

Response to Review of Higher Education Governance

Preamble

UCU Scotland represents 7,000 academic and academic-related members in Scottish higher education institutions (HEIs). We welcome the opportunity to respond to the call for evidence from the Review of Higher Education Governance.

UCU has involvement in the review through the STUC representative but would also wish to present evidence in our own right through this paper and in oral evidence to the panel.

In submitting this response we reserve the right to supplement it at a later stage as the timing of the review has not allowed for the full democratic consideration for this paper as it could not be approved by a meeting of our Executive.

Introduction

UCU believes that this independent inquiry 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.

In practice this should mean that:

- university management undertakes proper and thorough consultation with staff and unions
- the process of appointment to governing bodies is transparent and accountable, with key representative members being elected
- governing bodies reflect the concerns of the wider university community, especially staff and students
- governing bodies properly scrutinise executive proposals and give due consideration to alternatives

UCU has a fundamental commitment to scholarship in universities based on academic freedom as enshrined in the UNESCO recommendation¹ and our statement on academic freedom². This additionally extends to institutional autonomy and we believe both these principles should protect scholarship and research from external influences, be they political or profit motivated.

The consultation questions in this review cover a narrow remit over a very tight timescale. The questions are technical and deal with the details of governance arrangements rather than the whole change in culture of university management that has occurred in the last decade. Universities are not businesses, or indeed organisations in the conventional sense, they are a collegiate body whose aim is to create knowledge and wisdom and pass that on to future generations, a vocation that cannot be measured by accountants or time and space management. University Governance needs to recognise the collegiate nature of universities and the involvement of staff and students in all levels of the decision making process. However, we believe that tinkering with governance structures is not the answer and a fundamental review of universities is required.

In 2008 UCU Scotland organised a conference on 'Intellect and Democracy' intended to begin a process that, since 2007, we had proposed the Government should undertake. In recognition – even before the global financial crisis of 2008 – that higher education in Scotland faced a serious crisis, the proposal was for a genuinely independent review, with evidence from experts, including historians, educationalists and other social scientists, international commentators, campus trade unionists, students and concerned citizens, and a report to inform public policy discourse into the foreseeable future.

The Scottish Government was receptive to such a review but chose instead to carry out a wide ranging consultation with the sector which included governance issues. The notions underlying that consultation encouraged a 'restructuring' approach which threatens the principle that 'institutional autonomy' should protect academic freedom, rather than providing management with prerogatives that can make it, in practice, a meaningless concept for many creative and socially responsible university teachers and researchers. Universities – if they are to play their most basic critical function in society – cannot be run as though they were themselves businesses with their wider social function defined predominantly in terms of their role in servicing an economic business agenda.

During the consultation process UCU held a further conference, *The Future of Higher Education*, in February this year, which dealt with the wider issues of Scottish Universities and also addressed the operation of the collegiate body that makes up a university. UCU recommends that the review panel members, who were not present at the conference, view the content which is available in video format.³ The conference addressed governance issues in the wider context of the role of higher education in society.

Higher education is a good in itself – for society at large and for all those qualified to benefit from it including health and culture – and to the economy. Scottish higher education sustains the professional workforce, the fundamental research, and the intellectual engagement essential to public and private enterprise within a thriving democracy. It makes a crucial contribution to cultural development. It enriches the lives of those who engage with it – to the benefit of society as a whole. In the UK, maximising access to it for those so qualified has been accepted, at least since Robbins, as a key measure of the advance of civilised modernity. In Scotland, it has even been argued that

respect for 'the democratic intellect' is what gives the modern nation its distinctive ideological identity, and this idea, as a point of departure at least, gives added relevance to a more universal discussion about the nature of a university called for by several late-20th-century UNESCO statements on university autonomy and academic freedom.

While the main cause of the crisis facing Scotland's universities is underfunding, it is also necessary to highlight internal problems which centre on the encroachment since the 1980s of the now dominant managerialist priorities. Scottish principals act in denial of the existence of a Scottish university system and promote the idea of universities as simply competing corporations with themselves as CEOs. At the very least this trend, which has changed the values informing university governance from collegiality towards commercialism, needs to be brought to light and publicly discussed as a basis for democratic decision-making. Central to this change is the diminishing role for the academic body or Senate which represents the academic staff of the university. This body is responsible for all academic decisions and the most formal representation of the collegiate nature of university decision making. It is strange this review does not mention the relationship between governing bodies and Senate.

