UCU Scotland response to the Education and Culture Committee on the Higher Education Governance (Scotland) Bill

The University and College Union is the largest trade union in the Post-16 education sector in the UK, representing 120,000 academic and related members across the UK, and is the largest union in the higher education sector in Scotland.

We are happy for this submission to be made publicly available and shared in the usual ways.

If it was helpful to the committee we would be delighted to expand on our response and give further evidence in person.

We have answered the questions asked by the committee in order below.

(1) What do you consider to be the existing problems (if any) with higher education governance, particularly around modernity, inclusion and accountability?

One of the themes pushed by those arguing against governance reform in the Scottish Government's consultation on the bill is that this is legislation in search of a problem, that there is no problem and the governance of our universities does not require improvement. In arguing this case the body that represents university principals, Universities Scotland, was joined by a number of existing members of university courts. The argument is made that the international reputation of our universities proves the competence of the current arrangements. UCU is the largest trade union in the higher education sector in Scotland and refutes this. UCU believes that the reputation of our universities is not based on their successful governance, but on the world class research and teaching carried out by staff in our higher education institutions. Unfortunately we feel that universities' high international standing is somewhat dented by management and governance failures.

There is a problem with the way that our universities are governed which leads to a lack of robust questioning of strategic decision making of senior management. Our concern is this can lead to many institutions making demonstrably bad educational, financial and other decisions. We believe this has been the case most recently over plans to make large numbers of academic and other staff redundant (and in some instances close down whole departments) in universities including Dundee, Glasgow, Stirling, Abertay and
Aberdeen; and a lack of transparency around pay, awards and remuneration which have been widely reported; and that a move away from the university as (at its best) a collegiate learning community towards straightforward managerialism has damaged our universities. The von Prondzynski review was not set up for no reason. Rather, it was set up by the Scottish Government following a string of governance failures and a lack of transparency around soaring pay awards for principals and senior university managers. Substantial evidence was submitted to the von Prondzynski review demonstrating that there is a lack of connectivity between staff in our universities who feel disenfranchised and at times demoralised, and senior management who paint a much rosier picture divorced from the reality on campus.

There is also a question of accountability and how accountable university governing bodies are to the community of which they are a part. This is evidenced by the lack of diversity and often too uniform background of members of governing bodies. (We note the recent increase in the number of women chairs and welcome and comment on that elsewhere in this submission.)

Since the turn of the year we’ve seen universities face criticism over principals and senior managers receiving pay rises – of up to 13 per cent – while staff were being told there was no money for pay increases. In addition we see principals receiving expenses of tens of thousands of pounds. While it may be possible to make a case that senior managers are deserving of such substantial increases, it is the failure in governance in remuneration committees making these awards, that is the matter of concern. Having faced criticism in 2014 over the lack of transparency, the body which represents principals, Universities Scotland, argued that the sector had now established a ‘new normal’ of the very highest standards of transparency, accountability and effectiveness. This, it was argued, was as a result of the Code of Governance coming into effect. UCU was critical of the code when it was introduced but in any event that those standards aren’t being met under the code is demonstrably the case, when again in 2015 on being asked in an FOI to send details of the remuneration committees that set their principals’ pay, over two-thirds of Scottish institutions refused to provide full details. Of 17 institutions asked by UCU to provide remuneration committee minutes and an explanation for a principals’ pay rise, four refused to send any information and a further 8 redacted minutes, in some cases making them unintelligible.

The genesis of the call for elected chairs of governing bodies has been the gradual removal of the practice of rectors (in those ‘ancient’ universities where they did so) chairing court meetings. It is worth bearing in mind that only a minority of universities in Scotland have rectors (five), and that the majority do not have a position of a rector elected by students. This gradual removal of rectors chairing the governing body we believe has been as a result of a push from senior managers in the universities that the person chairing court should be
elected by court itself rather than the university. The guidance\textsuperscript{1} issued by the Scottish Rectors’ Group outlines the gradual push towards taking the democratic element of governance arrangements out of universities over many years, and the political counter push by senior politicians including then MPs David Steel, Donald Dewar, Brian Wilson and Menzies Campbell against this trend and to maintain the democratic tradition.

