

## **EIS-ULA Response to the Scottish Code of Good HE Governance**

The EIS welcomes the opportunity to comment on the draft Scottish Code of Good HE Governance which was published for consultation in April 2017.

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

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

The EIS-ULA believes that good governance is at the heart of delivering high-quality learning and teaching in the HE sector and in ensuring that universities enrich the lives of those attending as well as improving the quality of life within society more generally. Central to this is the concept of accountability and transparency, particularly in relation to decisions relating to how public funds are spent. This is recognised in the Scottish Funding Council's requirement that Institutions comply with principles of good governance as a prerequisite of a grant of public funding.

The EIS-ULA therefore welcomes the opportunity to contribute to the consultation on the draft Scottish Code of Good HE Governance and has the following comments to offer:-

### **1. The Governing Body – Primary Responsibilities**

The EIS-ULA welcomes the clear delineation of responsibilities which are attributed to the board in this section and the guidance given in terms of the requirement to plan the Institute's strategic drive and future development.

The commitment expressed in the Code to the Nine Principles of Public Life in Scotland provides a sound basis for the engagement and interaction of board members. By promoting an ethos founded on the principles of integrity, honesty, accountability and respect, individual board members should have the confidence to challenge decisions, explore issues thoroughly and act as critical friend in the governance process.

The inclusion of the principles of fair work and the reference to the Fair Work Framework in the Code are key aspects of driving forward an Institution which is balanced in terms of its rights and responsibilities and values to contribution of all. The EIS-ULA would, however, suggest that this should not be framed as an aspiration but rather clearly outlines as a fundamental duty. This would then reinforce the commitment to the Nine Principles of Public Life referred to above.

Although there is reference throughout the document to the board discharging its statutory responsibilities, there is no reference made specifically to health and safety legislation and requirements. It would be helpful to include this important area in the Code to ensure that board members are clear on their roles and responsibilities.

## **2. The Governing Body Membership**

The Code currently states that the recruitment of members appointed by the governing body must proceed through an open and inclusive process that is based on a skills evaluation. Whilst the EIS-ULA can appreciate that it would be desirable to have a range of skills on the board, it questions how this will interface with the legislative requirements outlined in section 10 of the Higher Education Governance (Scotland) Act 2016 which provides for two members of staff to be elected by staff members and one member nominated by each of the support staff trade union and the academic staff trade unions. If these members are elected and nominated, then this should be a matter for their respective bodies and the balance of skills across the board should not be a criterion in the selection process. Clarification would be welcomed as to whether this general principle applies solely to the recruitment of lay members of the board. Some of the detail in the following sections would suggest that this is the case. However, the reference to staff and trade union representation under this general principle clouds the issue.

## **3. Responsibilities of Governing Body Members**

The EIS-ULA welcomes the involvement of the recognised trade unions on the boards and believes that this representation will promote transparency, constructive dialogue and the opportunity for debate. This will, by its nature, strengthen the decision-making process and impact positively on governance.

Section 3 of the Code sets out the principles of collective responsibility of board members for the decisions of the board. It goes on to state that 'all members must exercise their responsibilities in accordance with accepted standards of behaviour in public life and in the interests of the Institution as a whole, rather than as a representative of any constituency.'

Whilst it is axiomatic that the representatives appointed as members of the board would have a duty to act in the best interests of the Institution in ensuring high standards of educational delivery and in working towards the fulfilment of strategic goals, it would be misguided to suggest that the trade union representatives are acting in an individual capacity. The foundation of their appointment is their duty to represent the views of the members of those unions. Paragraph 24 of the Code would appear to be inconsistent with this principle.

Paragraph 26 provides that 'the governing body, acting as a whole, must have the power to remove any member of the governing body from office and should do so if the member materially breaches the conditions of his/her appointment, including the requirements of this Code.' As currently drafted, no reference is made to the process through which this should be conducted, the right to representation and the issue of proportionality. Although there is a reference to material breaches of the appointment process, it would appear that a technical breach of the Code could allow removal. It may be that this would allow a trade union representative to be removed if he or she were acting in a representative rather than an individual capacity, as is currently stated.

This section of the Code also seeks to apply collective responsibility on all board members. Whilst the EIS-ULA can appreciate the rationale behind this approach, it has concerns about the impact of removal provisions in the event of potential disqualification procedures. It is the belief of EIS-ULA that members of a board should only be disqualified if it can be established that they were personally involved in the board failure. Given the far-reaching

consequences of disqualification, there must be individual culpability. To provide otherwise may act as a disincentive for employees to come forward as staff or trade union representatives.

#### **4. Equality and Diversity**

The EIS-ULA welcomes the commitment to providing effective leadership in relation to equality and diversity and its inclusion in the induction programme for new members. Paragraph 35 of the Code also refers to the importance of assessing the need for additional training in this area as part of the review of the training needs of board members. We would recommend that this section is extended to include a commitment to deliver equality and diversity training on an annual basis. This will ensure that members are kept up to date with their legal obligations but will also promote an understanding of good practice in this area.

#### **5. Effectiveness**

Paragraph 44 sets out topics for inclusion in the induction process. We would suggest that this is extended to make reference to principles of good governance such as accountability, openness and transparency.

Paragraph 45 then makes provision for a review of an individual member's contributions to the board. The EIS-ULA would question the purpose of such a review and the ultimate outcome of this process.

The Code currently allows for some business to be dealt with on a restricted basis with information being withheld from some members. This is set out in paragraph 49. We would question the interface between this provision and the principle of collective responsibility outlined in section 3 above. If a member of the Board has been excluded from the process, then it is difficult to argue that collective responsibility should apply.

#### **6. Key Roles**

Paragraph 62 outlines the role of the Chair and the interface between his relationship with the Principal. To ensure that this paragraph correctly identifies the balance of support and challenge, there may be some benefit in re-stating the overarching principle that the Chair's role is to act in the best interests of the Institution.

The Principal has a key role in ensuring financial compliance with the Scottish Funding Council's Financial Memorandum. Paragraph 69 clearly establishes the duty on the Principal to report to the SFC if a board takes action incompatible with this financial memorandum. However, paragraph 70 goes on to provide that the Principal must ensure that the decisions of the board are implemented. This section has not been further qualified and it would appear that some qualification is necessary.

To ensure that the assessment of the performance of the Principal is meaningful, then it might be appropriate to include the words 'and considered' after 'views may be sought' where it occurs in paragraph 73.

## **7. Committees and Academic Boards.**

Reference is made in different sections of the Code (paragraphs 72 and 82) to the suggestion that these committees should contain representation from either an elected member *or* a member from a trade union. Clarification would be welcomed as to why this is written in the alternative.

### **Research**

There have been concerns raised previously about research integrity within the UK, triggered by the lack of reproducibility of research findings.

This draft Code offers an opportunity to outline the role and responsibility of the governing board in ensuring that

(a) research is carried out with integrity; and

(b) any allegations of research malpractice by researchers will be overseen by the governing board and those reporting concerns will receive protection.

The EIS-ULA would recommend that the Code is amended to include a description of a transparent process which could include independent experts for all HEIs. Creating a legal responsibility on the Institution to prevent, expose and rectify research fraud would also be beneficial.

Pages 1 and 2 of the Code provide a list of relevant legislation. We note that there is currently no reference to the Public Interest Disclosure Act or to the duty on the Governing Board to have a procedure in place that would protect staff from retribution or intimidation by senior managers. There is one reference to whistleblowing procedures but it is not in a context that reflects the importance of the Act in protecting employees from retribution for acting in the public interest. Consideration could be given to extending the Code in this respect.

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