The need for this more wide-ranging discussion has again been sidestepped in this review which only addresses the internal governance and management of universities and does not set them in the context of the wider benefit for Scottish society of our world class universities.

We believe that our call for an independent review, whether or not it is sponsored directly by government, remains relevant to provide long-term and informed answers to the questions to which the Government now finds itself forced to seek pragmatic answers. Its remit and personnel should be agreed with the relevant trade unions. It should look at the changes in society and in the universities themselves since the 1960s, seeking a new consensus on the purposes of higher education over the next half-century and examining university governance, as well as developing proposals for institutional and student funding.

However, in the continued absence of that review and in the context set by this introduction we will endeavour to fully partake in this review. The following section provides responses to the individual questions.

Questions for the submission of evidence

1. *How do institutions currently engage with their communities and stakeholders? Do you think there is a case for a supervisory council or advisory forum representing these interests? If so, how should it be made up, what remit should it have and what role might it perform in improving institutional governance?*

We do not believe that the proposed advisory council will fulfil this role. It would simply add another layer of bureaucracy but would have limited power to influence the decisions of governing bodies.

Instead we suggest the present governing bodies should seek to have increased representation from the diverse communities and stakeholders which universities serve as all too often the makeup of these bodies is slanted towards business interests. Table 1 shows that lay members are predominately from either a business background or managers and directors in the public sector. Very few of the appointees to Court are from local communities or represent civic Scotland.

Table 1: Lay representation on governing bodies from a managerial background

Institution	Court size	Lay members		Managerial	
Aberdeen, University of	28	5	18%	5	100%
Abertay Dundee, University of	25	13	52%	11	85%
Dundee, University of	23	7	30%	7	100%
Edinburgh Napier University	24	12	50%	10	83%
Edinburgh, University of	20	8	40%	8	100%
Glasgow Caledonian University	19	14	74%	13	93%
Glasgow School of Art	-	-		-	
Glasgow, University of	23	5	22%	5	100%
Heriot-Watt University	24	7	29%	6	86%
Highlands and Islands, University of the	27			-	
Queen Margaret University, Edinburgh	23	16	70%	14	88%
Robert Gordon University	18	12	67%	11	92%
St Andrews, University of	22	6	27%	3	50%
Stirling, University of	21	8	38%	-	
Strathclyde, University of	28	8	29%	-	
West of Scotland, University of the	22	13	59%	12	92%
Average Total	23	9	39%	9	98%

Data obtained from published Court information. Numbers are based on actual membership.

We believe the appointments process has to become more transparent and inclusive so that representatives come from a broader mix of users of the university and reflect diversity in terms of gender, age, ethnicity and disability. For example many adults undertake courses which are not part of the mainstream but these courses are threatened

due to the business model imposed on education. The lack of representation from such users leads to the governing body only taking into account financial considerations.

2. What works and what could be improved with governing bodies as they are currently constituted? Specifically, what changes could be made to enable them to better fulfil their role? Is there an ideal size and composition of a governing body?

UCU recognises that the governance of HEIs presents unique, complex challenges for all involved. While all decision making processes should be subject to review and improvement, UCU believes the governance structures that currently operate in HE are capable of delivering good governance. However over recent years as pressure for change has intensified, the power of the university executive has grown unchecked, as private sector governance approaches are promoted, parallel to the decline in participatory and collegiate models of governance.

In recent times SFC has put a greater emphasis on the role of governing bodies to ensure that universities meet their conditions of grant. Though we have welcomed this greater involvement we have been concerned that university governing bodies often rubber stamp decisions taken by the principals and senior management team or executive.

Governing bodies are only concerned with their own institution, which they are increasingly encouraged to see as in competition with others rather than as part of the social and intellectual goals of society as a whole. Lay governing body members are volunteers with a limited time commitment and experience suggests that they rarely take senior management to task over their decisions. Some governors tell us that they feel uninvolved and not fully informed and, that, in practice, they lack the power to hold management to account. In some cases there is a feeling that lay members of governing bodies have unequal influence, depending on which sector of the broader community they come from or whether or not they support a particular management agenda. Non-executive directors in all sectors face a real challenge in balancing their role of supporting but also challenging executive management. In universities we believe that in most cases they are not able to carry out this role effectively.

