



Higher Education Governance Bill

The UNISON Scotland evidence to the Scottish Parliament Education and Culture Committee

August 2015

Introduction

UNISON is Scotland's largest public sector trade union. UNISON members deliver a wide range of services in the public, community and private sector. In education UNISON members deliver essential services including cleaning, advice, administration, libraries, technical and research support, IT, finance, learning and student support services, security, porter services and management. It is essential that the voices of all those involved in education contribute to the debate on its future. UNISON Scotland is able to collate and analyse members' experience to provide evidence to inform the policy process. We therefore welcome the opportunity to submit evidence to the Education and Culture Committee.

Response

UNISON welcomed the outcomes of Professor Von Prondzynski's Review of Higher Education Governance and is supportive of the aims of the Bill. We particularly welcome the opportunity for trade unions to nominate board members despite the opposition of university management. We are disappointed that the same opportunity is not available to members working in further education. Democratic structures create public bodies which are open and transparent in their dealings with the public. The Independent Commission on Good Governance in Public Services (2005) laid out 6 principles of governance. While universities are not public bodies these principles are equally valid. Those appointed to these roles should be:

- Focusing on the organisation's purpose and outcomes for the citizens and service users
- Developing the capacity and capability of the governing body to be effective
- Performing effectively in clearly defined functions and roles
- Promoting values for the whole organization and demonstrating good governance through behavior
- Taking informed transparent decisions and managing risk
- Engaging stakeholders and making accountability real

Universities rightfully value their academic freedom. This freedom does not exempt them from the needs to be governed properly and to be run efficiently and effectively. Better governances of banks could have prevented the collapse of those banks and the ensuing financial crisis and the same is true for charities. There must be independent oversight of how senior management operates in any organisation.

In our submission to the review we called for a great deal more transparency and accountability from those who run our universities. Universities, which play such a crucial role in Scotland's education, economy and culture and spend large amounts of public money, must have modern transparent governance structures to ensure their efficiency and effectiveness. The work of chief executives and senior staff in private companies is open to shareholder and board scrutiny, there needs to be a similar mechanism independent of senior management for universities too.

UNISON welcomes the plan to set out regulations regarding the appointment of “a chairing member for governing bodies”. Democratic structures create bodies which are open and transparent in their dealings with the communities they serve. Therefore we would prefer that the chair of the governing body was elected by staff and students. Even if this is not to be the case the appointments group which both shortlists and selects the chair/election candidates should include student and staff representatives.

UNISON is disappointed by the response of university leaders to these modest proposals to improve university governance. We have seen in both written responses to the Scottish Government proposal and newspaper stories claims that these are radical changes, that the Scottish Government is ending universities independence, that trade union members on boards would not act in the best interests of the institutions and that there is a risk to their charitable status risking millions in philanthropic giving. Government legislation covers the operation and governances of a huge range of public, private and charitable institutions in Scotland and the UK. Trades unions are subject to a range of legislation and government oversight including a Certification Officer¹. No one believes that the finance industry has been taken over by government because there are rules governing how it operates. There are volumes of company law on how businesses must be run. We have trading standards, environmental health, charity laws, rules surrounding the delivery of energy and telecoms, a charity regulator, utilities and telecoms regulators. Setting out rules for effective governances is not taking over.

Universities play a crucial role in our country and receive large amounts of public money. Setting out how universities should choose the people responsible for their own governance is vital. It is clearly not the same as controlling who is appointed or indeed what decisions the governing bodies then make. . No one from the Scottish Government will have a role on university governing bodies.

Reclassification by Office of National Statistics (ONS) as a public body is also raised as a concern by Universities Scotland. This would have implications for universities’ charitable status and therefore on how they would deal with any gifts from philanthropists. The ONS paper regarding reclassification of further education colleges as public bodies uses universities as a contrast to demonstrate why colleges had been wrongly categorised in the past. It makes it clear why the position of universities is different from colleges and there is nothing in the Bill that relates to those issues. The Scottish Charities Regulator is equally clear about what constitutes a charity and again nothing in this Bill leaves a universities open to a challenge by the regulator.

The ONS reclassified colleges as “Central Government” bodies in 2010 and continues to classify them as such. This is because

“the discovery of public sector controls over these institutions, sufficient to result in ONS concluding that the government had control over these bodies general corporate policy”²

The paper then goes on to say why universities continue to be defined as Non Profit Institutions Serving Households (NPISH).

¹ <https://www.gov.uk/government/organisations/certification-officer/about>

² Reclassification of Further Education Corporations and Sixth Form Colleges in England May 2012

The main reason for the decision that the public sector controls general corporate policy is that government funding makes up such a large proportion of college funding.

“although universities receive considerable public funding, they have other sources of funding and have a high degree of autonomy, such that they are judged not to be controlled by Government.”

