

Response to Draft Code of Good HE Governance

Preamble

UCU Scotland represents 6,500 academic and academic-related members in Scottish higher education institutions (HEIs) and is the largest union in higher education in Scotland and the UK. This response to the Draft Scottish Code of Good HE Governance represents our view on the draft code, representing views of UCU members in Scotland, across many varied institutions, including Pre and Post 92 HEIs, as well as members in a small specialist institution.

Introduction

UCU believes that this draft code is written by managers for managers, which is perhaps unsurprising, considering the lack of staff and student involvement in the steering group and code development, and given the background of the consultants who provided the Secretariat to the Steering Group. To this end UCU requested a meeting with the steering group in September 2012 to explain our concerns about the code development process. We welcome the constructive meeting which took place in May 2013 arising from the evidence session to the Scottish Parliament's Education Committee. However, many of the issues that have arisen could have been avoided if the group had met with staff and student unions at the outset of the process. Indeed the choice of consultants should have been a matter for the sector as the draft code reflects their management background.

We dismiss the claims, made in the press release, that the draft code will transform accountability and transparency, as we do not see that this draft code makes any significant or fundamental changes to governance. Indeed many institutions go far beyond the code's proposals for staff and student engagement. There is no mention in the draft code of places on governing bodies for trade union representatives, which was a recommendation from the Von Prondzynski Report. This is despite the fact that currently some universities have places on their governing bodies for non-academic trade union representatives. Indeed, there is no mention in the document of trade unions anywhere other than in the annex listing meetings held. We stated that the code development process was flawed from the start and it has resulted in a flawed draft code.

The main purpose¹ of the code is to implement where possible the Report of the Review of Higher Education Governance chaired by Professor Ferdinand von Prondzynski, but this draft code has failed to fully implement any of those proposals. We continue to call for the

full implementation of the Review, and for this code to put into practice those recommendations which do not require legislation.

The Von Prondzynski report sets out a definition of governance in universities which is:

- effective stewardship of the university to secure its sustainability over the medium and long term;
- safeguarding the mission of the university and the services it provides for the public benefit;
- securing the proper and effective use of public and other funds; and
- ensuring stakeholder participation and accounting to the wider society for institutional performance.

We believe that this draft code fails this definition.

The draft code is flawed and it is deeply disappointing that it is not the progressive, collegiate, and enlightened document which is proposed in the Review. It fails to address outcome agreements² despite this now being the most important element of governing bodies' strategy, reporting and review. UCU has also raised our deep concerns over the current draft code's references to the elected Rectors in five of Scotland's universities. We also question its legality because as currently drafted it appears to remove the statutory right of the five duly elected Rectors to chair Court, which is enshrined in university charters and Education Acts dating back to 1889³. For a Scottish code of governance to not even to mention the role of Rectors is not only astonishing but also a serious defect.

Further, its development does not meet the governance review recommendation:

The Scottish Funding Council should commission the drafting of a Code of Good Governance for higher education institutions.

Purpose and Main Principles of Governance

The principles listed in the draft code do not reflect the stewardship of a public educational body and could be applied to any public or indeed commercial body. While we welcome the principle of appropriate participation of key constituents, including students and staff, we believe that the reference to "appropriate" suggests limited participation at the discretion of the governing body or management. Our main point is that this lack of participation has led to ill informed decisions being taken by governing bodies⁴ who have not been privy to all of the information. UCU believes that a governance code should deliver recommendations to improve the management and governance of universities in Scotland; restore the confidence of staff in the governing bodies; and strengthen the autonomy, democracy and collegiality of Scottish higher education institutions. To that end we support the Von Prondzynski report as it actually addressed these issues which this draft code fails to accomplish.

This document does not address the Von Prondzynski recommendations.

