

Meeting between Steering Group for the new Scottish Code of Good HE Governance and NUS Scotland and sector unions

Meeting held on 16th May 2013 at the offices of Glasgow 2014, Glasgow

In attendance:

Lord Smith of Kelvin

Dame Elish Angiolini (by telephone conference)

Tony Brian

Simon Pepper

David Ross

Eric Sanderson

Robin Parker

Mary Senior

David Belsey

Helen Martin

Margaret Anne McParland

David Lott

Lord Smith opened the meeting explaining that the Steering Group welcomed this opportunity to discuss the draft code as part of the broader consultation process going on until 11 June. The agenda had been agreed with NUS Scotland and the trades unions and it was agreed that international student fees would be added to the agenda at the request of NUS Scotland.

Lord Smith indicated that the agenda covered all of the issues of concern to NUS and STUC unions and the Steering Group members were keen to have a dialogue to understand the issues, however the meeting was not a negotiation process. Trade unions acknowledged this, but noted that the Education Committee had appeared to suggest that NUS/TUs could go away and liaise with the Steering Group and “reach an agreement”, so clarity was needed on a way forward and timescales.

Lord Smith reiterated that the meeting offered an opportunity for NUS and STUC unions to highlight evidence that may not have come through in institutional meetings or through written evidence. The Steering Group would reflect on this, alongside the other additional evidence received during the consultation period, before considering the draft code again at its final meeting in late June.

Issues discussed:

The TUs made a general point that they felt the wording in the code was weak and the numerous caveats effectively allowed opt-outs for parts of the code which when added to the “comply or explain” aspect of the code, weakened the principles of governance set out in the code. The TUs

were clear that it was not necessary to have both extensive caveats in the wording and a 'comply or explain' principle within the code and that the 'comply or explain' principle- properly managed- would alone allow the necessary flexibility at institutional level.

Rather than go through the code line by line it was agreed that the STUC would send a written document following the meeting to David Lott highlighting the areas where wording was weak and suggesting ways to strengthen it.

NUS and trade union representatives first raised concerns about the use of 'comply or explain' within the code, specifically that the process and timescale in the code for reporting and explaining to the SFC that the code had not been complied with was too late (half way through the following financial year in its Annual Report for the previous year) which meant that the comply or explain mechanism would be ineffectual as a condition of funding. The TUs and NUS suggested a number of ways that the 'comply or explain' aspect could be improved such as that the SFC would need to be informed of non-compliance by a HEI as soon as its governing body decides to do so, or by sharing of governing body minutes to the SFC or the HEI updating the SFC on a quarterly basis.

The TUs and NUS also gave the view that the code did not set out that compliance would be the norm and that explanations of non-compliance would be the exception.

Steering Group members agreed to examine language associated with 'comply or explain' (page 2 of the draft code) and welcomed specific examples from NUS Scotland and the trade unions that they believed would bring greater precision. The Steering Group believed that, if identified by the SFC as principles of governance that constitute good practice, the Code would be a condition of grant and the Council would have a constant basis to question institutions' approach to meeting the principles.

The trade union representatives raised a concern that the draft did not set out a firm enough framework to ensure appropriate roles of members and officers in the conduct of business of the governing body. The Steering Group noted the evidence for a range of situations where a range of input from professional officers enhanced the governing body's business. It was agreed that, as part of the consultation process, NUS Scotland and the trade unions would offer alternative wording to that set out in the draft (page 27 – 28) which might reflect current good practice. One suggestion raised at the meeting was to amend the role of officers at governing body meeting and to use the word "direct" or 'influence' rather than "dominate".

The TUs and NUS also raised an issue related to the numbers of senior managers attending Court meetings, and gave the opinion that the number of senior managers (present in an *ex officio* capacity) should never be greater than the number of independent members – as they could have an adverse impact on the contribution of independent members (especially staff members) and may hinder open debate. The TUs and NUS suggested deleting the word "normally".

The NUS and trade unions also argued that attendance of senior managers should be on an issues/agenda item basis.

Trade union representatives asked that the code's guidance on the role of the Secretary should be reviewed to ensure that the Secretary supported Governing Body members who wished to raise issues of concern with the Chair. Trade unions explained that this is about a "separation of the roles" of Secretary as the secretary to the Court, and Secretary as the chief administrative officer of the University. There is a real need to ensure that these roles are distinct, and that there is no perception or otherwise of a conflict of interest.

