universities may not consider themselves as local (or even Scottish) universities serving their local community but world facing universities within a cosmopolitan world in which country boundaries are irrelevant. Such Universities have a relatively low concentration of local students (with Scottish students being in the minority), and a relatively high concentration of non-Scottish academic staff.

This type of HEI may be contrasted with some post-92 universities who have a relatively high number of students from the local community and high number of Scottish students.

The EIS believes that post-92 Universities generally engage with their local communities better, enrol a higher proportion of local students and often engage with local stakeholders effectively since they run a proportionally higher number of vocational HE courses. The EIS notes that some pre 92 Universities do not have matriculation agreements with local FE Colleges.

The EIS recognises the community outreach/adult education courses offered by all Universities, but notes the wide range in charges for these courses e.g. Spanish Evening Course prices range from £25 to £120 depending on the HEI.

The EIS believes that HEIs do need to offer greater community engagement to:

1. Provide learning experiences and courses for adult learners
2. Encourage and support school pupils and FE students to enrol in Higher Education, including their own HEI.

The EIS believes that these aims should be statutory requirements, and that sanctions should be available if HEIs are unable to meet such community engagement aims.

The EIS believes that any advisory council or forum to coordinate HEIs work with communities / stakeholders should be a national body.

The EIS believes that Governing Bodies would better govern HEIs if they worked well with stakeholders and heard their views.

2. What works and what could be improved with governing bodies as they are currently constituted? Specifically, what changes could be made to enable them to better fulfill their role? Is there an ideal size and composition of a governing body?

Scotland has 5 HEIs in the World Top 200 which is a remarkable achievement for such a small country, and recent student satisfaction surveys also show Scottish HEIs in a good light. There is no doubt that some HEIs in Scotland are carrying out exceptional work.

However, the EIS believes that current governance structures make effective governance somewhat of a lottery, often dependant on key individuals – particularly the choice of principal.

The EIS believes that governance structures and accountability pathways need to be changed, which would make governance and management processes more collegiate and consistent, and therefore less reliant on individuals.

The EIS believes that the current system of University Courts appointing their own members without a clear appointment criteria or transparency is simply wrong, and that the current practices do not lead to an informed effective governance or oversight. The EIS is further concerned with large numbers of senior staff (sometimes attending as ex officio members or as observers) who can distort the role and performance of the University Court.

The EIS believes that the current governance system does not put in a place a cohort of HE experienced governors who have the skills to govern and oversee the University Executive Group. The current system does not support nor train University Governors to carry out their role, which they do so in their own time and for free.

As the current system only makes University Courts responsible to themselves for their own performance; there is no driver for ensuring that public money is well spent. In other words, whilst public money pays for the majority of the Scottish HE sector, the sector is not accountable to the public in any way. The EIS believes that this is a democratic deficit.

Suggestions to better enable HE Governing Bodies to fulfil their role more effectively:

1. Elected chair of court (the Rector) with a maximum term of service of four years.
2. One quarter of Governor places to be elected by the staff, with reserved places for trade union representatives (one each for academic and support staff).
3. At least two student members elected by the student body and not serving terms of less than two years.
4. Not more than one third of appointed members of the court to be appointed by the full Court. Two additional members being appointed by the Government or Scottish Funding Council, which may include one representative from the local council.
5. Two or more members appointed directly from the Senate to represent the views of the Senate to the Court.
6. Independent secretariat for the Court, with the ability to give independent factual answers.

7. No member of the University Executive Group (including the Principal) may be a member of the Governing Body, and the practice of senior managers 'observing' meetings to be limited.

The EIS believes that the ideal size for a court of Governors is around 20 members.

3. How could we improve the arrangements for the appointment of Principals and governing body members? If you think there is a case for establishing a supervisory council or forum, is there a role for it in this process?

Yes, the EIS believes that a nationwide supervisory council to help train and support Governors and Governing Bodies. This Council may also issue policies to follow for the appointment of University Principals. Principal appointment panels should have half of their membership from outwith the HEI in question – and that these independent members should be involved from the start of the appointment process (including drawing up the person specification).

The role of Principals (and their Executive Groups) and University Courts should be reviewed by such a national forum, with clear binding policies set.

