



**UNISON Scotland Response: Scottish Code of Good
Further Education Governance
May 2017**

Introduction

UNISON is the largest trade union in Scottish public services. Our members deliver services, pay taxes and also have a wider citizenship interest in how services are provided and paid for. In further 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. These employees are often the face of Scottish colleges and contribute a great deal on the overall student experience, providing the foundations for high quality learning for all. UNISON is keen to move forward to more modern and effective governance particularly improving the role of staff and their representatives on governing bodies. UNISON Scotland therefore welcomes the opportunity to take part in this process.

Response

Colleges must be accountable to communities which they serve. Democratic structures create public bodies which are open and transparent in their dealings with the public. Even private sector organisations are required to have a level of corporate governance and openness. Colleges are public bodies and as such should follow the same principles as other public sector bodies.

The Independent Commission on Good Governance in Public Services (2005) laid out six principles of governance. UNISON supports these principles as the basis for governance of Scottish colleges. Those appointed to governance roles should be:

- Focusing on the organisation's purpose and outcomes for the citizens and services 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 organisation and demonstrating good governance through behaviour
- Taking informed transparent decisions and managing risk
- Engaging stakeholders and making accountability real

UNISON has consistently raised concerns about the way colleges are governed and managed. While we argued against many of the changes made in further education recently, we did support efforts to improve management and accountability in the sector. One example is transparency. Colleges have been dogged in recent years over the issue of principals' remuneration and redundancy payments, with excessive payments redolent of private corporations, resulting in negative press coverage which damages the sector as a whole. Remuneration committees are supposed to provide scrutiny but minutes are hard to get hold of and are often redacted. Staff members are excluded from Remuneration and Human Resources Committee meetings. While this may be appropriate on some occasions it should not be the default position and more openness around senior pay decision making may have avoided some of the excessive pay rises we have seen.

UNISON is therefore keen to see a speedy introduction of the new code. The code should include a presumption of openness and accessibility for meetings, decision making and accessibility of minutes and other board papers. And procedures for the rare occasions when decisions/meetings and minutes should not be open to the public.

UNISON was positive about setting up new boards that would be able to hold management accountable for the way they run colleges. We were disappointed that, unlike in higher education, there were no union places on the boards. We therefore welcome the opportunity provided by this code to ensure that trade union representatives can play a positive role in improving college governance. Academic freedom is an important principle that must be protected. That is not the same as highly paid senior managers being unaccountable to the government, students or the wider community for the decisions that they make or how their institutions meet the outcomes set for them in return for substantial amounts of public money.

The current governance structures in FE are weak in terms of links to local communities and accountability for the public money they spend. The boards need to be made up from a wide range of people to reflect the communities which they serve. There also needs to be the appropriate range of skills to ensure that the governance bodies are able to hold managers reporting to the boards to account.

Guidance at a minimum should lay out an open and transparent board appointment process independent of the senior managers of the respective institution. This should include a process for holding governors to account and their individual and collective de-selection. The process should ensure board members are appointed from a range of constituencies reflecting the region's wide range of stakeholders, to include trade union representatives and democratic representatives from the communities in which they operate. FE colleges should be at the heart of their communities. Boards should also reflect the diversity of the communities that colleges serve.

It is the experience of our members in colleges that management have too much influence in the decisions of governing bodies. Board members need to have access to all necessary management information held within FE colleges. They also need to be provided with appropriate training in respect of being independent, and methods of accountability. Board members require access to appropriate professional support and advice, including finance and audit. It is our experience that HR expertise is often lacking. Boards should ensure that some members bring these skills with them in the first place.

Our members feel they have little or no contact with board members leaving them feeling the boards have little understanding of the day to day running of colleges and the implications of the decisions they make at board level. Communication with staff is currently only via line management. It is often one way i.e. management tell but don't listen. If board members had more contact with staff they would be better informed, more able to challenge management information at board level and therefore to improve the running of colleges. This would also support management to improve their communication with staff and students. Placing trade union representatives on the boards provides a direct route to the views and experience of staff and HR expertise.

1 Should the Scottish Ministers have the powers to determine a rate of remuneration for the chairs of assigned, incorporates colleges?

Yes

Colleges have been dogged in recent years over the issue of principals' remuneration and redundancy payments with excessive payments redolent of private corporations. It is not clear to us how a principal can justify a salary higher than that of the First Minister¹. Remuneration committees are supposed to provide scrutiny but minutes are hard to get hold of and are often redacted. Staff members are excluded from Remuneration and Human Resources Committee meetings. While this may be appropriate on some occasions it should not be the default position and more openness around senior pay decision making may have avoided some of the excessive pay rises we have seen. The substantial gap between the salaries of the rest of college staff and the senior team exacerbate the current problems with pay negotiations and harmonisation of terms and conditions. The lack of scrutiny of salaries by boards results in negative press coverage which damages not only those being awarded the excessive rises but the sector as a whole.

