

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

**SUPPLEMENTARY EIS
SUBMISSION TO THE REVIEW
OF HE GOVERNANCE :**

**HOW AN EFFECTIVE UNIVERSITY
COURT CAN ENSURE GOOD
UNIVERSITY MANAGEMENT**

Supplementary EIS Submission to the Review on HE Governance

The EIS wishes to submit further evidence to the Review Group on areas that its oral evidence touched upon.

Effective university courts govern their institutions; they shape and control their managements, develop effective policies which they ensure are well implemented to best support teaching and research.

Ineffective university courts do not govern properly; they often do not hold the management to account but act as a ratifying body to university management and therefore allow the university to function in an arbitrary manner which is not conducive to developing policies and working practices that promote teaching and research.

The EIS believes that university courts should govern rather than simply to provide 'oversight'; courts should ensure that all university policies are effectively developed and implemented. Furthermore, courts should not be seen as simply providing oversight to University Executive Groups (UEG), courts should govern HEIs. This means that they should set the management standards, expectations and not only promote leadership but ensure good management at all levels.

Universities should be autonomous and accountable; these are not mutually exclusive terms. Although autonomous charities, Scottish universities are responsible for spending over a billion pounds of public money each year, and should be more accountable for their actions.

Current external regulation remains unfocussed and too light-touch, and the EIS believes that the Scottish Funding Council is unable to provide accountability and external scrutiny of HEIs for Parliament.

More effective and consistent HE governance is required across the sector; the EIS believes that there needs to be a step change in how university courts see their role and more importantly, carry out this role.

The HE Sector seems unwilling to accept major change in the way that HEIs are governed and therefore a single statute may be necessary to realise the necessary governance improvements.

The EIS believes that university courts should play a more active role in ensuring good management and leadership by considering the following areas.

Policy Development

Ultimately all university policies are policies agreed by the university court, and carried out in the court's name.

However the reality is that most academic policies are written by UEGs and presented to court for ratification. Most human resources policies are negotiated and agreed by the university management and trades unions, and then presented to university courts for ratification.

The only groups giving information to court meetings regarding the vast majority of policies are the movers of these policies – University Executive Groups (UEGs). This is a flaw.

The EIS is concerned that many academic policies are made by HEIs without the meaningful participation of affected academic staff.

This leads to “top down policy” decisions which are sometimes unencumbered by the realities facing academic staff, which leads to poor policies.

Furthermore, the lack of participation within the decision making process sometimes leads staff not to identify with the decisions or policies that they should be implementing. This lack of “ownership” around some policies, particularly those seen as imposed or ‘appearing out of thin air’, means that some academic policies are not consistently applied by staff and thus fail to achieve the desired outcome.

The EIS recommends all university courts improve their development of academic policies by:

- i. seeking advice of senate on academic aspects of all draft policies***
- ii. seeking independent reports on contentious issues***
- iii. seeking opinions from beyond the UEG***
- iv. play a more pro-active role in policy development, rather than simple ratification.***

The EIS believes that whilst many HEIs have policies and departmental structures designed to achieve staff participation, and many universities can show this by reference to Staff Handbooks and flow charts, the reality is that staff participation within policy development is often inconsistent within individual HEIs, and varies significantly from HEI to HEI.

EIS members often complain that departmental (which for this paper may be defined as a group, subject, area, school or faculty) meetings are poorly utilised, common problems being:

1. No agendas published prior to the meeting.
2. Policies or late draft policies presented without warning and without a proper discussion.
3. Heads of Department not allowing free discussion on draft policies or where current policies fail.
4. Meetings seen as opportunities to give information from management to staff.
5. Heads of management need to be confident in dealing with diverse views and not label them as awkward or avoid dealing with them in meetings.
6. No agreed minutes being produced.

The EIS recommends all HEIs improve staff participation within the formation of academic policies by:

- i. having regular departmental meetings***

- ii. Sending out agendas and associated paperwork at least 3 working days in advance. Staff should have an opportunity to raise items on the agenda.***
- iii. Introducing proposed policy development at a formative stage of their development; asking staff to email views if a meeting is not possible.***
- iv. meetings should be confidently chaired where consensus is sought by hearing all views***
- v. meetings should be a two way sharing of information and views***
- vi. minutes (or notes) should be circulated within five working days of the meetings***

The EIS believes that these simple and basic steps would improve staff engagement and implementation of HEI policies.

Making Good Decisions

All decisions made by university staff are ultimately made in the name of the university court.