The EIS is also concerned that many senior university managers have little or no management training. The EIS believes that a university management programme should be initiated in Scotland with a view to providing such training, as is done in the school sector for aspiring headteachers.

4. Do you think all institutions should have a rector? Do you have any comments to offer on the role or remit?

Yes the EIS does believe that all HEIs should elect a 'Rector', who should act as Chair of Court. Staff and students should vote for a Rector, and their term should last no more than four years.

The main purpose of an independent Rector would be to chair meetings, set the agenda and ensure that the functions of the Governing Body are carried out in a fair, equitable and transparent manner. This is aided by ensuring the reality and perception that the Chair of Governors (the Rector) is independent of the Principal and the University Executive Group. Rectors should have no executive authority.

There is a belief amongst many EIS members that some Chairs of Court become too close to Principals and University Executive Groups (UEG) over time, and effectively become another member of the UEG or sounding board to the UEG. This prevents effective scrutiny of decisions and policies at subsequent Court meetings.

An effective Rector would also help to ensure that all Governors play a full and active role within the Governing Body, particularly encouraging new Governors such as student Governors.

5. What do you think about the existing arrangements surrounding governing body effectiveness reviews? Are they suitably transparent and achieving what is required? If not, what changes might be made?

The EIS does not believe that existing arrangements are sufficiently robust and therefore do not achieve what is required.

The fact that the Edinburgh College of Art became financially unsustainable through poor management whilst the 'review' process was in place is testament to their failure. Other well publicised managerial problems at other HEIs (such as Abertay University) would seem to support this thesis.

6. What do you think about the relationship between the executive and the governing body? Does this help deliver accountable governance? Is the relationship suitably transparent?

The Governing Body should provide governance and vision to the University, which should be implemented and applied by the University Executive Group and management.

Power should lie with the Governing Body which should control and direct the Executive. In practice, it seems that many Executives control and direct the Governing Body which the EIS believes is not in the best interests of any institution nor the students and staff. The EIS believes that effective governance is not possible if the Executive controls or excessively influences the Governing Body, as fair unbiased scrutiny will not be possible under such conditions.

The EIS feels that the division between Governing Body and Executive is not apparent in some HEIs, and that it is not clear where one begins and the other ends. This is reflected by the attitude of staff to Governing Bodies which they often see as being remote and simply 'rubber stamps' the will of the Principal.

The EIS believes that many staff feel that loyalty is expected to the Executive/Senior Managers within the HEI rather than to the HEI itself. This has many consequences; including the stifling of debate within HEIs and cliques of staff, some of whom may feel disenfranchised within the institution. There is also a feeling that some individuals are appointed or promoted due to their unwavering loyalty to the Executive rather than merit. All these problems are a consequence of Executives being more powerful than Governing Bodies.

7. How does communication within institutions between staff, students, the executive and the governing body work? What examples are there of good practice and what could be done better?

In many institutions there is very limited communication between the Governing Body and the staff and/or students. Whilst the EIS is aware of some Principals holding 'roadshows' to engage with staff, the EIS is not aware of Governing Body 'roadshows'.

There is greater communication between the Executive groups (the Principal in particular) and staff, (and with students). However this is generally sharing information (informing) rather than meaningful consultation with staff, a process described as homologation masquerading as engagement.

It must be noted that historically, trade unions have sought to ensure that consultation/negotiation on working conditions etc are carried out bilaterally. The amount of meaningful consultation that occurs between HEIs and their trade unions is a matter of some debate. The EIS certainly feels that some consultation exercises are not carried out at a formative stage and therefore that some consultation exercises are simply considered as a legally necessary step within a process rather than a meaningful consultation. However, there have been some examples of effective working between HEIs and the EIS in recent times, where it has become clear that the ideas put forward by the EIS have been adapted/adopted.

The EIS believes that future consultations between HEIs and trade unions (and NUS) need to be carried out at an earlier stage, whilst plans are still at a formative stage. Consultation needs to be carried out by meetings with HEI staff who have the authority (and confidence) to make decisions without referral upwards. Closer relationships need to be forged between Trade Union staff representatives and Executive Group members and indeed Governing Body members.