Academic freedom is an important principle that must be protected, but that is not the same as board members and chairs being unaccountable to the government, students or the wider community for the decisions that they make or how their institutions meet the outcomes set for them in return for substantial amounts of public money.

UNISON therefore believes that the remuneration of chairs should not be allowed to follow the same wrong path that principal pay has taken. There should be a clear line of accountability to the minister and giving the minister a clear role in setting remuneration would be an important part of that process.

2. Should legislation require two trade union nominees from recognised trade unions for (1) teaching and (2) non-teaching staff to be members of a board of an incorporated college and regional board

Yes

3. If so should the nominees

(3) replace elected staff members

UNISON, alongside other trade unions, welcomed the Scottish government's commitment to trade union representation on the boards of public sector bodies. We were therefore very disappointed that that the Post-16 Education Act did not set in statute the need for trade union representatives on college boards unlike in university governance bodies. We therefore welcome this proposed change. Employee engagement in running organisations is a very effective way of improving efficiency and effectiveness. Staff, much more than managers interact with users/customers and understand how the systems in place operate in the real world. Staff have just as much (if not more) invested in the success of organisations as managers. Research into partnership working in the NHS indicates that it is an excellent example of employee involvement at board level².

Despite the evidence of the success of trade union involvement in governance structures we are aware that there is substantial opposition to trade union representation on boards from college

¹ Revealed the Salaries Earned by Scottish College Principals September 3rd 2016
http://www.heraldsotland.com/news/14721214.Revealed__The_salaries_earned_by_Scottish_college_principals/?c=p7sjppevcvwd84kr01or

² Partnership in NHS Scotland 1999-2011 Bacon.N, Samuel P. Cass Business School University of London, Nottingham University Business School 2012

management even if it is not voiced quite as openly as those in university management who have campaigned against this there.

Governing bodies are about setting and monitoring strategic objectives for the organisation and ensuring that those tasked with delivering the objectives are working effectively towards them. A key route to being able to do this successfully as an organisation is ensuring that you hear directly from staff on the ground, not just senior management.

Trade unions conduct bargaining and represent members through a range of structures negotiated with employers under extremely strict trade union laws. Decisions are made and reviewed not only through the democratic structures of the organisation but also through a statutory body: the Certification Officer. Trade Union activists are well used to working under strict rules and regulations. Trade union representatives are very clear about the difference between the role they undertake when bargaining and negotiating and when they hold positions on governing bodies. We are very clear about what is involved in taking on a role in a governing body. There is a clear understanding that taking a place on a governing board is not a replacement for conducting industrial relations negotiations.

The reason why we support trade union rather than staff representatives is that unions provide democratic structures and resources for union reps to be able to meet regularly with all staff. This means they can consult and inform staff members and take information back to the boards to enable the boards to more effectively undertake their role. Trade union reps are also receive ongoing training and support through the union ensuring they have up to date skills in a range of areas that boards require. Examples include: employment law, human resources and negotiating skills as well as public policy.

Through becoming active in their trade unions members gain experience standing for and being elected to a range of board positions within the trade union. This means they are already experienced in running large complex organisations. They are also clear about and used to understanding the roles of both representatives and delegates, the responsibilities of collective decision making and confidentiality.

Trade union representatives already negotiate wages and other terms and conditions for all staff in colleges so we see no reason why there would need to be other non trade union staff members on boards.

4 Should provision be made for highly regarded candidates for which there is no immediate position to be appointed without further open recruitment, along the lines proposed

Yes

UNISON believes that making some provision for a highly regarded candidate is reasonable in that it offers the opportunity to make savings on the costs of re-advertising and interviewing. This has to be balanced against the need for fairness, openness and equality in recruitment processes. We therefore believe that a year is too long a period from the initial selection process and that six months is a more reasonable period to appoint a highly regarded candidate without re-advertising the vacancy.

5. Should provision be made in relation to a proven ability to work well in a team?

Yes

UNISON believes that this is clearly a skill required for anyone to be an effective board member but there is a real risk that this can be used to select someone who “fits in” and is “like” the current board members and therefore can be a barrier to making boards more diverse. It is essential therefore that public sector equalities duties are strictly adhered to when board members are being selected.

6 should appointing bodies advertise all board vacancies in the College Development Network website

UNISON has no issues with advertising board vacancies on the College Development Network website but it should not be the only place that vacancies are advertised. It is essential that boards reflect the communities they serve, therefore adverts should also be in places likely to attract applicants from groups currently underrepresented on boards.

