



UCU Response to Proposed Changes to the FE College Instruments and Articles of Governance

UCU, the University and College Union represents academic staff in FE colleges. UCU does welcome this opportunity to submit its views on the proposed changes. We are pleased that the Department does keep the Instrument and Articles of Governance under review and for the most part we find the changes that are proposed helpful. As ever our main concerns are around ensuring that the Instruments and Articles facilitate good, open and transparent governance and management of FE colleges, and that the voices and views of all stakeholders in colleges are represented and heard in the governance of colleges.

The recent White Paper made a number of important recommendations about the future of colleges, especially in relation to the mission and role of colleges, as well as around strategies and policies to improve and maintain quality. College corporations are being given a substantial role in the implementation of these changes, especially around establishing the purpose and mission of the college. We understand that many of the changes proposed are designed to implement the White Paper's recommendations.

Instrument

The Composition of the Corporation

Clause 2 (1) (a) – A relaxation of the external stakeholder governor categories, to provide colleges with greater flexibility to recruit governors with the required skills and knowledge and support initiative and responsiveness to local needs

Over the years UCU's predecessor organisation NATFHE, has had serious concerns about the use of categories of governors. In the first years of incorporation we had major concerns and indeed objections to the numbers of reserved places on governing bodies given over to business, and to the disproportionate amount of decision making that was given to this group of governors. However in successive reviews and reformulations of the Instrument and Articles of Governance, this was amended and the categories of governor were opened up. On the whole UCU believes that these changes were beneficial. We consider that the result of the way that governing bodies are made up does mean that the principal stakeholders are represented on all governing bodies. We therefore would not support the kind of relaxation that is proposed which would remove all categories except for staff and student governors. UCU believes that for example, the reference in the current Instrument to have a representative of local government is positive, as are the requirements to have governors representing community as well as the business communities. It is especially important in the light of the closer co-operation between local authorities and colleges on 14-19 policies that the strong links between the college and the local authority are maintained. Similarly the "community" governors are often a way that equality issues, policies and practices are kept under review and linked to the local communities that the colleges should be and are serving. Of course it will be argued that a "good" college and its corporation would want to

maintain these links through the composition of the governing body. However in as much as the Instrument of Governance represents the base line and is the guardian of good practice, UCU would want to maintain the current specified categories of governor.

Clause 2 (1) (e) – An increase in the minimum number of student governors from one to two, providing an increased learner voice on college corporations.

UCU would support this but urge that the increase in the numbers of student governors is not at the expense of the numbers of staff governors. We would also wish to see guidance drawn up, with the full co-operation and involvement of the National Union of Students, as to how potential student governors are identified and supported. It will be important that there are imaginative and innovative ways sought to ensure that both mature and part time students are fully involved in the representation of students on college corporations.

How membership numbers are determined

Clause 3 (2) (a) – The minimum size of the governing body has been reduced from 12 to 10 to provide more flexibility and to reflect the wishes of some governing bodies to be able to form a smaller corporation.

UCU would not support any proposal that seeks to reduce the minimum size of the governing body. We feel that the current minimum size of 12 is too small a number to adequately represent a proper range of stakeholders and interests in a college.

Appointment of the members of the Corporation

Clause 5 (3) – An amendment to reflect the proposed changes to the composition of the corporation.

UCU does not oppose these proposed changes.

Appointment of the Clerk to the Corporation

Clause 7 – A discussion point as to whether the clerk should only serve in a single capacity and, therefore, be prevented from also serving as a member of staff - or is the matter of potential conflict of interest a matter for guidance. Note that a transitional arrangement would be introduced to protect the positions of those currently serving in a dual capacity should any change be introduced in this regard.

The discussion as to whether the Clerk to the Corporation can be a member of staff or not is an on-going one. Over the years we have heard cogent arguments both for and against. Clearly if the Clerk is a member of staff then there can be tensions and pressures around the Clerk maintaining the necessary independence. We note that there have over the years been a number of changes aimed at ensuring the independence of the Clerk, and that in higher education; the Clerk to the Governors is often the Secretary of the University and a senior post holder, and that in private companies, Company Secretaries have often had these two roles. Thus it would seem unfair and restrictive to limit colleges in this respect.

An alternative to changing the Instrument on this issue might be to further clarify and strengthen the definition of independence in relation to the Clerk; to broaden it to include

within the definition concepts of neutrality and objectivity and to issue guidance on this. Colleges could then decide how to best such standards and any failure could be identified through audit of the Governing Body.

Publication of minutes and papers

Clause 17 (3) – The introduction of a requirement for colleges to place copies of corporation meetings on their websites, in order to improve openness and accountability to stakeholders. Note that the existing power to request copies for inspection would be retained for those without Internet access.

Confidentiality and the publication and access to Corporation minutes and papers has long been an issue for UCU. In the past there have been occasions when confidentiality has been used to suppress debate, discussion and dissent in governing bodies. It is imperative that college governance is open and transparent. UCU supports the proposal to make a requirement for colleges to place copies of the corporation meetings on their web site. Guidance however should be issued to colleges in relation to between the requirements in the Instrument and those under the Freedom of Information Act so that it is clear to all what the requirements are on corporations in relation to publication of minutes and papers.

Payment of allowances to members

Clause 18 – A discussion point asking whether this clause should be amended to permit corporations to remunerate chairs of corporations for their services as chairs.

