

Addition of Trade Union Nominees to the boards of college institutions

Consultation Analysis

About this report

This report provides an analysis of responses to the Scottish Government's consultation on the "Addition of trade union nominees to the boards of college institutions" which ran from 1 December 2022 to 27 January 2023. The consultation paper can be accessed here:

[Addition of trade union nominees to the boards of college institutions - Scottish Government - Citizen Space](#)

Background

The [Good College Governance Task Group's report](#), published in 2016, made a series of recommendations to improve the governance of colleges, including adding trade union nominees to the boards of management of college institutions.

Following consultation in 2017 on the Good College Governance Task Group's recommendations, the Scottish Government committed to introducing trade union nominees to the boards of the incorporated colleges, the Glasgow Colleges' Regional Board (GCRB) and New College Lanarkshire (NCL) (also known as "the Lanarkshire Board").

We now want to hear your views on a set of policy proposals that aim to make changes to the Further and Higher Education (Scotland) Act 1992 and the Further and Higher Education (Scotland) Act 2005 to add trade union nominees to the boards of management of college institutions. These views have been gathered through a consultation and analysis on responses can be found below.

Overview of Respondents

A total of 29 written responses were received.

Of the 29 total responses, 24 have been published on the Scottish Government website. The remaining respondents did not want their response to be published. All responses have been included in this analysis, irrespective of whether or not they have been published. The published responses can be accessed here:

[Addition of trade union nominees to the boards of college institutions - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

Of the 29 responses, 18 were received from organisations and 11 from individuals.

A list of organisations that responded are listed at Annex A.

General

- Broad support for the consulted proposals – respondents were generally supportive.

Agreement on Proposals A and Proposals B

- Respondents were generally supportive, with the only concern relating to trade union members holding imbalanced views.

Proposal A(i) Agreement

- Majority of respondents elected not to provide an answer, stating that this was an issue for the Lanarkshire Board.

Term of Tenure

- Split agreement - those respondents who did not agree drew on the idea that if union nominated members are to be seen as full board members and on an equivalent basis to all other board members then terms of office should also align.

Agreement on TU Representative Ceasing to be Staff or Member

- Overwhelming support on this proposal – no further comment.

Analysis

There were 5 questions in the consultation document which related to the proposed addition of trade union nominees to the boards of college institutions.

The following analysis follows the layout of the consultation document.

All questions which asked for a “yes” or “no” answer have been broken down into the following categories for responses:

- Yes – the respondent selected “yes” when answering the question
- No – the respondent selected “no” when answering the question
- Not answered (NA) – the respondent did not answer the question and made no comments about the proposal

Question 1

Do you agree with the proposed changes to the Further and Higher Education (Scotland) Act 1992 and Further and Higher Education (Scotland) Act 2005, as outlined in the sections marked Proposal A and Proposal B?

21 respondents agreed that the proposed changes within Proposal A and B within the consultation are suitable; 5 respondents did not agree and 3 respondents did not answer the question.

Answer	Number	%
Yes	21	72%
No	5	17%
Not answered	3	10%

Please note, percentages may not sum to 100% as a result of rounding.

In further detail, respondents made the following comments about the proposed changes within Proposal A and B set out in the consultation. The below comments are direct quotes from respondents who were content to have their responses published:

- Whilst supportive of the principle of trade union nominated members of boards, the wording as currently set out would create trade union representatives on boards. Whilst this change may be unintentional, it

fundamentally changes the nature of these board members and creates significant potential for conflicts of interest to arise between their board responsibilities and role as a union representative.

- However, it is unclear if the proposal is to add trade union nominees to boards of college institutions or to add trade union representatives. If it is a nominee then there is no issue with this at all, however, if it is trade union representatives then there could be conflict as their role is to protect their members first and foremost which may, at times, not align fully with the needs of the organisation. At Glasgow Kelvin College we have had "in attendance" trade union members attending our Board of Management meetings for circa 3 years; we find their viewpoints at the meetings very helpful and informative and have had no issues with this situation whatsoever.
- Irrespective of how board members are appointed, all board members are required to act in the best interest of the college or regional strategic body, rather than representing any nominating body or third-party interests. As charity trustees, board members are also subject to a duty to avoid conflicts of interest. Although this is the case for all board members, this issue could potentially be more acute or more difficult to manage in relation to trade union nominees.
- Union representatives and workers should comprise ALL board members, not just a few of them.
- Trade unions are to represent members interest so are very narrow minded & will not take a balanced view.
- The boards are to further the cause of genuine education the recipients of which are the students. Is the inclusion of specific trades union representatives on the boards designed to help or hinder progressive educational practice for the future?