Emails are an important communication tool and used by University managements to share information. Much care must be taken in drafting emails, to ensure that they are not seen as propaganda emails from a senior management team based in a bunker, seeking to show how every decision and policy that they have ever made is working well.

Some emails sent to EIS members by their University employers during the recent EIS industrial action had the opposite to the intended effect, and re-entrenched the industrial action.

8. How are students currently represented on governing body committees? What examples are there of this working well and what could be improved?

The EIS believes that there are insufficient numbers of students on Governing Bodies and their committees. The EIS believes that the short terms served by student members – which are not coterminous with other terms of office – prevents individual student members of Governing Bodies to act as effectively as they could.

The EIS believes that there should be a minimum of two students per Governing Body and that each serves a two year term. The EIS also suggests that the terms are staggered so that one student term ends every year.

9. What are the current arrangements for the induction, training and ongoing support of lay governing body members? Where these could be improved?

The EIS is not aware of any external induction or training for Governing Body members. The EIS believes that this should be provided for all new members of Governing Bodies and updated with regular training. These should be provided by a third party such as the SFC or Government directly.

The Scottish Government should issue a circular to all Governing Bodies outlining the way in which meetings should be carried out, frequency of meetings, the criteria for deciding if a member should withdraw from an item, the role of the staff representatives etc.

The EIS further believes that on-going support should be offered to Governing Bodies by resources provided by the HEI (or SFC) but not influenced by the Executive at the particular HEI. An office should be established for each Governing Body, headed by a Court Registrar who should be managed and accountable to the Court. This office would provide administrative, secretarial and legal support to the Governing Body.

10. Should the governance and management of all universities be regulated by a single statute?

Yes the EIS does believe that every HEI should be governed by a single statute to build a coherent and planned HE sector to serve Scotland's needs.

The EIS does believe that HEIs should be autonomous institutions, part of a coherent HE Sector in Scotland but also different to each other and individually able to respond to their communities and stakeholders.

However, the EIS believes that autonomous HEIs must also be accountable, and that current HEI autonomy prevents accountability. The HEI Governing Bodies do not offer accountability – indeed they primarily seem to serve the interests of the HEIs themselves.

The EIS believes that a single statute needs to change the purpose of Governing Bodies and create a link to Parliament (or the Government). The EIS believes that HEI Governing Bodies need to be overseen by Parliament, and that Parliament should have a range of options available if the Governing Body breaches the statute, for example:

1. Issue an improvement notice with deadline.
2. Appoint a new Chair of the Governing Body (Rector) prior to the election of a new Rector.
3. Dissolve a Governing Body and take direct control until a new Governing Body is constituted.

The EIS believes that neither the Scottish Government nor Parliament should normally have governance or managerial control at any HEI, but that it should have oversight and scrutinizing powers and responsibility.

The EIS does however believe that that the Scottish Parliament should plan and create a coherent HE Sector in Scotland, and that HEIs should have regard to such Government plans.

11. Finally, are there any other issues relating to HE Governance that you would like to raise?

The EIS identifies the following issues from the remit, but not covered in questions 1 to 10:

- ***consider whether current institutional governance arrangements in the higher education sector in Scotland deliver an appropriate level of democratic accountability given the level of public funding institutions receive;***

The current purpose of a University Court is to govern its University; it is not designed to give democratic accountability to the public money spent by that University.

One could argue that it is the role of the Scottish Funding Council to ensure that Universities are accountable for their governance, and act as a statutory regulator to this end. Other bodies such as the Office of the Scottish Charity Regulator (OSCR) and Audit Scotland also have powers to follow up complaints which may have the effect of making Universities feel that they are not totally un-accountable for their governance and spending.

The EIS believes that the SFC does not exercise its regulator function in a pro-active way, and therefore that Universities are not pressed to be fully accountable for their actions. The EIS recognises that the SFC insists on HEIs investigating and showing that they provide “value for money” but the SFC seems to allow HEIs themselves to judge whether they are providing “value for money”. Whilst it would be easy to simply blame the SFC for this – it is worth noting that their current Corporate Plan states that they are a “light touch” regulator, and that this approach seems to be endorsed by the Scottish Government – which has also cut the SFC internal budget this year.