Main Principles

These paragraphs, which propose to set out the principles for the code, largely outline the status quo rather than providing a fresh underpinning for democratic and transparent governance of our higher education institutions. Though they talk of participation of staff and students it is at a level that already occurs in many institutions, it is the selection and election of staff and union representatives that is key, and this is not addressed in the draft code. Staff governors should be representative of all staff, whereas presently many so called "staff representatives" on governing bodies are representing the management perspective. The proposed code makes no proposals to increase representation of staff in important committees which make decisions on the appointment and appraisal of the Principal, appointments to the governing body, and remuneration for senior management, which is the fundamental tenant of Von Prondzynski's Report.

Representation

Despite the warm words, in the draft code press release, about staff and student representation, UCU does not believe this draft code provides sufficient improvements. It fails to deliver any major reforms of governance structures, and the inclusion of staff and students within the draft code is minimal. UCU has given evidence of major and widespread concerns of staff on the stewardship of our universities, when we submitted responses to the Review of Higher Education Governance⁴, in our response to the steering group consultation, in evidence to the consultants and to the Scottish Parliament Education Committee. These major concerns cover many universities and are fully listed⁵ but seem to have been ignored by those compiling this draft.

Staff and student union representatives do have a unique position within an institution, and are well placed to serve on governing bodies, given their representative position, the support of their respective constituencies, and their interest in the success of the institution. Yet unions do not feature at all in the code.

The current board members of higher education institutions tend to come from similar backgrounds and professions, which raises real questions about the balance of skills on boards. UCU Scotland's own analysis⁶ illustrates most lay governors are from management backgrounds which does not represent the diverse community in our universities, but rather a narrow business perspective. Von Prondzynski's Report made a number of recommendations on developing more diverse governing bodies, which are largely ignored by this draft code.

We call for the implementation of the governance review recommendation which states:

The panel recommends that there should be a minimum of two students on the governing body, nominated by the students' association/union, one of whom should be the President

of the Students' Association and at least one of whom should be a woman. There should be at least two directly elected staff members. In addition, there should be one member nominated by academic and related unions and one by administrative, technical or support staff unions.

In practice this already happens in many governing bodies by default and should be included in the code.

Targets

Many of the draft code's principles use inappropriate business jargon about performance indicators and targets, but neglect the main purpose of universities which is to educate, develop knowledge and advance research. We agree that universities should be accountable for public and private funding but their purpose is to provide learning, research and knowledge, and all the other criteria should flow from this main purpose of universities. If done appropriately in a collegiate manner then the university will be responsive to the needs of its learners, staff and the wider community, and will provide an ethical lead to its students and society. Performance indicators are now developed through outcome agreements with the Scottish Funding Council (SFC), but this process is neglected in the draft code, even though this is now one of the most crucial elements of the role of governing bodies. This code does not take account of these recent developments and seems to be stuck in an era of targets and self regulation which has now been discredited. This is particularly true for widening access agreements which will soon have statutory footing, including a responsibility to consult student and trade unions.

Outcome agreements and their collective development should be included in the code.

Equality

It is odd that equality legislation is not mentioned given an institution's duty of care for students. The repetitive emphasis on targets ignores the pastoral role of staff for students and their role in producing responsible, healthy and productive citizens for a modern Scotland.

Similarly, the alarming inequalities in the makeup of governing bodies are not addressed by the draft code. The Governance Review states:

The panel therefore recommends that each governing body should be required to ensure (over a specified transition period) that at least 40 per cent of the membership is female. Each governing body should also ensure that the membership reflects the principles of equality and diversity more generally, reflecting the diversity of the wider society.

We understand that reserved legislation may shape the way in which this recommendation can be taken forward. Nevertheless, UCU believes that the code should be making very

strong recommendations about working towards gender balance on governing bodies. UCU is clear that, as with most spheres of life (eg parliament, industry, judiciary), real change in gender representation (or other under-represented groups) is only made in a significant way where special measures to support progress are implemented.

The draft code, which is so keen on business targets which have no currency in universities, fails to set any targets on equality stating:

The governing body shall establish appropriate goals and policies in regard to the balance of its independent members in terms of equality and diversity, and regularly review its performance against those established goals and policies.

