



Item 9.2 LB/19/06/2017

## College Good Governance Consultation

**QUESTION 1:** Should the Scottish Ministers have powers to determine a rate of remuneration for the Chairs of assigned, incorporated colleges?

It would seem fair and reasonable for the Chairs of Assigned Colleges to be remunerated as long as the principle of equity is applied and the rate of remuneration is on a sliding scale according to the size of college and time requirement of the role. Cognisance should also be made of the remuneration to the Chairs of the Regional Boards. They carry greater responsibility and this should also be taken into consideration in setting any remuneration scales for the Chairs of assigned colleges.

**QUESTION 2:** Should legislation require two trade union nominees from recognised main unions for 1) teaching and 2) non-teaching staff to be members of a Board of an incorporated college and Regional Board?

As set out in the consultation, no effective rationale is given for such a change to the legislation other than it is being separately introduced into Higher Education. However, governance in the FE and HE sectors is increasingly different especially since the reclassification of FE Colleges in Scotland under ONS with the ensuing implications and duties this entails. The consultation offers no information on the benefits the introduction of the proposed change would bring to colleges.

Staff representatives are elected representatives of the staff and have a fiduciary duty to the Board. We currently have staff representation that does not distinguish between union and non-union members of staff and it is open for the trade unions to nominate candidates for election to this position and the current NCL and SLC Board Members happen to be trade union representatives. We have concerns regarding the representation of non-union staff who could be disenfranchised by such a move.

As The Lanarkshire Board, we also have concerns about the increase in Board membership such a change could bring, possibly taking the size of the Board to 32, making effective management of Board business very challenging. An increase in staff representation from 4 to 8 would also create imbalance with student representation of 2 and would also have an impact on the ratio of non-executive Board members.

Currently, Board members are advised as part of the appointment and induction processes that they must not represent any interest group or organisation in performing their role as a Board member.

Unlike the Health Boards, colleges are charities and therefore Board members are subject to a duty to avoid conflicts of interest and as charity trustees to use their knowledge, experience and expertise objectively and in the best interests of the college and its students.

**QUESTION 3:** If so, should the nominees 1) be in addition to elected staff members (without any change to student member numbers); 2) be in addition to elected staff members (with an increase in student member numbers); or 3) replace elected staff members.

As in Question 2. In addition, we have serious concerns re the implications for size of The Lanarkshire Board. This could take overall number on Board to 32. This is too big to manage effectively.

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

We think this is an efficient value for money approach which The Lanarkshire Board would be keen to adopt, however, such candidates would need to be advised early in the recruitment process that they might be 'successful' but not appointed immediately. We suggest that this provision should be valid for one year only.

**QUESTION 5:** Should provision be made in relation to proven ability to work well as a team?

Yes. The Lanarkshire Board already includes this in interview questions.

**QUESTION 6:** Should appointing bodies advertise all Board vacancies on the CDN website?

Yes, but not exclusively. It is important to take a broad approach to recruitment and advertising vacancies to attain diversity on the Board and progress towards maintaining gender balance.

**QUESTION 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 order is warranted?

Qualified 'yes', however there must be some acknowledgement of natural justice; the right to appeal must be respected and the appropriate mechanisms put in place.

Suspension pending investigation could lead to Board Members walking away even if the investigation had proved that there wasn't an issue. Members would be tainted while an investigation was under way as opposed to being removed after an investigation has proved that there is an issue. This comes back to natural justice.

Ministers already have the right to suspend a Board. Seeking further powers would require additional guidance for Boards and clarification of where the new powers could be applied and in what circumstances and defining the circumstance could be difficult

Non-executive College Board members are volunteers; any suspension of this group should be different from that applied to paid Board members. Such suspension, which does not have an end-point, would also have serious implications for other public appointments held.

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

No. How would the spectrum of time since they left be decided? Again, the non-executives on college Boards are volunteers. The rights of the individual must be protected. Some situations are out with an individual's control. They may have left the Board because of the issue leading to this action.

There is a distinction between the Chair as a public appointee and the rest of the Board. Where is the protection for Boards? An appeal procedure and independent arbiter would have to be established. There also needs to be proportionality and natural justice applied in this case.

**QUESTION 9:** Should Ministers have powers to direct a) incorporated colleges and b) Regional Boards?

What is the role of SFC and its Board, as opposed to the Government, in any such situations? The ROA is an agreement between the colleges and SFC and not the Government. What would be the implications for Board governance if the Government can directly intervene in this way? The 2013 Act gives powers to the Regional Boards and sets out their responsibilities and the circumstances for removal from Boards. Why make further changes so soon?

**QUESTION 10:** If Ministers were to have such powers 1) should they be limited to circumstances where they consider a Board is not governing appropriately? 2) should Ministers' powers be a) in addition or b) instead of the current power of direction that vests with Regional Strategic Bodies?

The Government should not replace the structures it has just legally put in place re the Regional Boards.

**QUESTION 11:** Should assigned colleges be required by legislation to co-operate with an SFC review under section 7C (7) of the 2005 Act?

As in Question 10. This is the responsibility of the Regional Strategic Body as recently established by the Government and should remain so.

**QUESTION 12:** Should SFC have powers to attend and address meetings if it has concerns about an assigned college's ability to meet the criteria set out in section 7(2) of the 2005 Act?

Yes. SFC already has an open invitation to attend meetings of The Lanarkshire Board; the SFC have attended meetings of the Board since its inception. This relationship with SFC is valuable to the work of the RSB.

**QUESTION 13:** Should the existing powers of the SFC and Regional Strategic Bodies to attend and address meetings of a governing body be extended to include relevant committee meetings?

The Lanarkshire Board has no issue with this proposal.

**QUESTION 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. As bodies in receipt of public funding all colleges should come under the scrutiny of the Auditor General to ensure the appropriate use of those funds.

**QUESTION 15:** Should legislation be clear that the power of a person or body to appoint college Board members includes a power to suspend any Board member that they have appointed?

Yes, but subject to natural justice and the right to appeal.

**QUESTION 16:** We would welcome comments on whether the matters covered in the consultation paper raise any equalities issues that require to be addressed with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex or sexual orientation.

**General equality issues** such as rights of the individual, fairness, availability of appeals process are excluded from the list of equalities set out in this question and should not be overlooked; these are the precise equalities issues which would apply in this case.

**Gender balance:** Although not part of this consultation, this is a matter of concern. As Scottish Ministers will be aware college boards have control over the appointment of non-executive members, i.e. two-thirds of Board membership. The remaining third comprise elected members and ex officio and appointed individuals. The Lanarkshire Board strives to maintain gender balance while being mindful of the skills and experience of potential appointees and advertises vacancies as widely as possible. Achieving gender balance will remain an objective of The Lanarkshire Board in future recruitment campaigns.