

Karen Frew
HE Governance Consultation
Employability, Skills and Lifelong Learning Directorate
Scottish Government
Higher Education and Learner Support Division
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Dear Ms Frew,

HE Governance Consultation

On behalf of the Institute of Chartered Secretaries and Administrators (ICSA), I am pleased to respond to your consultation document regarding the proposed changes to the governance arrangements in Scottish higher education institutions.

ICSA is the professional body qualifying and supporting corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, acting as adviser to government and regulators on company law and corporate governance; able to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. A number of our members are involved in the higher education sector, and all will be familiar with the importance of recruiting and developing strong boards for all types of organisations and their role in setting the culture and values of an organisation. This wealth of expertise and experience has informed our response to this consultation.



Comments relating to the role of the Privy Council:

As a chartered body, ICSA is familiar with the mechanisms involved in changing the governing document and the time involved. The privilege of chartered status however should not be weakened by breaking the ongoing link with the monarch as represented by the role of the Council.

Incorporation by Royal Charter is only granted in specific situations and as such the designation is more special than other types of incorporation. The proposal to replace the role of the Privy Council, in relation to the governance arrangements within Scottish higher education institutions, with a new Scottish committee could therefore diminish the reputation and standing of ancient and chartered universities.

Comments on the role of Principals:

We believe that within the sector, the position of Principal is well understood. If there is evidence to suggest that the title and role are widely misunderstood outside of the sector there may be some merit in providing relevant guidance to clarify that the role of Principal is effectively the same as that of chief executive officer, but we are not persuaded that this is necessary. Legislative change to describe the heads of Scottish higher education institutions as chief executive officers, while retaining the working title of Principal, appears to be of limited merit. The title of the role is less important than the wider understanding of what that role involves, for what the person performing it is responsible, to whom they are accountable and how that is manifested.

Those involved in the higher education sector are likely to be very familiar with the role of Principal and understand their contributions to, and responsibilities for, higher education institutions. It therefore seems unnecessary to introduce legislation to change the legal title to chief executive officer.

Comments on the chairing of governing bodies:

As the leading authority on good governance, ICSA fully endorses the consultation's sentiments with regards to the importance of the role of the chairman of the governing body. A good chairman is essential to a successful organisation: providing leadership to the governing body; acting as a source of support to the chief executive; setting the tone of the organisation from the top; leading the governing body in holding the executive to account; and ensuring that all members of the body contribute effectively to the work of the organisation.

It is therefore vital that a chairman has the appropriate balance of skills, experience, knowledge, independence, political intelligence and critical judgment to lead the organisation through both good and less successful times. Open and transparent recruitment processes, with appointments made against agreed criteria, are therefore an integral part of ensuring that the right person is appointed to this crucial position.

The need to introduce legislative measures, at this point, to ensure these processes are adopted, however, requires further evidence. The introduction of the new code of governance for higher education institutions in Scotland, with a 'comply or explain' approach, should be given the time to effect the positive change required. Introducing legislation will undermine the intended impact of the governance code on improving governance within the sector holistically and reduce the benefits to be gained to one of mere compliance rather than of endogenous improvement for the general benefit of the organisation.

Comments on remunerating chairmen of governing bodies:

As previously mentioned, the role of chairman is essential to a successful organisation. It is therefore understandable that remuneration may encourage more suitable candidates to take on a role that has a vast array of responsibilities and duties. Given that such bodies receive large amounts of public money and support, especially as being part of the wider charity sector, any decision to remunerate the chairman should be based on hard evidence that doing so would be in the best interests of the organisation and the people it is there to serve.

Research into the housing sector, which has the ability to pay board members, has not demonstrated any notable evidence that the offer of remuneration has led to an increase in the number of superior candidates standing for the role. In addition, any remuneration available to the chairman should be subject to an appropriate level of scrutiny to ensure that the value offered is proportionate to the role and the size and complexity of the institution. Such information regarding the remuneration of chairman should be publicly available and easy to find on the institution's website.

Comments on the membership of governing bodies:

The desire to ensure the governing body of a higher education institution is representative of the people it serves is admirable, but needs to be balanced with the overriding, established principles that such bodies should not be so large to make decision-making unwieldy or ineffective and that the people on that body should have the appropriate mix of skills. We are concerned that introducing legislation that provides places for eight new members of the governing body is that in doing so its decision-making ability will be diminished and potential or actual conflicts of interest will increase. Both of these developments can adversely impact the work of the organisation and the public's perception and trust in the way it is governed.

The widely-adopted governance principle of having a majority of independent members on a board is to ensure that decisions are made in the best interests of the owners (in the case of companies) or users and the public (in charities and public bodies). The proposal, if undertaken with an ongoing commitment to a clear majority of independent members, will mean that as a minimum the size of the governing body will be 17. This number does not include any members of the executive team.

While the consultation cites 25 as the maximum number of members as being a good benchmark, this is not borne out by research and experience in other sectors. The UK Code of Corporate Governance has long stated that boards should not be so large as to be unwieldy and the principle is widely accepted across other sectors of the UK economy. It is ICOSA's experience, and belief, that espousing a decision-making membership of that number will not be conducive to good governance or facilitate sound decision-making. Such a large number of members will also have an impact on the cost of undertaking board performance evaluations – whether facilitated internally or by independent parties.

ICOSA urges further consideration of the proposals aimed at improving representation, as it may be possible to introduce measures that provide a similar outcome without unduly compromising governance effectiveness. For example, establishing an advisory council which included representatives of all stakeholder groups and had delegated powers to hold the governing body to account for specific functions may achieve the desired outcome.

ICSA appreciates the opportunity to comment on the Scottish Government's thinking in developing governance arrangements in Scottish higher education institutions. Should further information or clarification be required, please do not hesitate to contact me.

Yours sincerely,

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