

## **STUC submission to the review of the Scottish code of good higher education governance**

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 570,000 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 members, LGBT members, and members with a disability, as well as retired and unemployed workers.

### 1) How well has the Scottish Code of Good HE Governance served its purpose?

The purpose of the code was to improve the Governance of the Higher Education Sector. The proposal for a Code of Good Governance came from the Von Prondzynski review and was designed to support the wider recommendations of this review. The last code was written by the Chairs of Court with very little input from staff and students and did not follow any principles of good governance in the manner in which it was drafted. As a result the quality of the code was very low. It contained a combination of weak wording and a 'comply or explain' principle. In addition there was little incentive to either comply or explain as the SFC took limited interest in the code's application.

The purpose of the code was to improve the governance of the HE sector and to ensure that all institutions had effective systems in place. While it was never intended to create a situation where practice was the same across the sector, it was intended to create a level of consistency and a reasonable degree of transparency and good practice in every institution. Throughout the consultation for the original code, trade unions repeatedly highlighted a series of failings in institutions across the sector and a picture very quickly developed of a sector with patchy practice, some of which was positive but some of which was very poor. In short, there was at that time considerable variation between institutions. If the code was working, we would have seen some

improvement in this regard. Unfortunately it is clear that practice continues to vary and issues of serious concern remain within the sector.

2) What effects has the code had on the governance of Scottish higher education?

The code has had limited effect but that is not to say that it has had no effect. There are some institutions where transparency has improved as a result of the code. For example some institutions now publish minutes of their meetings and do set out a single point of contact for the governing body, which was not the case prior to the introduction of the code. There has also been some increase in the number of women on governing bodies and holding the role of chair of court which is a positive step forward, although there is still much work to do in this area.

There have also been noticeable gaps in progress and not all institutions have responded positively to the code. Equally there are ongoing issues around pay awards for principals which continue to rise, out of step with pay in the rest of the institution and out of step with the current financial situation faced by universities – as exposed by the UCU in their FOI requests to institutions. The failure to get to grips with this issue is symptomatic of a weak governance system, and the refusal to even publish the information when faced with an FOI from the UCU shows a lack of commitment to transparency within institutions. The presence of the code of governance has simply failed to address this issue.

3) What (if any) changes to the code would help to improve the governance of Scottish higher education?

The code needs to be a more robust document. It needs to make clearer recommendations about what constitutes good practice and be stronger in its recommendations. Given that the code rests on a 'comply or explain' principle it is possible for the code to make strong recommendations that support a positive direction of travel without being an undue burden to individual institutions with unique circumstances. The code should support the improvement of equality outcomes and should include clear recommendations on the makeup of the governing body in this respect.

The previous code was confused in its treatment of staff and student representatives. This code must be clearer about the status of staff, student and now trade union representatives on the governing body. It seems appropriate that if all members of the governing body are to take collective responsibility for the decisions of the governing body, then all members must be offered a parity of esteem. 'Good practice' examples such as *"In one University the Principal meets with staff and student members of the Court before each meeting to discuss the business arising thereby facilitating the participation of those appointed from among those key groups"* which appeared in the original code, have no place in any revised version. Far from being a model of good practice this example shows a lack of respect towards certain categories of members, an assumption that these members are unable to participate in the meeting on an equal basis and an inappropriately managerial approach to their participation.

The code should also give thought to reflecting the ethos of the university and the role that the university should be playing in society. Universities are not corporate entities and while they are in receipt of a great deal of public funds and play a clear educational role they are also autonomous institutions and play an important role within the wider economy. It is important that universities reflect their educational purpose and also consider their wider ethical commitments and role as thought leaders in society and this should be reflected in the governance of the institution. Equally the code should contain a staff governance standard which supports the overall governance of the institution, helps the institution respond to challenges, and supports positive outcomes in learning and teaching.

- 4) Should the code be changed to reflect the Higher Education Governance (Scotland) Act passed by the Scottish Parliament in 2016, or any other legislative or regulatory changes made since 2013? If so, what changes would you like to see.

The code should reflect the Governance Act in full and ensure universities comply with the Act. It seems a minimum requirement that the code of governance supports universities to comply with their legal obligations.

In particular we would wish to see references in the code of 'Chair' replaced with 'Senior Lay Member' to replicate the language used in the bill.

The code also currently refers to benchmark guidance of the governing body comprising no more than 25 members. We are aware of some institutions in their draft ordinances on the bill are seeking to reduce the number of members on the governing body from senate and for the spaces to be taken by the new trade union nominees. We regard this as being against the spirit of the Act and a wrong step for universities to take. If the academic input into an institution's governance through senate is diminished then this begins to bring into question the purpose of the governing body and what a university is. We think that the code should not stay silent on this and that it would be appropriate to acknowledge that the number of 25 is not fixed, as the then Minister acknowledged in evidence to the Parliament's Education and Culture Committee during the passage of the Governance Act, and that senate's representation on the governing body should not be reduced in an attempt to shoehorn no more than 25 members onto court.

Similarly we are also aware that some institutions are seeking to interpret the Governance Act as requiring the non-support staff union nominating a member of the governing body to only nominate a member of academic staff and not academic-related staff. We would argue that the Act is here defining the union rather than the nominee and that considering the intention of Ministers is important. The bill, prior to being amended at stage three, clearly defined the union rather than the nominee. When the amendment was lodged it was clearly done so on the basis that it was to prevent universities seeking to circumvent the requirement to have trade union nominees on their governing body and not for any other reason. We would suggest that universities, in order not to knowingly disenfranchise a substantial part of their workforce, use section 11(3) (b)(i),(ii), and (iii) of the Act to define the criteria of staff in (i) to include academic related, or if it is simpler by specifying the relevant grades when they come to drafting their ordinances. It would be helpful if the code contained a reference to this.

- 5) Does anything need to change in the current code improve its clarity or presentation, even if not changing the substance.

It is useful for the code to have good practice examples, but thought should be given to the substance of those examples. It would also be useful for the new code to have a specific section on equality to ensure a sufficient focus on this issue by the governing body.

6) Is there any good practice, in higher education or other sectors and from Scotland or elsewhere, which you would particularly highlight?

The STUC believes that the code of governance in FE is an example of good practice that is particularly relevant to this sector. The FE code of governance also contains a staff governance standard which was negotiated between the STUC and Colleges Scotland. An updated version of this code is attached with this response.

Equally the governance arrangements in NHS Scotland are also a positive model.

### **NHS Staff Governance Standard**

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

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

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

A copy of this standard is available here:

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

### **How the Standard Works**

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

## **Partnership Working**

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

## **Current National Partnership Structures**

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

### **1. Scottish Partnership Forum (SPF)**

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

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

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

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

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

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

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

## **The Staff Governance Standard**

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

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

- well informed;
- appropriately trained and developed;
- involved in decisions;
- treated fairly and consistently, with dignity and respect, in an environment where diversity is valued; and
- provided with a continuously improving and safe working environment, promoting the health and wellbeing of staff, patients and the wider community.

The Standard also requires all staff to:

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

- ensure that their actions maintain and promote the health, safety and wellbeing of all staff, patients and carers.

### **Partnership working at the core of the approach**

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

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

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

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

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

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

### **Why this model is useful**

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

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

**STUC**

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