Question 2

Do you agree with Proposal A (i) to amend Schedule 2 of the 1992 Act to alter the composition of the Lanarkshire Board?

16 respondents agreed with Proposal A (i) to amend Schedule 2 of the 1992 Act to alter the composition of the Lanarkshire Board?; 5 respondents did not agree and 8 respondents did not answer the question.

Answer	Number	%

Yes	16	55%
No	5	17%
Not answered	8	28%

Please note, percentages may not sum to 100% as a result of rounding.

In further detail, respondents made the following comments about Proposal A (i) to amend Schedule 2 of the 1992 Act to alter the composition of the Lanarkshire Board? The below comments are direct quotes from respondents who were content to have their responses published:

- Trade unions are to represent members interest so are very narrow minded & will not take a balanced view.
- Yes – The Lanarkshire Board recognises that the Board has to increase to accommodate TU Representation. However, it is already a large Board and the proposal to limit the TU representation to 2 (one joint nomination from the teaching unions and one from the support staff unions) with a balancing additional 2 non-executive members, taking the Board from a maximum of 22 to 26, is a pragmatic approach. It is important to maintain the balance between exec and non- executive members and to have a Board that can still function in terms of its size.
- While UNISON fully supports the broader changes to introduce trade union seats on college boards, we are not convinced by the specific proposals for the 'Lanarkshire Board'. We are concerned that the proposed arrangement would leave SLC & NCL UNISON members with a lesser position compared to colleagues in other Scottish colleges, and believe an alternative solution could be found.

Question 3

Do you agree with the proposals that trade union representatives should have a flexible term of appointment of up to 4 years that is to be determined by the nominating trade union, as opposed to a fixed term appointment of 4 years?

18 respondents agreed with the proposals that trade union representatives should have a flexible term of appointment of up to 4 years that is to be determined by the nominating trade union, as opposed to a fixed term appointment of 4 years?; 8 respondent did not agree; 3 respondents did not answer the question.

Answer	Number	%
Yes	18	62%
No	8	28%
Not answered	3	10%

Please note, percentages may not sum to 100% as a result of rounding.

Question 4

Do you agree with the proposals that trade union representatives must vacate office if they cease to either be i) a member of staff of the college or ii) a member of the nominating trade union?

25 respondents agreed with the proposals that trade union representatives must vacate office if they cease to either be i) a member of staff of the college or ii) a member of the nominating trade union?; 2 respondent did not agree whilst the remaining 2 respondents did not answer the question.

Answer	Number	%
Yes	25	86%
No	2	7%
Not answered	2	7%

Please note, percentages may not sum to 100% as a result of rounding.

Question 5

Do you have any other comments on the proposals overall?

In further detail, the following comments were made. The below comments are direct quotes from respondents who were content to have their responses published:

- If union nominated members are to be seen as full board members in their own right and on an equivalent basis to all other board members then the term of office should also align.

- With regard to question 3 in the consultation, we are supportive of trade unions electing members for any term of up to four years. The term of appointment would require to be notified to the board via the governance professional. The member would presumably thereafter be eligible to stand for reappointment in the same way as staff board members currently are.
- In relation to Question 3 with in the consultation (regarding the terms of the appointment of trade union nominees onto boards of management), if implemented, these appointments should be in line with the current term for academic and support staff members to the boards of management which is a fixed term appointment of up to four years.
- Fixed Term Appointment - Other Board Members are appointed for four years and the TU nominees will equally be Board Members. It takes some time to come up to speed for a new Board Member and for them to get to know other Board Members and the workings of the Board and its committees. The Lanarkshire Board would support appointments for 4 years.
- With regard to Question 3, the term of office should either be determined by the appointing body, up to four years, or it should be consistent with what is set out in the relevant schedules for Staff Board Members, ie, four years.
- We would normally expect the nomination to be for a period of the full four years and, if reappointment is allowed, can it be specified for how long. Non-Executive Member appointments are normally only for two terms.
- We note that number of Board members would be increased to accommodate the addition of one trade union nominee from the teaching staff of the college and one trade union nominee from the support staff of the college. As an assigned College, we assume from this statement, that these staff are from those employed by the specific college rather than from staff employed by a college in a region. Given that there may be apologies submitted for Board meetings, it is worth considering that managing the balance of inputs from non-executive members with the inputs from 4 staff members, (all of whom may be Trade Union members), might prove to be challenging, particularly in dealing with Board business such as the approval of a voluntary severance scheme or other sensitive staffing matters.
- We are supportive of the introduction of trade union members to boards, which brings colleges in line with other public body boards, and supports a culture of openness, transparency and working together. It also removes the inconsistency within the sector where some boards allow trade union observers at meetings and others do not.