University governing bodies must continue to be seen as purpose-designed for collegial institutions, not as clones from a business-corporation template. We believe there should be a much enhanced involvement of staff governors, and more stable input from student representatives – those, in other words, 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.

Universities are all registered charities and the governing body should consider the broader educational aims as expressed in their charitable status and not just concentrate on

financial concerns. This status also precludes direct government intervention into university governance.

Governing bodies are responsible for the financial management of universities but they should not have responsibility for academic matters which is properly the role of Senate or equivalent body. This ensures academic decisions are taken without financial or political considerations. However, there are concerns that Senate is being undermined by management. In Glasgow Senate decisions on academic matters, including course provision and the revision of the number of Senate Assessors on Court have been overturned by Court and in other institutions Senates can be dominated by senior management. However, the worst case scenario is at St Andrews University where the Senate powers have been delegated to an academic council.

When the size of governing bodies is decreased it is often at the expense of staff representatives reducing the influence of the academic community. Furthermore, many governing bodies do not have a specific representative for academic staff, instead assuming that those elected from Senate will undertake this role.

UCU is proposing that this is formalised and that an academic staff representative responsible for staffing issues is included in all governing bodies in a similar manner to that for non-academic staff to be elected separately from Senate Representatives. To ensure staff representation at all decision making levels, similar representatives should be included at appropriate faculty, college and school bodies. Such staff should receive facility time to undertake this valuable role.

3. How could we improve the arrangements for the appointment of Principals and governing body members? If you think there is a case for establishing a supervisory council or forum, is there a role for it in this process?

Our belief is that present nomination committees 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 the appointments committee. This will increase transparency of the appointments process and allow for a broader view to be taken in selecting and appointing candidates.

UCU is concerned that in some universities governing bodies approve management decisions without adequate scrutiny. UCU Scotland has been campaigning on this failure of governance with the result that such issues were included in the recent higher education consultation and could be included in resulting legislation depending on the outcome of this review.

4. *Do you think all institutions should have a rector? Do you have any comments to offer on the role or remit?*

The idea of electing the chair of the governing body is a positive proposal. However the elected person does not necessarily have to be a rector which has particular connotations with the ancient universities.

In some cases the elected rector has not taken their role seriously and in the worst case scenario they have been joke candidates. The other scenario is that of a rector elected for demonstrative reasons who is not able to fulfil the duties of the role. If this role is to be given greater prominence then some safe guards may be required to ensure that candidates are actively able to take up this role. Furthermore, rectors are presently elected by the student body in most cases but we believe that the role could also represent the university as a whole including staff, as presently occurs at Edinburgh University.

UCU recommends that chairs of the governing body should all be elected by staff and students to represent the broad academic community.

5. *What do you think about the existing arrangements surrounding governing body effectiveness reviews? Are they suitably transparent and achieving what is required? If not, what changes might be made?*

There is a worrying lack of formal guidance to help HEI carry out a smooth process of governance renewal. Whilst governing bodies are advised to review and reflect on their performance, the development of a process for removing governors in the event of failures in HEI decision making to protect the public interest and uphold the principles of good governance, has been neglected.

6. *What do you think about the relationship between the executive and the governing body? Does this help deliver accountable governance? Is the relationship suitably transparent?*

We are concerned about the blurring of the interface of the governing body and the executive whereby the governing body is simply accepting executive decisions without debate or adequate scrutiny. Further as the executive attends the governing bodies it makes it more difficult to be critical of the running of an institution.

- It has become increasingly difficult, across many HEIs, to differentiate between the management function and the processes and mechanisms of governance.
- The governing bodies are failing to set the agenda for the running of the institution and far too often allow the executive to plan decisions which are simply passed by the governing body without full consideration of alternative options.

There are issues of timing of governing body meetings and decisions to be taken, which often leads to governing bodies simply rubber stamping decisions where there is no time to

pursue an alternative route. UCU has concerns with governing bodies being presented with limited or incomplete information on which to make significant decisions which will have a substantial impact upon educational provision. Governing bodies are all too often not presented with any alternative solutions or proposals, even when the campus unions or students' association have made valid proposals.

While the day to day running of institutions should be undertaken by the executive and is rightly given that role by the governing body, it has now reached the stage whereby the executive body is making strategic decisions, future plans and setting the vision for the institution without adequate input from the governing body. Hence the executive drafts a plan and presents it as the only option if the institution is to be financially viable rather than setting out various options.