It is indicative of the code that it fails to address such contemporary issues in suggesting such a weak statement and at that, only applies to independent members. UCU believes much stronger and positive requirements should be included within the code to really coerce governing bodies to address the woeful under representation of women on university Courts.

Proposed amendment

The governing body shall ensure (over a specified transition period) that at least 40 per cent of the membership is female by encouraging female members to apply to lay member positions and encouraging other constituent appointments to balance their representation.

Chairs of Court

While we welcome the proposed increased democracy in choosing chairs of governing bodies, it is not the election that was recommended by the Governance Review Report. Further, in five institutions the Rector is already elected by students to chair the Court. There is a danger that this new draft actually dilutes the important role of the Rector as the elected chair of the governing body in the five ancient universities. This cannot be changed without amendment of the statutes and Acts of Parliament dating back to 1889 and is possibly unlawful, which is surprising given the consultants knowledge of statutes and ordinances.

We agree with the Governance Review that chairs should be elected. Further, the present nomination committees for court membership tend to be dominated by both the senior management team and existing lay members from the business community which leads to similar people being appointed. UCU recommends that staff and student representatives should at least be included on appointment committees. This will increase transparency of the appointments process and allow for a broader view to be taken in selecting and appointing candidates.

All chairs of court should be elected as is the case presently for Rectors.

Proposed amendments on the role of Rector.

Principle 7

The chair *or elected Rector* shall be responsible for the leadership of the governing body, and be ultimately responsible for its effectiveness. They shall ensure the Institution is well connected with its stakeholders, including staff and students.

The final sentence on page 19 should be amended to

The Rector as the elected chair as defined in the regulations and legislation is expected to chair the court. In these universities a convener may also be selected but their role should not interfere with the duly elected representative.

Principle 11

At end of first paragraph

Including where applicable the delineation between the roles of the convener of Court and Rector, as defined in the regulations and legislation.

Secretary of Court

We have called for a fully independent secretary who is responsible to the whole body not just the chair of court. The code proposes to give even greater managerial power to the Secretary role which increases the conflict of interest between the Secretary's responsibility to the court and their membership of the senior management team. It is really concerning that the code should increase the conflict of interest of the Secretary on the one hand, whilst making spurious arguments about staff and students who represent the body of the collegiate institution on the other.

The Secretary should be an independent member of staff and solely responsible for the Court.

Communication

Communication regarding decisions is crucial to the whole university community. Therefore it is surprising that only half the universities have the minutes of governing body meetings up to date on their web pages. A further seven either do not publish the minutes at all or have failed to keep them up to date by over a year⁷. In some cases key decisions taken by Courts are viewed as "Reserved Business" and relevant papers and minutes of these items are not published or available to staff or students. The proposals in the draft code do not address this issue of transparency and inclusion; they are essentially the status quo.

Similarly the background on the membership of Court is not provided by many institutions. UCU believe it is critical for staff to be able to contact lay members of Court without difficulty through the secretary. At the moment, this contact varies across HEIs but in some cases, the only contact available is through the Court administration offices who can be obstructive due to the conflict with the management roles.

As stated above, we recommend that an independent secretary should be responsible for communication between the court, the university and the wider community.

Detailed Proposals

Governing Body

The criteria in this section are about corporate governance with education only getting a mention in the seventh bullet point. While we agree that universities should be accountable for public and private funding their function is to provide learning and knowledge and all the other criteria should stem from this. If done appropriately in a collegial manner then the university will be responsive to the needs of its learners, staff and the wider community and provide an ethical lead.

UCU is concerned that the “good practice example” within the draft code of the Principal meeting with staff and students representative prior to a court meeting, could in reality be the Principal attempting to influence or coerce these representatives prior to the court meeting. Communication between the Principal and all court members is very important, but this has to be done in a balanced and transparent manner.

Legal obligations

While we welcome the commitment to academic freedom, compliance with legal obligations and governing instruments is the very least that is expected but this principle is limited in only referencing charity law. It is odd that equality and employment legislation is ignored given an institution’s duty of care for students and staff. Even though this legislation is reserved to the UK, Scottish universities still have to comply with such legislation. In evidence to the Education committee, the steering group members stated that the Scottish code would supersede the UK code yet there are elements like this which are not included in the draft code even though they are in the UK version.