Whilst it is understandable for university courts not to be involved in each individual decision, they should be involved in determining the university ethos and culture that inform what decisions are made and the manner in which they are made.

Furthermore, a function of effective governance is to hold university managers to account for previous decisions; learn from successes and failures and to advise university managers accordingly.

The EIS believes that court agendas and debates are often controlled or dominated by UEG and other managers. This needs to be addressed by raising the confidence and skills of all court members and by bringing in more independent members by providing more training and briefings to non-educationalists and appointing from a greater range of stakeholders.

The EIS is concerned, with the culture of free rein that most courts seem to give their principals and UEGs, that UEG decisions are made in the knowledge that the court will always endorse them. The effect of this implicit understanding is to remove any effective accountability to the actions of senior managers.

Professor Stefan Collini of the University of Cambridge spoke recently¹ of the value of the expertise and intellectual rigour that can be applied to issues by university staff, describing the “clever, learned, awkward and not easily persuaded” view they can bring to issues as an equally valuable strength in testing and preserving the legitimacy of ideas.

At a time where both research and experience have detailed the inability of lay-members to act as “critical friend” to the management of universities, and where lack of rigour has led to situations such as those observed at the Edinburgh College of Art amongst others, the need for strengthened rigour is apparent.

Collini confirms the common sense of a better system where “that questioning of all claims to truth no matter how familiar or well-established and no matter how elevated the academic or political authority that makes them.” This rigour can best be achieved by greater openness and elected involvement of the expertise available within the academic community within our universities. As Professor Collini points out, it is this valuable resource of “organised scepticism” that can best act as a bulwark against errors, management vanity and excess, and where the powers that ultimately govern are the better arguments and better evidence, not those with exclusive and excessive control.

¹ The Very Idea of the University, University of Cambridge, CRASSH 10th Anniversary Lecture Series: The Idea of the University. 11 October 2011.

The EIS recommendations concerning university courts and university decision making processes:

- i. Court membership must be independently appointed or monitored. Principals should not be able to vet applications to court memberships as is the current practise in some HEIs.***
- ii. Courts should vote for a 'Chair' who can serve a limited term of office, who could be known as the 'Rector'. It should be the Rectors's responsibility – aided, by an independent secretariat, to ensure that Court meetings and processes are fair and equitable.***
- iii. Court members need to have a range of backgrounds and experiences but must confidently play a full role in governance processes.***
- iv. Court members need to be trained and independently briefed on HE matters.***
- v. Courts must be willing to meet more often than they currently do, give more of their time and be more proactive in governing HEIs.***
- vi. A culture must be developed in which university managers feel that all decisions are accountable to the university court.***
- vii. Courts must set clear expectations around effective management and create a culture of inclusive management.***
- viii. Courts need to review past decisions and projects; and advise management of lessons to be learnt.***
- ix. Courts should rely on multiple sources of information, and not over rely on their UEGs.***

Leadership: Principals

In the current HE governance system, the most important single decision a university court is likely to make is the appointment of the principal.

A great deal of consideration is needed to ensure that university courts have a rigorous, fair and independently moderated appointments' process for all members of University Executive Groups – but especially principals.

The role of the principal is so important because the principal effectively exercises the powers of court (in the court's name) whilst often not actually being held properly to account for it.

A measure of a principal's power is that the proposed HE merger between the Universities of Dundee and Abertay is only being considered because Abertay has no principal. FE College mergers often seem to be predicated on Principal retirements.

A newly appointed university principal will often augur a new UEG and wider management team, often including staff from the principal's former places of work. One of the key components of such teams is unswerving loyalty to the management group and principal, rather than loyalty to the university. In some cases managers seem to conflate loyalty to the principal with loyalty to the university – which is odd since court is the supreme constitutional body of any university.

It should also be noted that the principal's management style is often aped at lower levels of the university. The example that the principal sets is often the standard applied across the university. A principal who operates by issuing policies and decisions from within a small exclusive UEG (known for its loyalty) is going to encourage other managers to act in a similar way.

Institutional leadership therefore is too important an issue to be left to the principal and UEG alone. The EIS believes that courts need to set out their expectations with regard to leadership – and ensure that their expectations are met.

The EIS believes that some principals seek to ensure that the UEG is the main or only source of opinion to reach court regarding many matters, including how well policies are being delivered. Members of UEG sitting in at some courts (often as observers) often help to undermine all contributions contrary to their views – particularly from staff representatives – or portray them as being out of touch, awkward, atypical...