We are aware that there is a view that the proposals to elect chairs to all Scottish HEI’s governing bodies would result in the rectors in the universities which currently have rectors losing their right to chair court. We do not accept that this is the case. First, as it currently stands not all rectors chair court. Indeed, as is the case in Dundee some rectors have never had the right to chair. More importantly, even in those institutions where they have this right to chair, we have seen a gradual diminution in them fulfilling that role, with senior governors instead taking on the duty. All of the institutions which have a rector have ensured their governing body has separately appointed a chairperson to act as senior governor and chair the court. We also note that the code of governance drawn up by the Scottish Committee of Chairs of Court outlines a procedure whereby the chair is selected by a nominations committee rather than nominate the rector where one exists. It is also the case that the bill has provision for direct student representation on court as student association nominees. The idea of needing an “authority” figure to champion and represent them alone - and uniquely only in the ‘ancient’ universities - seems somewhat outdated when students are perfectly able to speak for and represent themselves.

We do not want though to lose the role of rector as a democratic voice on the governing body and in the wider university, rather, we want and believe the Bill can establish and revitalise this democratic tradition not just in the ‘ancient’ universities but across all institutions in Scotland. We are of the view that, as the von Prondzynski report suggests, in universities that currently have a rector the new elected chair of the governing body could take on that title albeit that he or she be elected by all staff as well as all students as currently happens in Edinburgh. This is our preferred option, but another possibility, if it were demanded by students in the four ‘ancient’ universities and Dundee, might be for the elected rector to sit alongside the new elected chair on court but that they be elected only by students and solely have an advocacy and representative role. In that case, then the rector would lose the ability to chair court (albeit one that was not always taken up and has changed over the last twenty years). It is important that the role of chairing would be taken on by someone with a democratic mandate from the whole university. Whichever of these possible solutions was used, the major benefit of the Bill is that rather than only having elected rectors in a small number of universities who

\textsuperscript{1} https://www.abdn.ac.uk/documents/scottish-university-rector.pdf
sometimes do but more often don’t chair the governing body, the bill will allow for an elected chair in all institutions.

(2) The extent to which the bill:

(a) will improve higher education governance, particularly in the areas above.

We believe that there is no magic bullet in regard to governance. We do, however, believe that elected chairs of governing bodies – essentially reinforcing and extending the historic role of an elected rector in chairing court but, as we and others supporting reform would want, elected by all staff and students (as happens in Edinburgh University) to represent the whole university community – would refocus the university as an institution of learning with a democratic tradition. Essentially the question in hand is whether a university should be modelled on solely a business model with annual surpluses as the definition of success, or run as an educational institution part publicly funded and accountable to the community it is based in and providing both teaching, research and knowledge exchange. In our view universities should not be regarded simply as businesses. It is well within the working life of many current academic staff that they would have as staff elected academic positions of management within the institution. As with rectors chairing court meetings, it is relatively recently that this model has disappeared. UCU is not, as some contributors to the Scottish Government’s consultation did, calling for elected principals, but we believe elected chairs would redress some of the imbalance and ensure that we can be confident that decisions made by court, often affecting the entire ethos and direction of an institution, are at least robustly questioned and considered, and we can be as assured as we can be that the decision reached is the correct one for the university and not simply railroaded through by senior managers without sufficient scrutiny.

We also support proposals for trade union and student nominees to have places on governing bodies. We note the body which represent university principals, Universities Scotland’s, view that trade unions members sitting on court would breach the Nolan principles. We disagree and note that a similar argument was not made against there being specific places for student association representatives. Trade union members would act as nominees on governing bodies and as such would be perfectly able to act in the best interests of the institution. The idea of trade unionists acting against the interests of the institution seems like a last hurrah for the old ‘enemy within’ view of unions, rather than a sensible way to conduct industrial relations in 2015. Likewise we make reference to the Scottish Government’s 2014 ‘Working Together Review’ chaired by the former Enterprise Minister Jim Mather which recommended that the “Scottish Government should legislate to ensure that there is effective worker representation (from representative trade unions) on the board of every public sector body...”. Higher Education Institutions are, as the von Prondzynski
review states, autonomous public bodies and receive over a billion pounds of public money from the Scottish Government annually, notwithstanding the other public money they draw in from publicly funded research bodies.