Responsibility for equality and employment legislation should be included in the code.

Meetings

While we agree with the principle about Court meetings we are concerned about the detail that follows. To suggest that some business should be reserved for certain members suggests that they are somehow not trustworthy nor working in the best interests of the

institution. As this assertion is implicitly being directed to staff and/or student members we find this really insulting. It appears that staff and student members are being singled out as inferior or untrustworthy governing body members, simply because they work or study at the institution, are prepared to challenge the management view, or seek to provide alternative proposals. Staff and student representatives have a clear interest in ensuring the success of their institution and can provide essential additional local information.

Statement of Primary Responsibilities

While this section goes on at length about procurement issues, financial memorandum, KPIs and annual reports, it fails to state the primary responsibilities of a university are to deliver education and knowledge. Further, while these issues are important many of them are outdated and have been overtaken by the new funding system.

Buried in the list of Primary Responsibilities is a weak pretence to involve staff and student representatives in the appointment of the Principal.

Both the appointment and the monitoring of performance of the Principal shall include consultation with staff and student members of the governing body;

The governance review states on the appointment and appraisal of Principals:

Student and staff representatives, as well as external advisers, should be involved in the interview process.

We also recommend that the appraisal of Principals should involve external governing body members, staff and students.

The re-appointment of the present Glasgow Principal included staff and student representation and this could have been used as a starting point for developing good practice for both appointment and review of the Principal.

In line with the Governance report's recommendations, staff and students should be included in bodies that appoint the Principal, and their views should be included in the appraisal of the Principal.

Responsibility of Members

This principle seeks to curtail the ability of staff and students to speak for their constituency which is deeply problematic. There is real value to having representation of staff, trade unions and students on governing bodies, as was recommended by Von Prondzynski. Their voices add to the diversity and legitimacy of the court. UCU is concerned that, in our experience, all too many governors act as representatives of the Principal and management, and this is why university governance structures need modifying.

The governance review states:

The SFC should investigate how the principles of the Hutton Report are being or should be applied to universities in Scotland.

We believe that the SFC is independent and should be tasked with this review. The code is both incorrect and insulting in its assertion that it is only staff and students that have a vested interest.

Staff and student representatives can and will act as responsible governors and this offensive reference should be removed.

The Role of Chair

We agree with the definition of the role of the chair of Court and best practice exists in institutions where the Rector is elected. Lay members should be encouraged to meet more regularly with staff as part of regular business, possibly through committees of Senate or College/faculty/School meetings.

The Head of the Institution

The Principal has always been accountable to the governing body but there is a failure of the body which is not adequately scrutinising management decisions.

Members of governing body

We agree there should be a balance of skills of governing body members, and as we have shown⁶ that balance is presently towards management functions.

We believe that staff and student representatives are also acting independently of the institution and should be counted as such. We do not support the principle on the size of courts if it leads to a reduction in the number of staff and student representatives as has often been the case when the number of governors is reduced. This was recently proposed by UHI and has been the case when universities have changed their statutory instruments.

While we welcome this increased democracy in choosing chairs of governing bodies it is not the election that was proposed by the governance review report. As we have mentioned above, in five institutions the chair is an elected Rector and this is ignored in the code.

We agree with the governance review that chairs should be elected. Further, the present nomination committees for court membership tend to be dominated by both the senior management team and existing lay members from the business community which leads to similar people being appointed. UCU recommends that staff and student representatives should be included on appointment committees. This will increase transparency of the

appointments process and allow for a broader view to be taken in selecting and appointing candidates.

Induction

This role should be overseen by an independent secretary with involvement of the chair and should include meetings with staff and student representatives, including unions.

Conduct of Meetings

This does not meet the governance review recommendation that the meetings should be held in public. At the very least the unrestricted papers should be made available publicly and the minutes published directly after the meeting. Often minutes are not published at all or months after the meeting⁷.

