



Scottish Code of Good Higher Education Governance

The UNISON Scotland Scottish Code of Good HE Governance **September 2016**

Introduction

UNISON is the largest trade union in Scottish public services. Our members deliver services, pay taxes and also have a wider citizenship interest in how services are provided and paid for. In education UNISON members deliver essential services including cleaning, advice, administration, libraries, technical and research support, IT, finance, learning and student support services, security, porter services and management. These employees are often the face of Scottish universities and contribute a great deal on the overall student experience, providing the foundations for high quality learning for all. UNISON welcomed the recommendations of the Review of Higher Education Governance and is disappointed at the resistance of university management since then to efforts to improve governance. We are keen to move forward to more modern governance particularly improving the role of staff and their representatives on governing bodies. UNISON Scotland therefore welcomes the opportunity to take part in this process.

Response

Democratic structures create public bodies which are open and transparent in their dealings with the public. Universities must be accountable to communities which they serve. The Independent Commission on Good Governance in Public Services (2005) laid out 6 principles of governance. UNISON supports these principles as the basis for governance of Scottish universities.

Those appointed to governance roles should be:

- Focusing on the organisation's purpose and outcomes for the citizens and services users
- Developing the capacity and capability of the governing body to be effective
- Performing effectively in clearly defined functions and roles
- Promoting values for the whole organisation and demonstrating good governance through behaviour
- Taking informed transparent decisions and managing risk
- Engaging stakeholders and making accountability real

UNISON therefore welcomed the findings of the Prondzynski review and hoped to see the recommendations swiftly implemented. We therefore hope to be more fully involved in the process than submitting this written response and would welcome the opportunity to take part further in the review process.

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

UNISON has called on the Scottish Government to reject the code and instead implement the proposals of the Von Prondzynski review. The resistance of university management to the changes proposed, in particularly such minimal trades union and staff representation on boards merely convinces us that the change is necessary.

During the debate on the recent HE Governance Act, the code was held up many times by those arguing that legislation on governance was not necessary as Higher Education Institutions (HEIs) were now working to the code and had reformed themselves. Members feed back to us that the current code has made no difference to the way universities are run or the issues we raised in our submissions to the Von Prondzynski review.

Universities are not businesses, they are not owned by principals or senior managers, but rather they are societal institutions which are as much owned by the students and the staff who work there as their senior managers. Members of the revised code's steering group will be aware that our universities benefit not only the students who study there, but also the economy and society in general. We would therefore like to see a statement of the purpose of higher education in general and universities in particular in the code.

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

There is a benefit in all institutions in Scotland agreeing a set of guidance that they then are required to follow. Universities are autonomous institutions but with regard to their governance there are certain principles that UNISON believes should be common to all. Even private sector organisations are required to have a level of corporate governance and openness. For that reason we agree the concept of a national code but we do not believe that the code as it stands goes far enough or, indeed, that institutions are following it fully. One example would be over transparency. Universities have been dogged in recent years over the issue of principals pay with excessive pay rises redolent of private corporations resulting in negative press coverage which damages not only those being awarded the excessive rises but the sector as a whole.

Remuneration committees are supposed to provide scrutiny but are minutes are hard to get hold of and are often redacted. Staff members are excluded from Remuneration and Human Resources Committee meetings. While this may be appropriate on some occasions it should not be the default position and more openness round senior pay decision making may have avoided some of the excessive pay rises we have seen. Ultimately court is still seen as something that simply rubberstamps management decisions and is not seen as questioning and challenging.

University principals working in a sector that receives over £1 billion in public money annually may not like the fact that their pay and expenses are a matter of public record but they are in receipt of large amounts of public money and play a vital role in our society and that comes with scrutiny. By that measure, at least, the code has not has a positive effect on higher education governance.

