

UCU Scotland submission following the publication of the draft Scottish code of good higher education governance

The University and College Union (UCU) is the largest trade union in the post-16 education sector in the UK, representing over 110,000 academic and related members across the UK, and is the largest union in the higher education sector in Scotland.

Introduction

UCU welcomes the opportunity to contribute on the new draft code of good higher education governance (the code). We welcome the current draft as a significant improvement on the 2013 code. We also welcome the more collegiate manner in which the current chairs have conducted this review, albeit we are sorry not to have a place on the review steering group.

That said, we do have some comments and suggestions which would, we believe, help improve the draft code, and one major criticism of the draft as it stands which, unless it is rectified, will set the code off on the wrong foot.

Overemphasis

UCU believe that draft code places too much emphasis on the necessity for members of the governing body to act in accordance the principles of good governance. Note, that we are absolutely not saying individual members should not act in such a way, nor that the code should not make some reference to the need for all members to follow the principles of good governance, rather we are stating that than by placing such disproportionate emphasis on this, the message the code sends out is unhelpful.

It may be that returning to this theme in listing the principles of public life and then again in section three taking three paragraphs to spell out the requirement for some members to act as nominees rather than representatives was felt by the steering group members to be necessary. It is likely though that trade union members filling the trade union nominee positions will feel singled out by this. UCU members remember being told¹ by university principals in early 2015 on the introduction of the governance bill that trade union members were incapable of acting in accordance with the Nolan principles as members of the governing body. By seemingly returning to this theme and over-emphasising this, the draft code risks making some governing body members feel like second class members of the governing body before they are even in place.

If that is not the intention, then we suggest the code be redrafted in such a way as to not read as an attack on trade union members of the governing body, nor

¹ *University leaders in row over union snub*, Andrew Denholm, The Herald, 3 February 2015.

that they, uniquely, are incapable of understanding the nature of good governance or of acting in the best interests of the institution.

Additionally, we would be keen to know the process behind amending the nine principles of public life in Scotland. Both the original Nolan principles, and the subsequent nine Scottish principles were substantial pieces of work leaning on evidence, individuals with substantial expertise in the field, and were also subject to parliamentary scrutiny. The code, while rightly stating that higher education institutions are not public bodies (they are public service bodies in receipt of large sums of public money) then takes the public sector standards across while adding on sentences weakening the standards that should, in our view, be subject to wider debate in the sector and not simply introduced via the code.

We have no problem with the inclusion of standards per se, noting they were included in the 2013 code, our concern is with the seemingly arbitrary way they have been amended for higher education. We question whether it is appropriate to simply add words on institutional 'stakeholders' alongside the public as interested parties when it is perfectly conceivable for there to be a conflict of interest between the public interest and some of a university's stakeholders. Likewise we are concerned at the addition to the standard on openness of an exclusion around commercially sensitive information. We can't see why higher education institutions should be having the standards watered down from those that exist in the public sector given that public sector bodies also enter into commercially sensitive agreements. We would also want assurances in the code that such an exclusion must not be misused to withhold information without good reason. Sadly, we see examples currently in higher education where the excuse of commercial sensitivity is used to cover up poor commercial decisions made in the past around, for example, overseas campuses, or unwise partnering with private sector providers for the provision of educational services.

Other issues

More positively, we also want to welcome several aspects of the new draft. We are happy with the section entitled 'definitions'; and are pleased to see the references to staff, trade unions, and students around senior pay and the remuneration committee. In particular, we welcome the reference to the possible inclusion of trade union, staff and governing body members in the makeup of the remuneration committee's membership and look forward to institutions taking this up. We were also pleased to see the reference to fair work.

We also welcome point 23, on page nine of the document, and the clarity it provides that all members of the governing body should take an active part in all aspects of the governing body's business.

There are two other issues we would want to see the steering group address in refining the draft code. These are perhaps less critical than those identified in the previous section but we believe that their improvement would nonetheless be beneficial to the final code.

While we welcome the section on equality and diversity and the reference to greater gender equity in governing bodies we would like to see the steering group set a timescale before the next scheduled review to amend the code should the proposed Gender Representation on Public Boards (Scotland) Bill be passed and receive assent. Given that this will be universities simply complying with legislation this should be relatively simple to do. On the same issue, while we obviously welcome the progress made by governing bodies and the existing chairs' commitment to at least 40% women members, we see no reason why this should not be increased to at least 50%. Nor do we see the need for quotas for men given historical and continuing male domination of governing bodies, and so can't see the rationale for the existing chairs' aspiration for at least 40 per cent men.

While the average is now just over 40%, it worth noting that there is obviously variation in the sector in Scotland and in March 2017 there were institutions in Scotland where under a third of the board were women including one, where women comprised only 21% of members.

Finally, in our submission to the steering group in September 2016 we argued that the role of secretary was a critical one, given that other members of the governing body relied on the secretary for information and guidance on process. We welcome some of the increased detail on their role which is included in the new draft, along with information on checks and balances on the role. We note, however, that our suggestion of new governing body members meeting a wider cross section of the university community including students and trade unions was not included either in the section referring to the secretary nor the induction process. We would ask the steering group to reconsider this.

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