Table 2: Senior management team size and combined salary bill

Institution	1990		2000		2005		2010	
	staff	salary	staff	salary	staff	salary	staff	salary
Aberdeen, University of								
Abertay Dundee University					10	£939,000	10	£1,376,000
Dundee, University of			8	£532,698	8	£719,766	8	£1,011,885
Edinburgh Napier University								
Edinburgh, University of			7	£673,329	7	£894,400	7	£1,048,819
Edinburgh College of Art			3	£156,560	3	£215,398	3	£283,580
Glasgow Caledonian University								
Glasgow School of Art			3	£183,112	9	£543,914	11	£838,031
Glasgow, University of	7	-	12	-	17	£1,525,504	14	£1,668,420
Heriot-Watt University	6	£271,783	9	£533,747	16	£1,361,929	16	£1,700,522
UHI								
Queen Margaret University	4	-	10	-	11	£748,114	10	£836,763
Robert Gordon University			35	£1,440,368	46	£2,601,854	49	£3,556,320
RSAMD					4	£268,468	8	£535,702
St Andrews, University of			6	£294,707	8	£711,018	8	£873,123
Stirling, University of			6	£382,969	7	£489,672	7	£692,253
Strathclyde, University of	8	£452,997	6	£503,076	8	£713,820	8	£955,877
West of Scotland University			3		9	£730,978	9	£921,574
SFC			3	£256,000	5	£497,000	5	£510,000
Average Total	6	£362,390.00	10	£619,570.75	13	£996,987.28	13	£1,292,989.91

Data obtained from institutions.

As the executive has taken over the running of institutions, management teams have grown in size and pay as the attached table 2 illustrates. This table shows the number of staff in the senior management team from those institutions that provided data to a freedom of information request. It shows a slight increase in the size of the management teams from that in 2000 but more startling is the increase in the combined salaries. Many institutions refused to provide data prior to 2000 and UCU believes it is in this period when the greatest growth in numbers occurred. While academic pursuit is seen as a vocation, management have seen salaries increase as they take over responsibility for running the institution from the academic body.

We fundamentally believe that this relationship has to be rebalanced. The properly constituted governing body should set the overall vision and the executive role is to put that into action. The strategy should be set by the governing body and carried out by the executive who should propose the range of options to the governing body rather than a single formulated plan.

One of our members at a new university made this statement about the governance at their institution.

"Governance in a University is tripartite ie by a cooperative triangle of Court, Executive and Senate. We should therefore be looking at the relationship between Senate and Court (here almost non-existent) and the relationship between Executive and Senate. Here the Executive have gradually taken over everything including academic decisions and Senate (who are after all the Academic communities representatives) have been emasculated. A look at Senate agendas over the last few years will confirm these observations. One problem in the new Universities particularly is that Senate is dominated by management who do not question any decisions and those who do often get humiliated at Senate or dressed down afterwards. Senate's lack of influence here and inability to do its job because of the composition lie near the heart of this university's problems."

7. *How does communication within institutions between staff, students, the executive and the governing body work? What examples are there of good practice and what could be done better?*

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 year. 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 involved. 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. At the moment, this contact varies across HEIs but in some cases, the only contact available is through the Court administration office. Lay members should be encouraged to meet more regularly with staff as part of regular business, possibly through Committee of Senate or College/faculty/School meetings.

We believe there should be a much enhanced involvement of staff governors, and more stable input from student representatives – those, in other words, with direct access to the university community. Lay governors should be encouraged to seek the views of staff and student representatives about campus views and concerns rather than rely solely on senior management opinion.

The role of staff and students as governing body representatives has become increasingly constrained and powerless, in contrast to the expanding proportion of lay members in many HEIs. Staff and student governors are now routinely excluded from key decision making committees.