Again the payment and remuneration of corporation members is a long standing issue. UCU's position is that where as we are opposed to payment of governors, we would wish to see membership of a governing body being seen as a "public duty" such as membership of a council, and that payment for loss of earnings becomes possible at rates similar to those given to councillors. In as much as the role of the Chair of a corporation can be a time consuming and potentially onerous duty, we can understand why there is this proposal to remunerate corporation chairs for their services. We would prefer to see this for all governors. We would reiterate a point we make at every consultation on the Instrument and Articles, that staff governors should be able to count their activities as governors as part of their staff duties including counted against teaching contact.

Articles

Responsibilities of the Corporation and the Principal

Article 3 (1) (a) – To introduce a responsibility for the corporation to periodically review the educational character and mission of the institution, to emphasise the importance of the college regularly reviewing how it contributes to meeting the education and training needs of its local area.

UCU would support this proposal which clearly follows the recommendation of the recent FE White Paper that colleges should focus their role and mission more clearly and keep it under periodic review. Bearing in mind the changes in the Instrument and Articles of Governance last year which allowed colleges to abolish Academic Boards, we would like to see either written in to Articles or in strong Guidance, some reference to the Principal and Corporation

consulting and making the staff and students of the college, active participants in such reviews of the educational character and mission. UCU would also wish to see the Corporation publishing action plans that demonstrate how the college will review if and how it is meeting the education and training needs of its local area.

Article 3 (1) (b) – To introduce a responsibility to approve the institution’s quality strategy, so that corporations actively review the college’s approach to quality and performance improvement.

Again we can see how this proposal flows from the increasing focus on quality in colleges, the recommendations of the White Paper and the creation of the new Quality Improvement Agency. We do support this proposal but as with the proposal above on the review of the educational character of the college, we would like to see Guidance on how the colleges should publish action plans on how they will consult with all the college’s stakeholders including staff and their representative organisations on the institution’s quality improvement strategy and the overall approach to quality and performance improvement.

Article 3 (1) (g) – The introduction of a responsibility for the corporation to ensure the proper operation of a students union at the college, to raise the profile of student engagement. This reflects the corporations’ duty under primary legislation.

UCU supports this proposal which we consider to be in line with the recommendations in the FE White Paper to raise the profile of student involvement in colleges. We would recommend that Guidance is created with the NUS as what constitutes proper operation. We want to see clear and achievable plans on how both part time and mature students will be able to participate in the student union.

Article 3 (1) - A discussion point seeking views on whether it should be a function of the corporation to keep options for collaboration, federation and merger under review, or whether this should be included in guidance.

Given the colleges have always been able to collaborate and merger with others, the recommendations in the White Paper around these issues seems to UCU to be somewhat otiose and redundant as indeed this proposal to make it a function to keep the option open. Surely options are always open unless they are specifically prohibited by either legislation, the Instrument and Articles of Governance or that such action would be ultra vires. If it was felt necessary to make the point on keeping this particular option open, then it would preferable to include it guidance rather than on the face of the Articles.

Article 3 (2) (b) – To provide the principal with a responsibility to make proposals to the corporation about policies for the engagement of learners and employers, to highlight the importance of effective engagement with these stakeholders. This supports the proposed amendment at Article 3 (1) (g) described above.

UU would support this proposal

Article 3 (3) – The introduction of an Article setting out the principle functions of the clerk.

UCU would support this proposal. As we have said in our response to the proposed changes to Clause 7 of the Instrument above, we consider that the more guidance there is as to the functions and independence of the Clerk the better.

The establishment of committees and delegation of functions generally

Article 4 (2) – To reflect the powers proposed in the new Education and Inspections Bill for colleges to form committees for the purpose of collaboration with other FE institutions and/or maintained schools.

In similar manner as with the response we have given the proposal to keep the option of the corporation discussing collaboration, federations and mergers open, we consider that this proposal is redundant. Corporations and college management are free to form committees on any purpose that is not ultra vires.

The Search Committee

Articles 5 (1) & (2) – Amendments to reflect the relaxation of the external stakeholder governor categories.

As UCU is opposed to the relaxation of the external stakeholders governor categories, we are opposed this consequential change to the Articles.

Article 5 (3) – To introduce a requirement to publish the Search Committee’s rules, terms of reference and advice to the corporation on the college website in order to improve openness and accountability to stakeholders.

UCU would support this as it is line with making the corporation and its proceedings as open and as transparent as possible.

Access to committees by non-members and publication of minutes

Article 8 - To introduce a requirement to publish the corporation’s policy regarding attendance at committee meetings by non-members and the publication of the minutes of committee meetings on the college website in order to improve openness and accountability to stakeholders.

UCU would support this.

Delegable and non-delegable functions

Article 9 – Adds the responsibility for ensuring that the students’ union operates in a fair and democratic manner and is accountable for its finances to the list of functions that cannot be delegated by the corporation.

UCU would support this.

Dismissal of staff

Articles 17 and 18 – A discussion point seeking views on whether the detail of these articles should be replaced by a general requirement for corporations to establish procedures which are compliant with employment legislation and follow best practice.

UCU would oppose the replacement of Articles 17 and 18 which deal with the dismissal of staff with a general requirement for corporations to establish procedures which are compliant with employment legislation and follow best practice. We would of course expect that colleges do establish procedures that are compliant with legislation and follow best practice. Indeed we would insist that such procedures are the subject of negotiation and consultation between the college and the organisations representing staff. UCU considers that various changes to these particular Articles have on the whole been helpful and we would not wish to see them changed. We are also mindful that the Government through the Department for Trade and Industry is currently reviewing the regulations on employers in these areas, with a view to reducing the amount of regulation. UCU is fearful that in adopting the kind of general requirement as proposed in the discussion point, colleges would move away from a set of procedures that are tailored to this sector to something which by its very nature is general and designed to meet the needs of small and even micro employers to very large ones.