Over time some managers feel that they become so good at their jobs, and see the wider picture so clearly, that consulting with others is simply a bureaucratic burden which only serves to waste time.

This seems to be a particular problem of some long serving HE principals, who seem to short circuit consultation and inclusive styles of management in favour of issuing decisions and policies seemingly out of thin air, often without an accompanying rationale.

This management style, in which edicts are produced from the principal's office, is idiosyncratic of a governance structure that is unable to govern or control its chief executive i.e. the principal.

The THE Magazine published an article 'The Madness of kings' on 11 October 2011 about this phenomenon. Kings as sovereigns had supreme, independent authority within their kingdoms- principals have the authority given to them by the university court, which is the sovereign body of each university. Kings are anointed but principals are appointed and yet the flaws of the current governance systems do allow principals to act as *rex* in their HEIs.

EIS recommendations concerning governing bodies and principals:

- i. The principal and the university court need to work effectively with each other.**
- ii. Principals need to be appointed by a rigorous mechanism which includes external and independent members.**
- iii. Principals need to be directly accountable to court.**
- iv. Principals should not conflate their role with the role of the court; ultimately it is for the court to enforce its sovereignty.**
- v. University Executive Groups should not be considered as the principal's personal executive team, and courts should be careful not to allow UEGs to develop who are loyal to the principal rather than the court.**
- vi. The university's management style (including that of the principal) and ethos should be shaped by the university court, as it will be the standard copied by other managers within the university. The court should ensure that its desired management style is delivered.**
- vii. No principal should serve more than two terms of office at one HEI.**
- viii. There should be greater movement of senior staff between HEIs.**
- ix. The concepts of institutional loyalty need to be developed for all staff, rather than loyalty to particular managers or to a subject area.**

Leadership: Recruitment and Rewards

Another point we would seek to raise is the issue of mechanisms for hiring and remuneration of senior staff. We note that the current UK government is considering new rules for public, based in large part on the recommendations in Hutton's Report on Fair Pay in the Public Sector, which will seek to improve consultation and solidarity, and narrow inequality as part of "responsible capitalism".

As Vince Cable² stated very recently, the current disconnect on executive pay levels shows "something dysfunctional about the market in executive pay and long-term performance, or a failure in corporate governance arrangements".

It would be a pity if Scotland is left trailing the coat-tails of the UK Coalition Government on executive recruitment, remuneration and transparency.

Principal's pay levels have been the subject of much debate in Scotland recently, and principals have been at pains to point out that they have comparable posts to leaders in private industry and that they simply accept the pay levels set by independent remuneration sub-committees.

The EIS believes that principals' salaries are too high, and that the argument that they are comparable to leaders of large private companies does not bear close scrutiny. Furthermore, the pay of most university principals exceeds that of the First Minister - who is ultimately responsible for a budget of billions of pounds annually.

Whilst most Scottish Universities do have budgets of hundreds of millions of pounds per annum, it is the university court not the principal who is responsible and accountable for its expenditure.

Many private sector companies pay senior executives well because they are perceived as bringing added value or exceptional performance to a company. If this is not realised then they are dismissed - in other words there is limited job security. One only has to look at the length of service of Scottish principals to see that job security is not a problem.

The EIS does not believe that principals are individually accountable for their HEI's successes or failings, in the same way as private companies or even elected politicians.

Furthermore, senior executives are accountable to company boards which are mainly comprised of shareholders (or appointed by shareholders) and independent non-executive directors. Shareholders demand value and seem to deliver greater levels of scrutiny to company boards that university courts seem to provide.

The pay of senior university staff is fast becoming a problem within HEIs, especially as unpromoted academics have seen a 10% real terms pay cut in the last two years at a time when the numbers of senior staff (particularly managers) on £100k plus salaries seem to be fast increasing.

The EIS believes that there needs to be a whole sector pay policy as it is funded as one sector. This would lead to some transparent processes and may result in greater

² <http://www.guardian.co.uk/politics/2011/sep/18/vince-cable-executive-pay-bonuses?INTCMP=ILCNETTXT3487>

consistency across the sector. The EIS believes that the Scottish Funding Council (SFC) has a key role to play here.

The EIS believes that the Hutton Report on Fair Pay in the Public Sector, with its recommendations on pay multiples, transparency and public accountability, as well as a Fair Pay Code, would be an eminently sensible position to start from.