There are numerous examples where Universities have failed to adequately consult staff and unions and where governing bodies have simply taken the management position without proper consideration of the issues:

For instance at the University of Stirling, the 'Court' approved the dismissal of staff in the Institute of Aquaculture without management adequately addressing staff proposals. Subsequent developments including successful grant applications have confirmed that the staff proposals were sound. The Court was not given independent advice on the feasibility of these and other alternatives offered by the staff unions. The unions requested a meeting with the Chair of Court well in advance of the meeting to outline the failure of management to consult in a constructive manner. The Chair of Court did not receive advice of the request in a timely manner from the University and eventually met briefly with staff representatives immediately prior to the Court meeting, when there was no time to receive documents or seek independent advice, even had the Chair of Court been minded so to do. Indeed he had been thoroughly briefed by management and reiterated errors made by management which had not been corrected and which were at the heart of the dispute. Subsequently in two of the five substantive academic redundancies the University has now conceded it breached contract conditions and has moved to settle, while in the other three cases the matter is proceeding to appeal. As the Court is the employer of staff the Court has, on the advice of management, again unlawfully dismissed staff. In the previous instance the University was found to have breached employment law and is now pursuing an expensive series of appeals, instead of following the example of other Universities including Edinburgh and Aberdeen to resolve this dispute. When the Chair of Court spoke to staff representatives about the previous case he was unaware that other Universities had reached a satisfactory resolution in that matter.

At Abertay Dundee University, the Court did not act until there was an impasse which plunged the University into crisis.

Whilst there have latterly been moves to resolve the de-recognition of UCU at Robert Gordon University, UCU was initially alarmed at how this decision was taken and by whom.

At Glasgow University UCU was forced to ballot members for industrial action following a particular interpretation of management accounts used by the executive to persuade Court to issue threats of compulsory redundancies in several areas including archaeology, biomedical and life sciences and teacher education. Subsequently the court has referred decisions on academic matters such as course closures to Senate following interventions by staff representatives on Court. However Court has recently overturned Senate's academic decision for "strategic reasons".

Strathclyde University lost approximately 350 staff via a voluntary scheme which closed in September 2010. However in early 2011 the University opened formal redundancy consultations aimed at further reducing staff numbers. The proposed Voluntary Early Release Scheme (VERS) offered inferior terms and did not look attractive enough to secure voluntary job loss. Consequently the threat of compulsory redundancies is much higher and the value of good communication as a tangible expression of good Governance and management is therefore at a premium. Within a short period of time four subject areas in Humanities, Arts and Social Sciences were proposed for closure and a number of posts in Professional Services were threatened. These proposals resulted in significant public protest and staff/student opposition. At present Court has agreed the proposals thereby creating the basis for a serious trade dispute in addition to the public outrage over the credibility of the academic decisions. Throughout this period the University has continued to appoint new staff on grounds of 'strategic reshaping' in pursuit of a vision of the university as a leading international technological university. Clearly this must undermine the efficacy of any strategy to reduce staff and contain expenditure. All efforts by local UCU to engage in meaningful consultation and discussion have been met by bland assurances that our detailed critiques of the proposals have been 'considered'. However we have no evidence of any serious changes being made as a consequence of staff and union representations. Clearly this is not a good example of meaningful communication on the university's part and requires a change of disposition and process to replace the current top down approach.

Glasgow Caledonian announced 95 job losses stating compulsory redundancies could not be ruled out despite previously working with the unions to shed about 200 jobs on a voluntary basis in previous years. The University has also taken decisions on academic matters without consultation including the teaching of international students by INTO and the setting up of a campus in London. Both ventures have not led to the promised gains and could instead result in financial losses.

Heriot-Watt University introduced a performance development review scheme which was universally disliked by staff and viewed by UCU as inappropriate for an academic institution. The scheme was introduced without consultation with staff unions and resulted in a dispute and industrial action with UCU. Further, Heriot-Watt managers failed to consult staff in its review of Charter and Statutes, attempting to instruct the Ordinance and Regulations Committee (of Court) to do no more than pass the drafts and remove typos.

UCU has had further concerns at the development of overseas campuses, at Heriot-Watt University. The union is unclear as to the purpose and contribution of the campus in Dubai, and the proposed Malaysian campus, and is alarmed at two tier employment terms and conditions which are developing as a result of the university operating in countries with inferior employment rights legislation, and where there are very different cultures and attitudes to trade unions and workers' rights, and, indeed, human rights.

However, there are also examples where the unions, management and governing bodies have worked together to resolve issues:

A dispute between UCU and the University of Dundee over job cuts was able to be resolved satisfactorily by the union working together with management and agreeing how to deal with future redundancy situations and the large number of fixed term contracts at the institution. This experience has highlighted the benefits of the executive working closely with campus unions.