Universities Scotland indicated that Scottish universities only get 45% of their overall funding from government. Colleges on the other hand are much more reliant on public funding: “Scottish Government funding, provided through the SFC, makes up the majority of the income received by the college sector (70.9 per cent in 2013-14).³

Universities have a range of income sources and the proposed Bill will not impact on the balance of funding. The difference in borrowing powers was also said to be significant: colleges unlike universities require government permission to borrow. The Government also has the power to merge or close further education colleges. There is no similar power over universities. There seems therefore no risk of reclassification following the implementation of the Bill.

The Scottish Charity Regulator is also equally clear on what merits ministerial direction or control which would prevent a body being given charitable status:

“an organisation can’t be a charity if its governing document allows government ministers to control direct or stop it from carrying out its activities”⁴

They further clarify that they will consider

- How important the parts that government can control re to the organisations’ functions
- And can ministers use their powers whenever they wish?

The Bill does not give these powers to the Scottish Government. The regulator also states that this refers to a body’s **governing document** not to any contracts or service level agreements.

“it is open to charities to enter into contracts or agreements with government ministers, though charity trustees must make sure that they are acting in the interest of the charity. Therefore it is clear that Single Outcome Agreements or government initiatives to, for example, improve access for people from low incomes to universities do not constitute ministerial direction or control.

As Universities Scotland and the regulator also make clear, if the regulator ruled that aspects of the Bill or other agreements between a charity and ministers meant a body no longer met the test Ministers do have the power to act “by making an order in the Scottish parliament” to ensure that universities retain charitable status and therefore all the tax and fund raising benefits attached. There seems therefore no risk to either charitable or NPISH status involved in the new Bill.

³ http://www.audit-scotland.gov.uk/docs/central/2015/nr_150402_scotlands_colleges.pdf

⁴ <http://www.oscr.org.uk/charities/guidance/meeting-the-charity-test-guidance>

UNISON, alongside other trade unions, welcomed the Scottish Government's commitment to trade union representation on the boards of public sector bodies⁵. While we are disappointed that this right was not extended to our members working in further education we are pleased that the Higher Education Governance Bill extends this right to universities.

Employee engagement in running organisations is a very effective way to improve efficiency and effectiveness. They, much more than managers, interact with users/customers and understand how systems operate in the real world. Staff have just as much invested in the success of organisations as managers. Research into partnership working in the NHS indicates just how successful employee involvement is in running large complex organisations.⁶

UNISON is disappointed but not surprised by the reaction of University Scotland and university chairs to trades unions being able to nominate a board member.

The Universities Scotland submission states

"there are appropriate structure for close engagement with trade union sides ...where issues can be discussed frankly from the respective perspectives of management and the trade union side without either party being placed in a conflict of interest"

And that boards are therefore not the appropriate bodies for union management negotiations and discussions. We fully agree. It appears that it is Universities Scotland that misunderstands the role of board members: Board meetings are not places where unions and management negotiate or liaise. The proposal is about how universities are governed: the strategic objectives, of the organisation and ensuring those tasked with delivering the objectives are working effectively towards them.

The submissions from Universities Scotland and the chairs seem to suggest that trades unions representatives cannot be trusted to behave appropriately: that there would be a conflict of interest that they would not be able to resolve. While we dispute the statement that *"This intrinsic conflict of interest was one of the fundamental difficulties with the late 1970s experiments with the appointment of trade union representatives to the boards of public corporations"* Even if it were true we are also in very different times. Industrial relations now bear no relation to the 1970s. The role of the employee director in the NHS is evidence of union nominees bringing expertise to boards and fully able to understand the roles and responsibilities that come with taking up a director's post.

Trade union members undertake a range on roles both within the union and in the wider community. Many are very experienced in holding positions on committees and boards in the public and voluntary sectors. They have skills and knowledge that boards require. Trade unions, far from preventing nominees from being effective board members, are able to support members with administrative, research/information and training required to undertake these roles.

Unions provide training to members on a range of areas enable them to bring skills to university boards for example employment law, human resources and negotiating skills. Members run trade unions: the democratic committee

⁵ Working Together Review Scottish Government STUC
<http://www.gov.scot/Resource/0045/00457659.pdf>

⁶ Partnership in NHS Scotland 199-2011 Bacon N Samuel PCass Business School City University London, Nottingham University Business School 2012

structures of the union allow them to gain experience and training in running large organisations. These same structures mean they are also well used to understanding the “mandates” and nature of what it means to sit on a board, to make collective decisions and to be bound by confidentiality.

Conclusion

UNISON represents a range of education staff and we have used their experience to inform this submission. UNISON welcomed the recommendations of the Review of Higher Education Governance in particular proposals for a clear line of accountability between higher education institutions and the Scottish Government and the role for trade unions on governance bodies. We are keen to ensure that those recommendations are implemented. UNISON Scotland therefore welcomes the opportunity to participate in this consultation.

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