One route to proper democratic accountability would be to strengthen the SFC role in overseeing HE Governance. The EIS believes that this is not a viable route and that the SFC regulatory functions should be taken up directly by the government, with parliamentary scrutiny.

The Scottish Funding Council (using Government money) directly funds the Higher Education Sector in Scotland with over a billion pounds per annum. This however is only part of the picture, as public money comes directly from other Scottish Government budgets, UK and EU budgets and other public monies come indirectly from research councils etc.

In other words, public money is the majority financial source for every Scottish University – even allowing for increasing RUK and non-EU student tuition fees, yet this is not reflected in accountability embedded in current governance structures.

- **The purpose of university governance in Scotland in the 21st century.**

The EIS believes that firstly one should consider the purpose of Universities before considering the purpose of University governance.

The 1997 report of the National Committee of Inquiry into Higher Education, chaired by Lord Dearing, recognised HE as central to creating a society in the UK committed to learning throughout life. The report saw HE activity as both life enriching – desirable in its own right for individuals – and as fundamental to achieving improved quality of life within society more generally. The report argued higher education should sustain a learning society with four main purposes:

- to inspire and enable individuals to develop their capabilities to the highest potential levels throughout life, so that they grow intellectually, are well equipped for work, can contribute effectively to society and achieve personal fulfilment*
- to increase knowledge and understanding for their own sake and to foster their application to the benefit of the economy and society*
- to serve the needs of an adaptable, sustainable, knowledge-based economy at local, regional and national levels*
- to play a major role in shaping a democratic, civilised, inclusive society.*

The EIS shares these values, believing them to be consistent with Scottish values, particularly around the ‘Scottish Intellect.’

The EIS therefore believes that the purpose of University governors to provide:

- 1) governance for internal and external democratic accountability*
- 2) governance for maximising institutional performance and success for students, staff and society.*
- 3) collegial governance and management; having due regard to the principles of transparency and institutional autonomy.*

The EIS does not believe that current University Courts have the skills to hold their own institutions fully to account on behalf of the public.

The EIS recognises that HEIs require autonomy but also that they also need to be governed in a way that shows that they are accountable and allow others to judge their performance. In other words, the EIS believes that University Governing Bodies should also enable accountability carried out by another body – the SFC or preferably the Scottish Government – rather than only being accountable to itself.

Proposals amplifying on the answers to questions 1 to 11 of the ‘Call for Evidence’.

- 1) Staff and students vote for Chair/rector of Court, who should serve for no longer than four years.*
- 2) Through its commitment to collegiality, each University should be committed to ensuring that members of staff have the opportunity to make their views known on all appropriate areas.*

In general, staff should be consulted through University Committees/Fora/Meetings on academic related issues and through trade unions for employment terms and working conditions.

Specifically, each University should be fully committed

- (a) to ensuring that academic decisions are taken by academic bodies, such as Senate.
 - (b) to maintaining staff elected seats on the Council, the Senate and all policy boards (in the case of the Senate the elected seats to constitute a majority of the total membership)
 - (c) to supporting a forum within each faculty (or department or school as necessary) which can act as a two-way channel of communication between staff in the faculty and the faculty's management committee;
 - (d) to encouraging regular and effective staff meetings and to encourage staff engagement in the development of school strategy, planning submissions and other strategic and policy issues;
 - (e) to making all Council, Senate and Sub-Committee papers available on-line.
- 3) The EIS believes that a Governing Body should have between 16-20 members. One quarter of all governors should be elected by staff in open processes. At least two students should be elected from the student body and should serve terms of a minimum of two years. All Governors should be equal.
 - 4) No member of the University Executive Group should be a member of the University Court. The University Senate should elect members from it to serve on the University Court, to ensure that the views of Senate are clearly communicated.
 - 5) The University Court of Governors may appoint further Governors (of not more than a third of the Governing Body) by an open and transparent process overseen by the whole Court. A further 2 members may be nominated by the Scottish Government, which may include a person from the local community or council. Two members should be appointed by the Senate to the University Court.
 - 6) The Hutton Review also made the case for the need to strengthen the talent pipe-line, with his research indicating that "restricted labour markets for senior positions are unnecessarily fuelling pay inflation." We retain concerns that an "auld pals network" exists at the top of some HEIs. Hutton argues that executive development and career paths within the public sector should be radically opened up. The talent pool from which executives are recruited should be broadened, to minimise the risk of constrained supply putting upward pressure on senior pay. Managers should be supported at all stages of their development, to maximise the opportunities for managers to progress and build varied careers within public service. Broader career paths should be encouraged to produce the cross-sectoral skills vital for public service reform to succeed.
 - 7) The Governing Body should be unambiguously and collectively responsible for the oversight of **all** the institution's activities - institutional mission, vision, values and strategies.

