

## **UCU Scotland submission to the review of the 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 to the review of the Code of Good HE Governance (the code). As the largest trade union in higher education in Scotland we were disappointed not to be able to sit on the review's steering group. We do, however, acknowledge that places were reserved for trade union positions and that this is an improvement on the process which drafted the original code where input from trade unions and students was very much an afterthought. We welcome this change and hope that the current review improves the code substantially. We have attempted to address each of the questions asked in the public consultation in turn. If there is scope to feed into the review through further evidence in person at a later date then we would be happy to do so.

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

When the code of Good HE Governance was initially published UCU Scotland described the code as being one 'written by managers for managers' and called on the Scottish Government to reject the code and instead implement the proposals of the von Prondzynski review.

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. UCU starts from the position that universities are not businesses, that they are not owned by principals or senior managers, but rather they are societal institutions which are as much owned by the staff who work there and their students 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. The nature of universities was not reflected in the code, which simply codified business as usual.

## **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<sup>1</sup> but with regard to their governance there are certain principles that UCU believes should be common to all. 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. For the past number of years UCU have asked universities for the minutes of the remuneration committees which set their principals pay. The code stipulates that the governing body, which the remuneration committee is a committee of, shall conduct themselves in accordance with (amongst other things) high standards of accountability and openness. When we submitted FOI requests to institutions in Scotland in 2016, 18 institutions were asked to respond. Two did not respond to the inquiry at all, two used exemptions to withhold information and six redacted the minutes of the committee sent. In 2015 over two thirds of institutions refused to provide full details. Of 17 asked, four refused to send any information and eight redacted the minutes of the committee to, in some cases, make them unreadable. In 2014, alongside comparable percentages not responding or redacting their response the minutes showed that at least one principal was influencing the debate around their remuneration in an unusual way and the reasons being given for above inflation rises were arbitrary and cursory in nature.

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 refusing to comply with FOI legislation is not being open and accountable. By that measure, at least, the code has not had 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. Without wishing to be begrudging, we would argue the advances are welcome but given we started from such a low base where the sector had been for a very long time (only 25% of court members were women as recently as 2010/11) rather than being as a result of the code being progressive, the advances made were as a result of universities attempting to show politicians that they were able to get their act in order in an attempt to persuade government against legislating around the von Prondzynski review.

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<sup>1</sup> UCU wholly support the autonomy of our HEIs but believe this needs to be based on the concept of responsible autonomy. UCU does not defend the autonomy of institutions so that remuneration committees can pay principals inflated salaries without criticism, rather we do so to ensure academic freedom and prevent inappropriate government interference on what subjects are taught or studied and what research is carried out.

### **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. (See also our answer to question four.)

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 than 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.

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. UCU thinks this would be a useful 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.

UCU believes that the position of the university secretary is a critical one. It is essential however, important though the role is, that such a position has appropriate checks and balances and is not overly powerful. By the nature of the position the chair and other members of the governing body will look to the secretary for guidance on process and their roles. The code already acknowledges this by ensuring that there must be a separation between the role of secretary and any other function they carry out for the university. UCU believes that it might also be helpful for the code to ensure new members of the governing body in all institutions meet a diverse range of stakeholders including students and staff by way of the trade unions as part of the familiarisation process on taking up position.

**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.**

In short, yes. 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.

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.**

UCU doesn't have any comment on the presentation of the code which appears perfectly functional.

**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.

**7. Please provide any other relevant comments you may have.**

n/a

**For more information contact:**

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