Aberdeen University negotiated the revision of its Ordinance with the local UCU branch. Whilst the agreed version of the new Ordinance is still awaiting approval by the Privy Council, all parties are comfortable with the new text which deals with key employment conditions for staff. The revised Ordinance has important safeguards for academic freedom, and how this will be enshrined in practice at the institution. The University of Dundee also engaged in constructive consultations with UCU on its Statute revisions, which have also delivered important guarantees for staff on how academic freedom matters will be dealt with at the institution. This contrasts with the manner in which Stirling and Strathclyde Universities dealt with the same issues, with very little reference to UCU, and reduced protection for academic staff.

UCU believes that this independent inquiry should lead to recommendations to improve 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.

8. How are students currently represented on governing body committees? What examples are there of this working well and what could be improved?

Students are usually represented by the President of the students association who is the elected representative of students. In most cases this can work well and allows for direct representation of students. However, students, like staff representatives, are in a minority in governing bodies and their views may not always be fully considered. In particular it is usually the student president who is the representative who only serves in this role for a maximum of two years. This often results in a lack of experience when they first become members of the governing body and a lack of consistency depending on the knowledge of the President. Support should be given to allow student representatives to understand the role and newly elected representatives should be allowed to shadow those in position.

9. What are the current arrangements for the induction, training and ongoing support of lay governing body members? Where could these be improved?

A fresh look at the composition of university governing bodies and support for and training of university governing body members should be improved and one issue is the independence of the training provided.

For example, in our work to promote good governance in the sector UCU has taken steps to ensure the training needs of elected staff on HEI governing bodies are addressed. UCU worked in partnership with the Leadership Foundation for Higher Education (LFHE), to organise a successful training event specifically for staff representatives serving on HEI governing bodies, such as University Councils and the Board of Governors. The seminar, held on 14 April 2011, was designed to help staff governors gain a greater understanding of the key aspects of their role in the governance of institutions and to more effectively balance their responsibilities towards the staff body with those relating to the corporate governance of the institution.

The seminar was well received by participants, several of whom expressed appreciation to UCU for helping to bring it about as it was felt to have filled a major gap in the governor training offered. The group discussions highlighted several common concerns held by serving staff representatives /governors, including:

- The unwritten expectation they will act as a 'rubber stamp' of executive decisions
- Exclusion from key decision making forums
- Isolation as a result of being the sole staff representative on a reduced sized governing board
- The value of their role being questioned by other governors

A frequent comment made by participants during the day was that the staff representatives/governors arguably undertook the most challenging and difficult role on governing bodies.

We recommend that similar training for governing body members should be provided in Scotland.

10. Should the governance and management of all universities be regulated by a single statute?

No.

While we recognise that changing statutes and other regulations through Privy Council is costly and time consuming, this process also gives some protection to these regulations. What the government terms minor amendments have included the make-up of governing bodies including staff representation. We have no faith that the Privy Council offers any protection over these matters but the process itself does. Where statutes have been changed this has occurred to the detriment of staff and without adequate consultation.

For the post-1992 universities these regulations exist in statutory instruments which have been changed without consultation. Hence we would be concerned if this process was extended to all universities.

11. Finally, are there any other issues relating to HE Governance that you would like to raise?

We are surprised that the role of SFC in governance is not mentioned in this review. The SFC has a statutory role over universities and their governance, particularly in regard to the spending of public finances.

The Tripartite Relationship

We support the role of the SFC as a buffer body between government and the universities in that learning and research cannot be directly influenced by government.

There should be greater clarity of the national governance arrangements, including the framework for intervention in the sector, through funding levers and regulation. We have a democratic mechanism whereby universities are accountable, through the SFC, to a Scottish Parliament with significant and distinctive roles for the Cabinet Secretary and the Education Committee. An appropriate method to address the balance between autonomy and accountability is by introducing a more rigorous condition of grant as recently developed by the SFC. Higher education institutions, as recipients of substantial public funding from the Scottish Parliament's budget, should be broadly accountable for the use of these funds in accordance with Scotland's needs for higher education and research. We believe that institutions should be required to show how they will respond to government policies in their strategic plans whilst maintaining their distinctive institutional mission and fully involving internal stakeholders – notably staff and students.

We recommend that the SFC further develops capacity and methodology for monitoring the implementation (as well as the adequacy) of institutions' strategic plans.