Von Prondzynski is clear that key officers should only be present at meetings for the specific agenda items which relate to their function. It is important that the governing body is allowed the space to scrutinise, deliberate and to take decisions without undue influence of senior managers. The Court cannot perform as an independent body if officers of the institution are present in such numbers with unrestricted speaking rights⁸.

The Governance review states:

Senior managers other than the Principal should not be governing body members and should not be in attendance at governing body meetings, except for specific agenda items at which their individual participation is considered necessary, and for those agenda items only.

Those on the Von Prondzynski Review panel took this position because of the evidence they collected. We do not understand why the steering group had to re-collect evidence on this issue or why it contradicts the independent review. The fully evidenced governance review recommendation should be implemented by the code.

Proposed amendment

In final paragraph:

It is desirable for the effective conduct of meetings that key officers are able to offer guidance and advice as required. However, they should only not normally be in attendance except if giving advice and should only take part when called upon.

Remuneration

The code does not change present practice, which has led to the huge increases for senior staff⁹. The governance review recommended that staff and students representatives

should be included on the remuneration committee yet this draft code completely excludes them.

At least one university already publishes the salaries of senior officers which we consider good practice, which should be extended to all.

The governance review states:

The panel further recommends that remuneration committees should include staff and student members. The work of the committee should be transparent, and in particular, the basis upon which pay is calculated should be published.

This is a very important point, and an issue which is not lost on political decision makers and the wider public, and has become indicative of how the sector is viewed. We believe the remuneration process for senior positions will only be truly transparent when the recommendation to include staff and student representation on remuneration committees is implemented.

Effectiveness

The proposed annual review of effectiveness is already carried out and this is normally why institutions have annual reports. Further, with outcome agreements the governing body will be required not only to review KPIs but also agree them with the SFC. We believe the fixation with KPIs is outdated and the agreements should be about outcomes. As Professor Griggs stated in evidence on the draft code:

'My concern is about the amount of detail that the funding council still asking about in the middle around key performance indicators that are to do with the "how" rather than the "what".'

It is our belief that the draft code does not recognise the new reporting culture that we now have and which is developing rapidly. All this reporting should now be done via outcome agreements which are crucial to the future of universities yet they are completely absent from the draft code. It is very surprising that the code does not reflect the new outcome agreement regime.

Conclusion

University governing bodies must continue to be seen as purpose-designed, collegial institutions, not as clones from a business-corporation template. We believe there should be a significantly greater involvement of staff and trade union governors, and more contiguous input from student representatives. Staff and students are those with direct access to the university community. Such representatives should be encouraged to brief lay governors about campus views and concerns rather than be made to feel that the

proper business of a governing body is only what senior management wants to have discussed and endorsed.

UCU believes that the code should lead to improvements in the management and governance of universities in Scotland, restore the confidence of staff in the governance of universities, and strengthen the autonomy, democracy and collegiality of Scottish Universities. This in turn should mean that the university management undertakes proper and thorough consultation with staff and unions. It should also contribute to the reform of universities envisaged by the government.

This draft code fails to meet these objectives. It does not recognise new developments within university governance such as outcome agreements. We therefore question the ability of the draft code to increase democracy and to make any substantial and positive changes to present governance processes.

¹ M Russell, Scottish Parliament 28 June 2012

² <http://www.sfc.ac.uk/funding/OutcomeAgreements/OutcomeAgreementsOverview.aspx>

³ Universities (Scotland) Act 1889

⁴ UCU Response to Review of Higher Education Governance

<http://www.scotland.gov.uk/Publications/2011/10/25103503/39>

⁵ Pg 10 *ibid*

⁶ Table 1: Lay representation on governing bodies from a managerial background, *ibid*

⁷ Pg 9 *ibid*

⁸ Recommendation 4.2, Report of the Review of Higher Education Governance in Scotland

⁹ Table 2, UCU Response to Review of Higher Education Governance and Sunday Herald 21 April.