Submission from Mr Brian Pack

Response to Education and Culture Committee: Call for Evidence on the Higher Education Governance Bill

Dear Sirs

I have a close interest in university governance as a governor of the University of Aberdeen and as Convener of the University’s Operating Board. I write in a personal capacity but based on my experience as a governor to emphasise my particular concerns regarding the proposals around election of Chairs, membership of governing bodies and academic bodies and the potential impact on the University’s status as a charity and its ONS classification as a non-government body.

In general terms, the proposals will undermine institutional autonomy and in several areas without an obvious reasoned justification. Having experienced board level governance in the private, public and charitable sectors, I know that the University of Aberdeen takes good governance, accountability and public confidence to be of the utmost importance. Within our Court, we have debated and discussed our governance arrangements extensively at regular intervals, particularly over the last two to three years in response to the Scottish Code of Good HE Governance. Given that it is only in the past year that the Code has been adopted by the Scottish Funding Council as a condition of grant and only two years since the passing of the Post-16 Education (Scotland) Act, the case for further legislation in this regard, in the context of many other national priorities, is lacking.

Ministerial Powers

I am concerned that the Bill introduces extensive new powers for Scottish Ministers to specify and alter various aspects of the internal governance of universities. This is not in keeping with the current model of governance and the relationship between universities and the State which has served Scotland well. That the Bill will introduce political control of the governance of universities is at odds with universities fulfilling their role in society as a voice which is independent of government. This is an issue which should be of concern to the Committee and wider Scottish society, particularly as the justification provided for taking these powers is, at best, vague.

Chairing of Governing Bodies

I consider the proposals for the election of chairs to be of particular concern and to the detriment of good governance in our universities. A chair must have the confidence of the governing body and, for that reason, must be selected and appointed by that governing body. A chair who is elected by specific sets of stakeholders is in effect in a politicised role, potentially beholden to particular interests and as a result not able to exercise independence in ensuring the governing body reaches ‘corporate’ decisions made in the best interests of the institution. It is accepted that governing bodies should have a majority of independent members. It would, therefore, be completely at odds with this core principle of governance if the chair were not also independent.
Membership of Governing Bodies

I am not persuaded that it is appropriate or beneficial for the Scottish Government to specify in detail the composition of the board of a charity. In particular, the proposals to require trade union membership of governing bodies would create significant difficulties in the governance and management of institutions. Trade Unions, rightly, have a role within universities and there are mechanisms within the wider governance structure of most universities through which they are represented to reflect that role. However, there is a fundamental conflict of interest in there being a ‘trade union’ member of a governing body, which is irreconcilable with good governance. Again, I am of the view that this proposal will be to the detriment of good governance and is an area that is inappropriate for Government to determine.

Composition of Academic Boards

For similar reasons, I do not view the proposals for Government to legislate on the composition of Academic Boards to be appropriate. These are matters that should rightly be determined by the academic institution itself in order to best reflect its local circumstances and academic structure.

ONS Classification and Charitable Status

I am aware that there is concern within the sector that the Bill’s proposals for Ministerial control over governance could result in either ONS reclassification as a government body and/or loss of charitable status. Either outcome would be disastrous for universities and their ability to function as competitive institutions that we should be encouraging and expecting to be more entrepreneurial whether that is in regard to fundraising and philanthropy, working with industry, or commercialising research. Damaging these will ultimately damage the ability of universities to invest in facilities for Scottish students and the best interests of wider Scotland.

Which takes me to my final point. As a governor, my focus is on securing an internationally successful future for our university. I know this is a goal that the Scottish Government shares. I consider autonomy to be fundamental to the achievement of that goal. I would urge the Scottish Government to reflect further on whether these proposals will inhibit or enable the achievement of that shared national goal of international success.

Yours sincerely

Mr Brian Pack OBE