- 8) The Governing Body should oversee the engagement with staff groups and representatives with other Scottish Universities on any consultation on governance by SFC, Scottish Government etc.
- 9) The Governing Body will be the final internal arbiter of staff complaints on employment matters regarding the Executive.
- 10) A Charter and model of Governance for HE should be established to define the core characteristics of good governance, with a view to incorporation, along with revisions to significantly improve collegiality in decision-making, to the statutes of each Scottish university.

11) Democratic Deficit

In recent years senior HE managers have eroded negotiation rights by staff and students and imposed “consultation”, i.e. “we’ll tell you what we’re doing, and then we’ll do it”. A damaging utilitarian managerialism has been installed in place of true collegiality and proper worker representation and participation in decision-making. Academic staff have witnessed the destruction of collegiality and a move to what Lambert³ describes as dominance by “overmighty executives”.

Staff are either excluded⁴ or relegated to a “consultation” process that is seen by many as lip-service prior to imposition. Minimising staff and student democratic representation and participation in management decisions is to the detriment of each institution.

Gillies⁵ notes: “As co-workers in the institutional enterprise, according to the collegial compact, staff and students are often subject to similar interests, for instance, in holding management – and, indeed, governors – to account. In many regards they can do this better than independent (lay) governors because of their daily experience of institutional life and regular opportunity to witness the implementation of agreed policies.”

Many have noted with increasing ill-ease the subversion and side-lining of collegiality by university management and the rise of small very highly-paid power cliques at the top. While senior managers may well believe that in clearing the way of “the obstruction of awkward questions” to allow them to better pursue their objectives and agendas, this in a very real sense is a subversion of democracy and a dilution of mechanisms of accountability.

Our universities are packed with Scotland’s brightest and best, both staff and students, and they have a clear commitment to, and are key stake-holders in, the well-being and development of each higher education institution and Scotland’s higher education sector.

³ Richard Lambert. University Governance in a market environment. Presentation made on 13 December 2005: p4.

⁴ A recent visit by the SFC to UWS, for example, where governance was one of the key issues on the agenda, saw the SFC engage with senior university managers, plus a special session of the University Court specifically with student representatives, but the staff members of court were specifically excluded. 6

⁵ University Governance: Questions for a New Era. Malcolm Gillies.

Other examples of exclusion are:

a) University Senates

Some HEI Senates are now viewed by some EIS branch officials as “gerrymandered boroughs”, packed with unelected ‘place-men’, overwhelming the small number of elected staff representatives in any debate or vote. There are some independently minded Senates, which seek to guard academic standards and rigour but some have been overruled and neutered by their University Courts.

b) University Courts

The EIS believes that one should consider the purpose of universities before considering the purpose of university governance and University Courts.

The 1997 report of the National Committee of Inquiry into Higher Education, chaired by Lord Dearing, recognised HE as central to creating a society in the UK committed to learning throughout life. The report saw HE activity as both life enriching – desirable in its own right for individuals – and as fundamental to achieving improved quality of life within society more generally. The report argued higher education should sustain a learning society with four main purposes:

- to inspire and enable individuals to develop their capabilities to the highest potential levels throughout life, so that they grow intellectually, are well equipped for work, can contribute effectively to society and achieve personal fulfilment
- to increase knowledge and understanding for their own sake and to foster their application to the benefit of the economy and society
- to serve the needs of an adaptable, sustainable, knowledge-based economy at local, regional and national levels
- to play a major role in shaping a democratic, civilised, inclusive society.