- We note that the maximum number on boards has been increased by two to take account of trade union members being added. We would like to request that, instead, the current maximum number and the number of non executive members be increased by four so that boards can ensure that they always have a maximum of non executive members present not only at board meetings but also at committee meetings. If the maximum number only is increased, this allows boards to have discretion to appoint the number of members it requires to operate efficiently depending on the number of committees it has and how many committees board members can realistically be expected to sit on.
- It is essential that appropriate training is rolled out for trade union members before they are invited to participate in board meetings. We understand that this was offered previously (and was welcomed by those who participated) and we would ask that this be a mandatory piece of training prior to trade union board members being appointed.
- Training for these new appointments will also be important and CDN already provides vital support to boards of management and induction training to new board members, and has a suite of governance training modules available aimed at supporting board members in their work.
- In considering our response to question 4 in the consultation, we have reviewed the draft criteria for electing trade union board members we note that nominees must come from the local college branch rather than opening this up to also include members at a national level. This seems to be a duplication with staff board members as representatives can come from the same body of people. Staff who are in a recognised trade union will have two opportunities to stand for positions, whereas those who are not members of the trade union will have one opportunity. It also means that the staff voice on the board will be significantly stronger than the student voice in that there will be five staff board members (including the Principal) and only two student members.
- The EIS is broadly supportive of the proposals overall. However, it is worth drawing attention to concern to two concerns. In relation to Proposal A, point 4 – on the election of TU reps in accordance with board procedures, the EIS believes that TU reps on boards should be elected via internal trade union procedures and with minimal scope for interference from a college board. Proposal A, point 44, as it stands does not block off the scope for such interference. The EIS-FELA Executive has also expressed concern regarding the safeguarding of TU reps on boards in situations where board members, or a board as a whole, have suffered sanctions. There are a number of examples of this, from the Further Education sector, in recent years. As such,

the EIS believes that further thought on the safeguarding of TU board members, and enacting such safeguarding via legislation, would be worth considering. The EIS would welcome further discussion on either of these points, or indeed any other aspect of this consultation.

- These welcome proposals would give college support staff increased democratic input in to the decisions of their governing bodies, matching governance improvements made in Scotland's universities some years ago. This is a sensible Fair Work measure, and should bring a broader range of voices and experiences, along with considerable operational insight, to college boards. It is crucial that these representatives must leave office if no longer employed by the college, or no longer a member of the trade union, so this role is truly representative and carried out in the spirit of this reform and associated legislation. A flexible term of appointment, determined by the nominating trade union, is also a sensible measure for the same reasons.
- All proposals should have 2 EIS/FELA representatives.
- Increasing the size of college boards to 20 persons could raise challenges for effective corporate governance and the coordination of the board as a cohesive unit. Two elected staff members (support and lecturing) already sit on college boards. The addition of trade union nominated board members could undermine the position of staff members elected by their peers. The balance of non-executive board members in comparison to those members who are employed by the college could weaken the independence of the board, especially boards operating with only the minimum number of non-executive members (due to unforeseen circumstances).
- To ensure that board of management and its committees remain quorate, with (independent) non-executive members in the majority, standing orders and terms of references would need to be reviewed. To maintain an appropriate degree of independence boards of management may need to ensure that a minimum of eight non-executives are present to match/exceed the number of college staff with voting rights.
- As charity trustees, board members are also subject to a duty to avoid conflicts of interest. Although this is the case for all board members, this issue could potentially be more acute or more difficult to manage in relation to trade union nominees. Any change to the composition of boards should not detract from the notion of a board having 'collective responsibility' for the decisions it makes. It is therefore important that the language used by the Scottish Government when describing these appointments moves away from using "trade union representatives" and uses "trade union nominated board members".

- Staff members, regardless of how they are appointed to boards of management, are full members and have the same rights, responsibilities and obligations as other board members. Staff members are not there as “representatives” of the staff, they are there to bring knowledge and expertise of the day-to-day workings of the college into board meetings, processes and decision-making.
- If Proposal A & B are implemented, appropriate training for these new appointments will be essential. Whilst the College Development Network already provides vital support to boards of management and induction training to new board members, it is important that all staff board members are appropriately inducted (and receive continued development) to help them fully understand their role and responsibilities.
- In relation to Question 4 with in the consultation, if trade union nominated board members cease to be a member of the relevant trade union and therefore no longer meet the defined set of criteria for which they were appointed (i.e. be a member of the relevant trade union), they should also vacate their position as a board member.
- It is important that all Board members are referred to as such - this is especially important with staff, student and trade union members. To describe them as representative implies that these members are solely representing their group when attending Board meetings and this would not be the case. It is essential for good governance that all Board members have the same duties and responsibilities regardless of how they are appointed.
- Consideration should be given to increasing the overall number of Board members by 4 rather the 2 suggested to allow trade union members to join. This would give the Board flexibility and allow for the right balance of Board members employed by the College and independent members at committees as well as the Board meeting.
- Diverse and effective boards are key to the continued success of our colleges and the role they play in improving the life chances of our students, supporting employers and serving the needs of our regions. However, along with colleagues across the college sector, we call for early consideration of key issues to avoid unintended consequences and avert issues arising post-implementation of the proposals. All board members, whether they are non-executives, staff or student members, are required to act in the best interests of the college and respect collective responsibility. Staff and student board members, while elected by a constituency, are not ‘representatives’ of a constituency or third-party. Staff members of the Board bring their professional expertise and knowledge of the day-to-day workings of the