Corporate responsibility

We would urge the Review Panel to examine governance models and corresponding debates with respect to the private sector. We have observed an increasing propensity for university executives to adopt or mimic 'business' models of management. This can be seen not only in the language used by university management but also in the treatment of staff by management. Management are increasingly insisting on a 'business case' to be made for academic initiatives and are using terminology such as 'customers', 'consumers' and 'clients' rather than 'students' etc.

If governing bodies and management are to continue to operate as a private business then they should be governed by the principles that apply in the private sector. These principles

are examined below and we ask that the panel note this enhanced corporate responsibility required in the private sector though we do not endorse a private model being extended to universities which are public bodies and registered charities.

There are various models of 'corporate governance' used in the private sector. The main debate over the past twenty years has been with regard to corporate governance in public limited companies whose shares are listed on the Stock exchange or the Alternative Investment Market. This is because, among other reasons, these are the companies whose individual performance has the most significant impact on the UK economy and these are also the companies with the most diverse range of 'stakeholders'. If comparison is to be made between Higher Education Institutions and business organisations, for these reasons the most appropriate comparison is with the listed plc.

The Financial Reporting Council (FRC) is the UK's independent regulator responsible for promoting high quality corporate governance and reporting to foster investment⁴. In its publication The UK Approach to Corporate Governance published in November 2006⁵ it states:

The key aspects of corporate governance in the UK are:

- A single board collectively responsible for the success of the company.
- Checks and balances:
 - Separate Chief Executive and Chairman.
 - A balance of executive and independent non-executive directors.
 - Strong, independent audit and remuneration committees.
 - Annual evaluation by the board of its performance.
 - Emphasis on objectivity of directors in the interests of the company.
 - Transparency on appointments and remuneration.
 - Effective rights for shareholders.
- A Code of good practice based on extensive consultation with practitioners and operating on the basis of the 'comply or explain' principle.

While we would not agree that a single tier board structure is appropriate for HEIs, we would observe that a two-tier structure distinguishing between non-executive governors and executive officers (as favoured by companies in Europe) would be more appropriate for HEIs - and may indeed be more appropriate for listed plcs – see e.g.

http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article5983510.ece), nevertheless the remaining aspects of UK corporate governance as set out by the FRC above are similar to what we would view as necessary in HEI institutions.

Further information on the Code of Corporate Governance promulgated by the FRC is available here: <http://www.frc.org.uk/corporate/ukcgcode.cfm>

We also observe that the legal regime in which company directors operate, in addition to recognising best practice in corporate management⁶, provides for legal consequences arising from falling below minimum standards⁷. There are also several transparency provisions incorporated into company legislation which we feel should be mirrored in HEI management with respect to service contracts – in particular the availability for inspection of service contracts covered by Chapter 5 of Part 10 of the Companies Act 2006.

We also note that company directors are subject to the provisions of the Company Directors Disqualification Act 1986, which, among other provisions, provides that a director or other company officer who has demonstrated unfitness to participate in the management of a company, either where a company has been wound up as insolvent or revealed in an inspection of the company's affairs, may be disqualified from participating in the promotion, formation or management of a company, either by undertaking or by a court, for between two and fifteen years.

There are two points which we would like to emphasise:

Firstly, disqualification under the Company Directors Disqualification Act does not extend to disqualification from the management of any public or publicly funded body that is not a registered company or Limited Liability Partnership. Thus, an individual who has been declared unfit to participate in the management of a private enterprise may nevertheless be deemed fit to participate in the management of a public body, including an HEI.

Secondly, there is no provision for disqualification from management of either a public or private organisation with regards to unfit managers of public bodies which are not incorporated as companies or limited liability partnerships. It is clear that the potential for disqualification is intended to act as a deterrent to irresponsible management – but only in the private sector?

We consider that the review of governance in HEIs in Scotland provides the opportunity to develop appropriate parallels to aspects of corporate governance to be applied in the public sector in general and in HEIs in particular.

¹ UNESCO recommendation 1997 http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

² UCU Scotland charter on academic freedom

http://www.ucu.org.uk/media/pdf/3/1/Academic_Freedom_charter.pdf

³ Future of higher education conference: <http://www.ucu.org.uk/SHEfuture>

⁴ <http://www.frc.org.uk/about/>

⁵ <http://www.frc.org.uk/documents/pagemanager/frc/FRC%20The%20UK%20Approach%20to%20Corporate%20Governance%20final.pdf>

⁶ S.174 Companies Act 2006

⁷ Part 10 Chapters 2 & 3 of the Companies Act 2006