NUS Scotland and trade union representatives raised concerns that the draft code does not offer a sufficiently firm framework for the openness of governing body business including public meetings. NUS and TUs pointed out that the publication of agendas, papers and minutes (saving those that

dealt with in confidence matters) should be required, as a minimum. Steering Group members noted this as an issue for consideration as they finalise the Code. It was further suggested that the current wording (page 27) might require more firmly engagement with the university and broader local communities. The Steering Group agreed to look at this issue balanced against the evidence it had already received on the outcomes found in other sectors from initiatives to hold public meetings. There was a difference of opinion on meetings in public, but it was suggested that holding one annual meeting in public may be a compromise position.

It was noted that the draft code stipulated that staff and student governing body members should be members of nomination committees, (page 22 of the draft code). This was welcomed by NUS Scotland and trade union representatives. Trade union representatives stated that they would welcome greater clarity on the definition of “staff member” of the governing body in this and similar sections to ensure that this is an elected or nominated staff representative rather than a member of senior management or an *ex officio* staff member of the governing body. The Steering Group stated that the former was also their understanding of a “staff member” and they would consider clarifying this.

NUS Scotland and the trade union representatives noted that the draft code should ensure that staff and students are involved in the appointment and appraisal of the principal. They proposed that staff and student reps should be on appointment panels, in line with current practice in many institutions and that the Chair should be required to consult/take views from staff and students as part of the appraisal process. Steering Group members agreed to consider these proposals within the consultation on the code. NUS Scotland and trade union representatives noted that the proposal set out in the review of Higher Education Governance for staff and student membership of remuneration committees had not been met by the draft code. The Steering Group noted that the proposed wording in the draft code, as a main principle gave the governing body, including staff and student members, full oversight of the remuneration committee’s work (page 29 of the draft code):

“The policies and processes used by the remuneration committee shall be determined by the governing body, and the committee’s reports to the governing body shall provide sufficient detail to enable the governing body to satisfy itself that the decisions made have been compliant with its policies.”

The Steering Group suggested that this would secure a firm, transparent framework in every institution. NUS and TUs noted that this did not reflect current practice in every institution. It would therefore be an improvement but, in their view, did not go far enough. The trade unions and NUS said that they believed there is value to staff and student representatives being members of the Remuneration Committees. TUs and NUS emphasised that the fact that Principals and senior managers are paid very high salaries (more than the First Minister) is a very public issue, and a matter that influences other decisions which are made about the sector, so should be an issue which is seen to be addressed.

The meeting discussed the wording in the draft code on rectors, (page 19 of the draft code). There was agreement that the wording needed to reflect the position of rector, who was entitled to ‘preside’ at court meetings alongside the role of the ‘chair’ whose breadth of responsibilities are defined in the code (page 18-19 of the draft code). Steering Group members noted that they had already agreed to re-examine the wording in the draft code and welcomed suggestions of alternate drafting during the consultation phase.

The meeting discussed how the code might address increased diversity within the membership of governing bodies, in particular gender balance. It was noted that the draft code introduced a requirement to set goals. It was also noted that the setting of quotas was out with the scope of the code. The meeting discussed the nature of goals that it would be expected that institutions should

set. It was also noted that, given the large proportion of many governing body memberships who are elected, the code would need to be clear about whether goals should be for unelected governing body members alone or for the membership of the governing body overall. The Steering Group members agreed that they would consider alternative wording received as part of the consultation period. In particular the clarification of what goals should aspire to achieve, for example for governing body membership to reflect the communities that universities serve. It was noted that there was a relationship between these goals and the schedule of skills and experience noted in the code (pages 21 -22 of the draft code). Indeed the draft code notes:

In making its recommendations to the governing body, the nominations committee must pay regard to the balance of membership and the needs of the institution, and should keep a 'skills register' against which to consider the field of candidates. In addition, the issues of equality and diversity must be addressed, and a regular report should be presented to the governing body on progress made towards achieving previously established goals in regard to a balanced membership taking account of equality and diversity characteristics. Furthermore, the question of inclusion of appropriate members of the local community should also be addressed. Finally, particular care should be taken on the appointment of members to ensure that they understand the need to abide by both the standards expected of them under Main Principle 3 and the values of the Institution.

NUS and the trade unions argued that this was a really crucial point, Von Prondzynski had recommended strong measures to improve gender balance on Courts, and so it was important that the Code emphasised the importance of implementing special measures / support mechanisms to improve gender balance, and the diversity of Courts.

It was noted that NUS Scotland would like the Steering Group to consider the inclusion of guidance on fee frameworks for international students – ensuring that an individual student's fee structure over the lifetime of their course is known at the point of first enrolment. The Steering Group questioned whether this was within the scope of a code of governance. It was noted that institutions with prominent international recruitment levels had already moved to introduce such frameworks.

It was agreed that attendees would agree a note of the main points discussed and that both NUS Scotland and the trade unions would provide the further information discussed as part of the consultation via the Steering Group's secretariat.

Ends