The EIS is concerned that the senior pay policies of some HEIs would not meet current equality laws.

The EIS recommends the following:

- i. The use of Hutton's Report on Fair Pay in the Public Sector Recommendations as a good starting position for looking at senior pay levels in the HE sector.**
- ii. The SFC should carry out a senior staff remuneration report and give clear guidance to governing bodies on this matter.**
- iii. The SFC should publish a clear process for use in HEIs to determine salary levels.**
- iv. All HEIs should carry out equal pay reviews of staff over JNCHES salary point 51.**
- v. That all HEIs should adopt a single salary spine to cover all salaries including those of senior staff.**

Leadership: Fairness and Opportunity

The EIS is deeply concerned with the conflation that seems to exist within many HEIs between loyalty to the employer and loyalty to individuals (or posts) within an institution.

The EIS understands that this concern is not limited to the HE sector, but it does seem to be endemic in some HEIs.

The EIS remains concerned with the perception shared by many academics that some managers consider different views to the Institution's view (or emerging view) as being dissent, and that the holders of such views as being awkward (at best) or disloyal (at worse).

The EIS believes that many staff members who are hardworking, often with a good teaching and/or research record are perceived as being awkward or disloyal because they challenge the views of their line manager or university managers in general.

Furthermore it is the EIS experience that such staff are more likely to find themselves defending trivial disciplinary allegations/queries that are often ignored for other less 'awkward' staff.

Such perceptions lead to further problems as trust in confidence in managers and leaders are eroded and undermined. Staff then coalesce into factions, some seen as

loyalists and others as awkward squads. Grievances become more common, staff evaluation surveys produce poor results and staff turnover rates climb.

The power of patronage exercised by the principal at the top of the university management tree is replicated at the middle and lower levels of management. Internal appointments are particularly prone to such influences.

There is a perception at some HEIs that many promotions are more influenced by loyalty (and friendship bonds built at previous institutions) than by merit.

Some managers also reward loyal staff with easier or more flexible timetables etc whilst some more awkward staff seem to be disadvantaged. This unfairness of course reinforces or consolidates factions within departments.

Together these issues cause three effects:

1. A large number of staff 'keep their heads down' and avoid expressing their true views.
2. Some dis-contented staff believe that they are treated unfairly compared to others and become resentful. Staff engagement and morale drops, staff turnover rates climb.
3. Dis-contented staff often raise grievances against managers. These grievances are rarely successful because HEIs invariably reward the loyalty of managers – it is an unspoken bargain.

The EIS makes the following recommendations to address these concerns:

- i. Academic promotions should be time limited and rotated amongst staff.***
- ii. All Heads of Department/School/Faculty must work within the remit of an Executive Committee for that Department/School/Faculty.***
- iii. Decisions should be made or endorsed by an Executive Committee. An alternative method would be allowing academic staff to appeal any academic decision to the departmental/school/faculty Executive Committee. This would reduce the number of grievances.***
- iv. All managers should be trained after their appointment to make them more confident in dealing with different views. In time – all future managers (i.e. promoted academics) should receive management training as a pre-requisite to accepting promoted management posts or any management roles.***
- v. Ultimately the power of patronage must be broken from the top down; perhaps certain promoted posts should be earmarked for external candidates.***

It is ironic that academic staff are encouraged and trained to develop ideas and improve practice by questioning ideas and challenging practices, are dissuaded from doing so to their own management practices.

University Senates

The EIS believes that a university senate is the principal academic body of a university. In this way the EIS believes that a Senate should be responsible for regulating and directing the academic work of a university and thus senates should be regarded as the supreme academic authority of a university.

The purpose of a university senate would be to exercise the academic duties of the university (subject to oversight from the court) and provide narrow academic advice to the court. It would not be to recommend that certain decisions/policies are made or not, but to give an opinion on the effect on academic standards of draft policy and proposed decisions.

The EIS recommends that university senate responsibilities should include:

- i. the responsibility for the approval of policies, procedures and strategies that are of a purely academic nature***
- ii. providing advice on academic matters for all other policies, procedures and strategies to Court***
- iii. approving new courses or changes to courses and advising court of the academic consequences of course changes including closures***
- iv. validating all university modules would be done through a mechanism approved by Senate***
- v. being the final arbiter of academic appeals; staff and student.***
- vi. being the guardian of academic standards within the university***
- vii. promoting research and make recommendations to Court to improve research***
- viii. being responsible for student assessment and examination***
- ix. being responsible for student discipline***

Senate membership should include the heads of academic departments, professorial staff, elected members of academic staff, the Librarian, Director of Student Services, and elected representatives of the student body. The EIS does not believe that senates or UEG should be able to directly nominate additional members to senate.