We have seen some positive advances since the code came in, particularly around the number of women chairs and women members of governing bodies but given we started from such a low base (only 25% of court members were women as recently as 2010/11) it's only a first step. Beyond that boards remain remarkable un-diverse given they are institutions with a global reach. Given the slow progress to date we feel it is time to legislate to accelerate progress.

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

The code should be updated to ensure the universities are compliant with the provisions in the Higher Education Governance Act 2015, as well as public sector equalities duties and the fair work convention.

The code should ensure that there is greater transparency around remuneration for principals and senior staff. As indicated in answer to question two, there has been no issue more detrimental to the perception of our universities that the way principals by

accepting pay rises of, in some cases, 13 and 25 per cent have given the impression that those at the top of the sector are driven by greed rather than teaching or scholarship. The code should include a presumption on openness and accessibility for meetings, decision making and accessibility of minutes and other board papers. And procedures for the rare occasions when decisions/meetings and minutes should not be open to the public.

During the debate in the Scottish Parliament around the final stage of the passage of the HE Governance Act parliamentarians from a number of parties argued in favour of a proposal to include the new trade union and student association nominees on the governing body to be on the remuneration committee alongside others to ensure transparency and openness. UNISON thinks this an essential addition to the code. While our preference would be for it to be the trade union nominees on the committee, even the inclusion of staff representatives would, in many cases, be an improvement. The current guidance, stating simply that the committee should take care not to agree packages in certain instances which staff and students would deem excessive has demonstrably not proven effective.

As indicated in answer two, we have seen some advances in the gender makeup of governing bodies. Again, the debate in Governance Act included an amendment on gender quotas for university courts. We note that the amendment was rejected because the Parliament took the view that they weren't at that time competent to legislate on equalities issues. No such restriction would apply to the code and for that reason we would welcome measures in the code around positive discrimination in the form of gender quotas for governing bodies. UNISON believes that there should be a commitment to a 50/50 gender balance with a realistic but short timetable for achieving this aim. UNISON believes that diversity goes beyond gender, for example race. University governance structures need to reflect the student body and wider society.

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 compliance with the Act. It was telling during the stage three debate on the Bill that Scottish Government MSPs were proposing amendments for the sole purpose of attempting to ensure universities did not seek ways to get round the provisions of the Bill. Ensuring the code recognised the act would go some way to repairing the damage done during the past year and would also ensure institutions complied with the law.

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 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.

It is clear that many senior managers in universities did not want trades union representatives taking part as full members in governing bodies. There must be no scope for them to avoid having two trade union representatives of the governance boards representing both academic and support staff respectively. The Scottish government must ensure that the guidance is clear and that it is for UNISON and other trade unions representing the support staff to select their representative for those staff and the unions representing academic staff to select their representatives.

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

UNISON would like to see the code lay out the purpose of higher education and of universities both in general and as part of wider society and the economy. This will set out the culture in which decisions should be made.

UNISON would also like to see the code giving examples of where governance structures have "failed" in the past and how decisions could be better made in future.

These would not necessarily need to be for higher education but could be from a range of public and private corporate failures.

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

The role of principal in a higher education institution is distinct from that of a FE College principal but not so different that we can't learn from what is in place in that sector. SFC guidance suggests the remuneration committee take evidence from staff and students before agreeing the package for the college's principal. We have already outlined the sorry state of affairs at many Scottish universities and, if the steering group are not minded to consider our preferred option of the student association and trade union nominees being on the remuneration committee then even the less structural and simply consultative suggestion in the college sector would be an improvement on what goes on in higher education.

UNISON would also like to see reference governance structures including ethical behaviour similar to the FE governance code.

For further information, please contact:
Dave Watson d.watson@unison.co.uk
Kay Sillars: k.sillars@unison.co.uk

Mike J Kirby, Scottish Secretary
UNISON Scotland,
UNISON House,
14, West Campbell Street,
Glasgow

G2 6RX

Tel: 0800 0857 857

Fax: 0141-331 1203

Email: m.kirby@unison.co.uk