The EIS shares these values, believing them to be consistent with Scottish values, particularly around the ‘Scottish Intellect.’

The EIS therefore believes that the purpose of University Governing Bodies is to provide:

1. governance for internal and external democratic accountability
2. governance for maximising institutional performance and success for students, staff and society.
3. collegial governance and management; having due regard to the principles of transparency and institutional autonomy.

The role of a Governing Body, and thus governors, must be wide enough to incorporate the ethical and moral values of the university (and not limited to risk assessment and financial monitoring alone).

Malcolm Gillies⁶ notes that the “drastic withdrawal from the state” of HE in England has specific implications for HE, and that “the state’s stake, both moral and financial, is weakened”, and that failures in governance have “given reason to question the growing acceptance of corporate tendencies in university governance”. He goes on to argue that governors do not need to understand the core business over which they have authority, but cites no supporting data. Gillies does however propose that there is value in a move back towards a more representative model to ensure effective governance. In most universities in Scotland however, staff and student representation at governor level is severely limited, leaving the dominance of an exclusively management agenda.

The Committee of University Chairs (CUC) Code proposed that a governing body has the oversight of a HEI’s activities, and provides:

- i. governance for accountability and compliance
- ii. governance for maximising institutional performance and success
- iii. governance for representation and democracy.

The EIS does not agree with these criteria as they do not fully reflect Scottish values and do not allow for ‘democratic accountability’. In fact, the EIS believes that these criteria illustrate the flaws of the current governance structures that concentrate on maximising institutional performance rather than providing democratic (or external) accountability.

The EIS believes that governance should be seeking more than to ‘maximise institutional performance’ but also seek to encourage and foster the pursuit of education and knowledge within society. The EIS believes that the Scottish ideals of ‘*Democratic Intellect*’ and the role of education to support and enrich society are long standing Scottish concepts and values.

Furthermore, it is not entirely clear in the CUC document what ‘governance for accountability’ means. Many University Courts seem to believe that if they are content with the way in which they govern, and follow SFC guidelines, then the university has acted in an accountable manner.

The recent Welsh HE Review report cites Newcombe’s observation “The evidence is that many lay governors...feel that their knowledge is patchy...and this can be a significant challenge”.

This would seem to be a key problem with the ‘Governor’ model of University Court Governance, and is a huge flaw in the EIS view. Put simply, many University governors do not have the experience or the skills to challenge arguments and plans put forward by the University Executive. This is particularly true of nominated governors, often coming from business and who may be ‘good chaps’ but lack the skills necessary to govern in a specialised institution and thus are left to endorse the Executive’s plans.

The role of University Governors has become more complex and the EIS believes that the time of the amateur governor turning up for a few meetings every year has long passed. Scottish HEIs now have annual incomes of up to £620m per annum, and must wade through a plethora of complex compliance issues.

⁶ University Governance: Questions for a New Era. March 2011.

Andrew Wilkinson, of the Committee of University Chairmen, stated at this year's New JNCHES conference that it was now an "increasingly important time for boards of governors to stand up and be counted", and that the role of "critical friend" is increasingly vital.

While the English HE system is currently being divorced from direct government regulation and intervention, and the Welsh are looking at a move to greater external participation on university courts, we see clear and compelling arguments for a more stringent government mechanism for direct intervention, and significantly greater collegiate involvement of staff and their extensive expertise and understanding of HE and institutional issues on Court.

It is also worth noting that the Leadership Foundation for Higher Education states:

"That in times of institutional crisis having staff and student governors can be a way of ensuring effective communication within the institution as a whole, which may reduce tension"

and

"Some institutions have found that in times of a governance crisis staff and student members may be more willing to hold the executive to account than independent members."

The recent Review into Higher Education Governance in Wales states that:

"At the heart of the provision of modern public services is the devolution of authority and accountability as near the front line as possible. Strengthening governance is, therefore, very important to the future of public services. For this reason, we want to see stronger, more strategic and more accountable governing bodies."

It is reasonable to suggest that numbers of students and staff should be significant enough to fully contribute and vote, and should be participate in both Courts and Senates.