7. Should Ministers have powers to suspend any or all board members (except) the principal) in circumstances where they consider this appropriate while they carry out further consideration as to whether a removal is warranted?

UNISON has campaigned for some time for colleges to have much clearer lines of accountability for the services they provide and for the public money they receive. The situation that has arisen around the redundancy payments at Coatbridge College is a clear example of why the government must be able to take action. All too often when issues arise in colleges ministers are powerless to intervene. UNISON therefore believes that it is essential that ministers have these powers.

8. Should Ministers have the power, when making the removal order, to include someone who has since left the board but was a member during the period for which Ministers consider there was a board failure with the effect that the person is disqualified from any other boards?

It should not be possible to avoid disqualification after board failure just by leaving quickly/early. It is therefore essential that ministers have this power.

9. please select which powers Scottish Ministers should have to direct

Both

10. If Ministers were to have such powers

(1) should they be limited to circumstances where they consider a board is not governing properly

No

(2) Should Minister's powers be

(a) in addition to the current power of direction that vests with regional strategic bodies

Academic freedom is an important principle that must be protected, but that is not the same as board members and chairs being unaccountable to the government, students or the wider

community for the decisions that they make or how their institutions meet the outcomes set for them in return for substantial amounts of public money. Colleges in Scotland provide a vital public service and receive a great deal of public money. The Scottish government must be able to hold colleges to account for how they operate and citizens must be able to hold the government to account for how those services are run. If the minister is responsible for further education delivery then she/he must be able to hold the delivery bodies to account.

11. Should assigned colleges be required by legislation to cooperate with a Scottish Further and Higher Education Funding Council review under section 7C(7) of the 2005 Act?

Yes

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Audit Scotland has highlighted issues round substantial gaps in information about costings and savings in FE and lack of clarity round the role if the SFC in monitoring and engagement. UNISON would like to see a wider remit for the SFC in monitoring services currently, like in higher education. The SFC does not appear to feel it should look at how colleges are spending money other than around issues like gross misconduct and fraud. UNISON would therefore welcome this change as it will enable clearer lines of responsibility and empower the SFC to take action when required.

12. Should the a Scottish Further and Higher Education Funding Council have powers to attend and address meetings if it has concerns about an assigned college’s ability to meet the criteria set out in secion 7(2) of teh 2005 Act

Yes

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13. Should the existing powers of the Scottish Further and Higher Education Funding Council and the regional strategic bodies to attend and address meetings of a governing body be extended to include relevant committee meetings?

Yes

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14 Should the powers of the Auditor General for Scotland to conduct economy, efficiency and effectiveness examinations be extended to include all relevant non-incorporated colleges?

Yes

The Auditor General provides essential protection for citizens in ensuring that public money is used wisely and in a transparent and efficient manner. It is not acceptable that any publicly funded organisation is not open to scrutiny by the Auditor General.

15 Should legislation be clear that the powers of a person or body to appoint college board member includes the power to suspend any board member that they have appointed?

Yes

No one should be appointed to a body without there also being a clear route to removing that person. It is therefore essential that the legislation includes the power to suspend appointees.

16. we welcome comments on whether the matters covered in the consultation paper raise any equalities issues that require to be addresses with respect to age, disability

gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex or sexual orientation.

Equalities duties need to be mainstreamed into every aspect of work in the public sector. They are not separate from the everyday work of an organisation nor should they be a separate section of a consultation. The fact that this is not just a separate question but the last one in the consultation is part of the problem. Equalities duties are legal duties not an afterthought, to be glanced at once the real work has been done and decisions made.

The new Code of Good Governance must set clear target for improving the diversity of boards themselves and clear responsibility of the board for monitoring the mainstreaming of equalities in the colleges they are responsible for.

Each board meeting should be reviewing how the college is meeting its legal equalities duties, they should ensure that the college is producing regular reports and that they are reviewing these reports and ensuring appropriate action is taken.

They should ensure that college management

- report progress on mainstreaming the equality duties
- publish equality outcomes and report progress
- assess and review their policies and practices in light of these reports
- gather and use employee information
- publish gender pay gap information
- publish statements on equal pay
- consider award criteria and conditions in relation to public procurement

Conclusion

UNISON is the largest trade union in Scottish public services. Our members deliver services, pay taxes and also have a wider citizenship interest in how services are provided and paid for. In further education UNISON members deliver essential services. UNISON is pleased to see the development of a new code of governance for Scotland's colleges. The new code will make clear the lines of accountability for such an important public service and substantial public spend.

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