We note the recent Herald story\(^2\) regarding the estimated costings in the financial memorandum for the bill and the claim by Universities Scotland, that these were miscalculated to take into account only actual days chairing court and not also the associated work carried out by the chair. We agree that the cost should include the additional work above days spent chairing court meetings, and are of the view that the payment of suitable remuneration for the role would open it up beyond the narrow section of society that have traditionally taken the role on and would be money well spent.

(b) may alter the higher education sector’s current level of autonomy

The purpose of autonomy is to protect academic freedom and allow institutions to further knowledge free from any government and other external bodies intervention. Autonomy is not a cherished concept to allow principals to open another international campus or shut down departments without question or challenge. In the current debate the purpose of autonomy can be overlooked by those seeking to use the argument as a defence against reform. It is telling that the Trinity College Dublin policy on academic freedom\(^3\) which the von Prondynski report references lists changes away from collegiate model of governance toward a more hierarchical model as being a threat to academic freedom. We would not support the reform of university governance if we believed that the proposals contained in the bill threatened that autonomy. We do not wish to see any increased influence by Ministers in the running of universities and do not believe that the proposals outlined in the bill would so. The proposals do allow Ministers to ensure that the sector has improved and provides for more robust governance procedures. Given that the sector currently receives over one billion pounds annually we believe that politicians and parliament are entitled to be assured that the sector is robustly governed. The proposals do not give powers to Ministers to involve themselves in the day to day running of institutions, or in setting targets beyond the current ministerial letter of guidance to the funding council.

(c) may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector.

Similarly to our answer to the previous question on autonomy we do not believe that the proposed legislation would affect lines of accountability. The reforms


\(^3\) https://www.tcd.ie/about/policies/academic-freedom.php
are about strengthening how governance works, not about Ministers having control over which courses universities teach or which areas of research are funded. Those decisions will rightly be left to funding bodies and the universities themselves.

The Bill is part of a wider package of recent reforms to higher education governance, including the development of a Scottish Code of Good Higher Education Governance.

(3) Has the correct balance been struck between legislative and non-legislative measures? Are further measures needed?

UCU has argued since before the von Prondzynski review that there is a need for legislation on governance. Universities are statutory bodies and many of their governance arrangements are also set in law. The complexity of the sector and the differing roots of the legislation applying is not a valid reason to not seek to bring in legislation. We are also clear that it is the possibility of legislation following the von Prondzynski report that has driven the positive developments the sector has seen in recent years.

In 2011/12 research carried out by NUS Scotland showed that only 25 per cent of members of university courts were women. In October 2014 it was reported that five out of the last six appointments of chairs of court were women, marking substantial progress. And we’ve seen other welcome developments since the publication of the von Prondzynski report and the promise by Ministers of legislation. Scottish Universities have signed up to the aspiration to be living wage employers. Again, very welcome. The code of governance drawn up by the Committee of Scottish Chairs (who incidentally don’t contain any rectors) was, we would argue, also an attempt to see off legislation and didn’t properly address the issues raised by the von Prondzynski report. While the promise of legislation has driven part of the progress in these issues, it is important that the Scottish Government follows through and brings forward the democratic framework for elected chairs. We support elected chairs and that they should be brought in with legislation so as not to be subject to a gradual attack on their right to chair the governing body as has been seen in the case of the rector.

The Bill proposes a number of specific changes to higher education governance:

To require higher education institutions to appoint the chair of their governing body in accordance with a process set out in regulations made by the Scottish Ministers.

UCU strongly support the principle of elected chairs but need to see detail before we can comment further. Our preferred option would be for the detail to be in
the bill and to include elected chairs; elected by all staff and all students – which we note would place the students at a numerical advantage over staff.