Court members amenable to senior management objectives appear to some onlookers to be filtered by senior management into positions of influence, and although all governors are invited to propose new court-members, the list and decision can be controlled by small self-selected groups.

Governors need to act as the 'critical friend' of HE institution senior executive (and not "cheerleaders" according to the Wales report into HE Governance). The EIS agrees with this view and believes that HE executives should not have the ability to appoint nor nominate members of Court.

Post-92 universities sometimes claim to have more lay-people on court than other institutions, but the criteria for selection can be decided by a small self-selecting group of Governors. There is some evidence that some Governing Bodies seek to bar staff governors from some meetings, particularly on appointments.

There also appears to have been a concerted move away from representatives of the community the university serves, to representatives of the business community, or those seen as appropriate by senior management.

Some post-92 institutions also boast a high percentage of governors are from the staff and student bodies. However, this belies the reality that almost none are directly elected, with most nominated via the University Executive.

12) *Pay excesses as a symptom of poor governance*

Respected Cambridge University economist Ha-Joon Chang eloquently writes about the damage done by managers imposing on their organisation a management system that operates on the assumption of the primacy of self-interest over collegiality and communal goals. Chang also writes of various studies confirming that in relative terms today's managers are significantly overpaid in comparison to their predecessors. They are also over-protected, a contradiction of the market forces they claim dictate their ever-increasing compensation.

UK Business Secretary Vince Cable last year described the salaries of university principals as “out of touch with reality”. Almost all University principals in Scotland are paid more than the First Minister, and yet the public remains the main funder of Higher Education in Scotland.

The number of managers and senior academics who are paid over £100k per annum at Scottish HEIs has rocketed in recent years. The University Employers' Association (UCEA) negotiates with the 5 recognised Campus Trade Unions on the pay for all support staff and academic staff up to (but not including) professors. There is no transparency in the way in which the pay of professors, senior managers and Executive Group members are determined. Recent figures suggest that almost a third of the entire HE pay bill comes from this relatively small group of staff.

This explosion of remuneration by the management classes in HE has been sanctioned by University Governing Bodies. The EIS believes that this is a symptom of a flawed system of governance and an example in which the Executives' dominance over the University Courts is clearly illustrated.

EIS proposals regarding pay and expenses

- 1) All minutes, all expenses of over £50 and all salaries inclusive of benefits and bonuses should be published clearly, openly and contemporaneously on each university website⁷. As U.S. Supreme Court Justice Louis Brandeis once noted, “Sunlight is the best disinfectant”.

⁷ Academy principal's pledge: We will put expenses online:
<http://www.heraldscotland.com/news/education/academy-principal-s-pledge-we-will-put-expenses-online-1.1071188>

- 2) Senior salaries should be brought onto the existing New JNCHES single-pay spine, and evaluated under HERA.

The EIS propose a pay cap for University Senior staff, and that no university staff should earn more than the First Minister.

HEIs should also cut the salaries of all HEIs' senior staff being paid over £100,000pa by 7%, to offset the recent cuts and to bring senior pay closer in line with the real terms cuts in pay suffered by ordinary academic staff members over the past three years (2009: 0.5%, 2010: 0.4% and 2011 offer of a flat rate £150).

- 3) The Hutton Review of Fair Pay in the Public Sector (March 2011) noted that "What has made the impact so toxic is the growing scepticism about whether the rise of pay at the top is the due desert of those who receive it", and Hutton makes a convincing case for limiting pay multiples. He also proposes that every public body should annually publish the multiple of top to median pay in a clear and presentable way, and a system of enforcement which escalates from public admonition to direct intervention if pay rises in an unjustified fashion.

As Hutton states:

"All this demands much stronger governance of the pay-setting process and independent assessments of performance indicators – at present very patchy. Organisations are social in character, and among the best equipped people to judge what constitutes good performance is the workforce. I recommend that employees should be represented on remuneration committees to help assess performance metrics – not only a means to ensuring that committees are more effective but to show that everybody is in the same organisational boat."

- 4) The Hutton report recommends a framework of tracking multiples, of transparency and explanation, of earn-back, of escalating intervention, and of widening the talent pool to increase competition for posts.