Senate membership should include the principal and members of UEG with academic responsibilities as *ex officio* non-voting members.

Senate should be chaired by a member of academic staff, elected to that position, who together with the elected vice chair, should be *ex officio* members of the university court. This would ensure the views of Senate are accurately and fairly represented to the university court.

External Scrutiny and Regulation

Unlike the Further Education Sector, the Higher Education Sector is not considered by the Audit Office to be part of the public sector. Despite this the Scottish Government channels twice the amount of public money into the HE sector than the FE sector. SFC funding alone to the HE sector accounts for over a billion pounds a year on Higher Education.

Parliament has enabled a number of non-departmental public bodies to regulate or scrutinise aspects of HEIs, these include the Scottish Funding Council, the Office for Scottish Charity Regulator and the Public Services Ombudsman. Parliament also has the ability to call persons to give evidence to parliamentary committees.

The Scottish Funding Council describes itself as a light touch regulator, which seems an accurate description. It does not seem to proactively engage with HEI governance problems even if they challenge institutional sustainability, e.g. the Edinburgh College of Art and Abertay University.

As a funding body the SFC does not even show HEI Annual Accounts or Annual Reports on its website, although it does so for FEIs. Furthermore one would expect the SFC to provide a detailed report of how HEIs spend a billion pounds of taxpayers' money every year – showing whether the taxpayer is getting good value for money or not.

The SFC simply allows HEIs to measure their own performance against SFC determined key performance indicators (KPI) and then seems to keep the information confidential.

The Office for Scottish Charity Regulator has a memorandum of understanding with the SFC, which effectively allows each organisation to pass reported concerns (from the EIS at least) between them backwards and forwards.

The EIS currently has no experience of dealing with the Public Services Ombudsman on HE matters.

The EIS does not believe that the SFC and OSCR provide any level of effective scrutiny across the HE sector, or that the SFC act as a regulator in any meaningful way.

The EIS believes that the HE sector needs a more effective scrutiny structure.

Greater clarity and specificity in operation of governance is also required, and greater clarity and comparability on key points of the operation of governance would be a very welcome improvement. A single statute can greatly aid in this necessary improvement.

EIS makes the following recommendations for external scrutiny of HE governance:

- i. SFC needs to act as a proper regulator of the sector, providing scrutiny, promoting effective governance and enabling democratic accountability.***

- ii. If the SFC is unwilling or unable to act as a proper regulator then it should be stripped of its regulatory powers and they should be moved to the government.***
- iii. The SFC should publish Annual Accounts, Reports and KPI results for each HEI every year. The SFC should also publish a detailed report on the whole HE sector, giving information on how effectively each HEI spends public money.***
- iv. The adoption of a single statute would improve governance quality and consistency in the EIS' opinion.***

Summary

Current HE governance is failing to offer a progressive evolution or mechanisms that ensure that governing bodies are proportionately accountable. The concentration of power in fewer hands, the attacks on collegiality within our universities and in parallel the increasingly light-touch approach to scrutiny and regulation by external bodies, is not serving Scotland and its Higher Education sector well.

One Scottish University Chair of Court explained to the EIS that university courts should not involve themselves in operational matters. The EIS believes that courts that follow such a doctrine provide weak governance since they intrinsically fail to fully govern the HEI.

Today, historians and academics do not consider strategy and tactics as discrete or separate concepts, and limiting courts to 'strategy' and endorsing policies without being involved in ensuring their effective implementation is a flawed model of governance.

Universities play a central role in Scotland's economy, society and international reputation, and this is being put at risk by a slide into weak regulation and accountability, increasing managerialism and undemocratic governance at some HEIs.

Scotland has five HEIs in the World Top 200, and the EIS is committed to working with universities for the benefit of staff, students and continued institutional success. The EIS believes that the recommendations outlined in this supplementary paper – as well as its substantive submission would go some way in improving the governance at Scottish HEIs.

In essence, the EIS is simply proposing that university governing bodies should govern universities and not allow managements to govern in their place. Proper governance means courts having responsibility for shaping and overseeing all aspects of universities' management and leadership. The EIS believes that the recommendations in this paper will go some way in achieving these aims.