We would also prefer that there was no pre-election interview or shortlisting stage meaning that any candidate is able to put themselves forward for election. We recognise, however, that the universities may be uncomfortable with such an open system and would seek to reach a consensual outcome on this specific question.

To require HEIs to include various persons within the membership of their governing bodies.

We strongly support the proposals to have trade union and student nominee positions. We believe that universities will be strengthened by having as diverse and representative a governing body as it can and that that should include staff and students. Universities rightly recognise trade unions for bargaining and we see no reason why that should not also be the case with regard involvement in the governing body. Trade union nominees can bring a wealth of experience and knowledge to the boardroom table, and are capable of acting in the interests of the institution. As indicated in response to question one we don’t accept the arguments made thus far by university principals against trade unions being on the governing body. We note that they don’t make the same arguments around the Nolan principles about Student Association nominees; and that the proposal also sits fully with the recommendations of the Working Together Review.

To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and include various persons.

We are comfortable with proposals on the proposed size of academic boards outlined in the bill.

(4) Please provide your views on the merit of each of the proposals.

Please provide your views on the following –

(5) The likely affects of these provisions, for example, whether there are any areas of teaching, learning or research that will be particularly enhanced.

We believe that recent history shows a number of decisions made on departments and academic disciplines has not been based on educational rationale but on financial grounds and to drive ever bigger surpluses or as a result of bad financial decisions made by unrepresentative governing bodies, and sometimes the rationale for change has not been clear. Recent examples would include the universities of Glasgow, Dundee, Stirling, and most recently Aberdeen. It would be fair to say that enhanced teaching and research exists in
subjects that would otherwise have been closed were it not for campaigning and industrial action taken by UCU. It is our view that better governance arrangements would mean universities made better decisions in the first place to the enhancement of teaching, learning and research.

The Bill states that academic freedom is to be exercised “within the law”.

(6) Are there likely to be any significant constraints – other than legal constraints – on academic freedom? For example, the particular ethos within an institution; funding pressures; institutions’ policies on equality and diversity; etc.

The constraints on academic freedom contained in the question all apply. In addition we would add the willingness to bend to outside pressure from, for example, the media or politicians by the employing institution.

The point of having academic freedom embedded in legislation is that it takes precedence other the constraints referred to and protects the members of university staff. In essence you either have academic freedom enshrined in law allowing university staff to defend themselves or don’t in which case the constraints referred to are paramount. The proposals simply seeks to widen the existing reference in the 2005 Act. Given that we as a trade union on a not infrequent basis defend members whose academic freedom is questioned, then we support the 2005 definition and its extension in the bill.

As stated in response to question 2(b) the Trinity College Dublin policy on academic freedom⁴ annexed in the von Prondzynski report contains a useful list of threats to academic freedom. These include strategic planning, particularly relating to research; measurement of performance in research, including allocation of resources based on meeting targets for research productivity; changes in university governance [from collegiate model to hierarchical model]; state control through funding mechanisms; and academic tenure and fixed-term contracts.

(7) Are the situations in which relevant persons can exercise their academic freedom clear? For example, should their freedom be limited to their work within an institution, as opposed to views they may express outwith the institution?

Our view is that it should go beyond simply their work in an institution. Clearly work within the university should be covered but we are also clear that academics are often seen as public figures and opinion leaders. An example of this might be the 2014 referendum on Scottish independence where institutions

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⁴ [https://www.tcd.ie/about/policies/academic-freedom.php](https://www.tcd.ie/about/policies/academic-freedom.php)
largely supported high profile individuals against perceived pressure but cannot guarantee that this will always happen.

We are also clear that academic freedom should apply not solely to academic staff. The development of ideas and knowledge may be led by academic staff, but the process will involve academic related and support staff too. We believe that they should also be covered.

Finally, we also note that the bill does not carry forward all the proposals contained in the von Prondzynski report or indeed the consultation. While we are happy that the proposal to rename university principals ‘chief executives’ was dropped there are other recommendations that were in the report and not carried forward which deserve proper consideration. The proposals to make the recruitment, appraisal and remuneration of both principals and senior management should be considered further along with the possible establishment of a Centre for Higher Education research within an existing institution.

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