College to inform the Board's deliberations and decision-making. They exercise the same rights and responsibilities as other board members. It is therefore important that the nomenclature of the new role reflects this, with trade union "nominee" or "member" being used as opposed to "representative". Consideration should also be given to how conflicts of interest would be managed once these changes are implemented. The College respects the role of the Good Governance Steering Group (GGSG) as the sector's advisory body on college governance. We recommend that the GGSG be responsible for developing a national process and procedure for the election and appointment of trade union nominees/members to boards. The College believes that the appointment of trade union nominees/members should be in line with the existing terms of office for support and teaching staff board members. As with staff board members, trade union nominees/members should vacate office at the end of a four year term, or if they cease to be a member of staff of a college or a member of a recognised trade union.

- The Board of West Highland College welcome the insight and breadth of knowledge brought by Directors from different backgrounds. To balance the significant potential for conflict of interest, in the same way as for the Principal/CEO, it is felt to be essential that the legislation, and supporting guidance makes explicit they are appointed as Directors and Trustees on the Board rather than TU representatives to the Board. In particular relating to the collective accountabilities of the board in decision making, confidentiality and standards in public right as this relates to being an employer and have a duty to act at all times in the interests of the charity. To this end we strongly recommend the terminology should refer to them as TU Nominated Directors(or Members) rather than TU representatives.
- In relation to the specific questions in the consultation on the terms of the appointment of trade union nominees onto boards of management, these appointments should be in line with the current term for teaching (academic) and non-teaching (support) staff members to the boards of management which is a fixed-term appointment of four years. In addition, and again in line with other staff member appointments, trade union nominated staff members should vacate office if they cease to be a member of staff at the attributing college.
- The Lanarkshire Board seeks clarification if there will be training/guidance for the Trades Unions in terms of what the expectations are for TU representatives who will be bound by acting in the interests of the college and by collective responsibility and confidentiality as set out in the Code of Good Governance, the Code of Conduct and Charities legislation. The Standards Commission may also provide advice on training. For example, as set out by

our colleagues in SLC, should there be guidance as to appropriate mechanisms for resolution of differences where Trade Union Members may be conflicted as between principled commitment to Trade Union Policy and collegiate responsibility for Board decisions. There will also need to be training for the TU nominees presumably through CDN who already run courses for staff members.

- The Lanarkshire Board would also seek clarification on the role of the Board vis a vis the role of the TU on a number of aspects. For example: Where does the responsibility fall if the Board considers the nomination from the TU's as not being acceptable? The Lanarkshire Board will have two TU members nominated jointly from NCL and SLC. What mechanism will there be, if for any reason, there is not agreement between the TU's on the joint nominations? The Lanarkshire Board also seeks clarification on what would happen if the TU rep did not attend, was ill or could not fulfil their board obligations. Is this the Board or the TU's responsibility? What would happen if the TU wanted to replace the nominee but the nominee did not want to leave the board. Who would have responsibility?
- Trade Union "Nominee" or "Member" would be a more appropriate term than Trade Union "Representative" in both legislation and any associated regulations. Good governance in the sector is based on the principle that all members are acting equally in the interests of the board as a public authority and not in the interests of a particular constituency. The first three principles in the Model Code of Conduct refer to "a duty to act in the interests of the public body of which (I) am a member", taking "decisions solely in terms of public interest", and not placing oneself under any "obligation to any individual or organisation that might reasonably be thought to influence (me) in the performance of (my) duties". The question of representative status arose a decade ago as a concern around staff board members who were often considered/referred to as "staff representatives". The position adopted by the sector at that time was that staff members, while elected by a particular constituency, were not representatives of that constituency but were acting as individuals in the interests of the body on which they served/the public.

Annex A - List of organisations that responded

- Dundee and Angus College
- The Educational Institute of Scotland
- Glasgow Clyde College
- Colleges Scotland
- City of Glasgow College
- UHI West Highland
- Lanarkshire College Board
- 11 anonymous responses
- 11 individual responses



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