

Memorandum of Comments
by the EIS-ULA
on the CUC Remuneration Code

The overall approach set out in the guidance is reasonable.

Disagree

Whilst the overall approach set out in the guidance is welcome and a positive move forward, it does not go far enough in delivering the levels of independence, accountability and transparency which will now be needed to ensure that there can be public confidence in the mechanism through which the remuneration of senior staff pay is determined in universities.

This Code must be regarded in the current societal context in which University lecturers and support staff have witnessed the real value of their pay decline over the last decade with the cumulative loss to pay (compared to rises in RPI) sitting at over 17%. If inflation increases as predicted by economists advising the Treasury, then by the end of 2018, the real terms decline in pay since 2009/10 will be 19.3%.

Over the same period, reports show that there have been substantial increases in the pay of principals of UK Universities. Even setting aside the recent reports of Vice Chancellors' pay reported in the press in England, it is clear that in Scottish universities, the salaries of the principals have continued to increase significantly since 2007. A comparison of the figures shows increases of more than 50% for some with others extending to a 76% rise over this period.

At a time of austerity and the imposition of the public sector pay cap, it is little surprise that public confidence in the current arrangements is low. If the CUC wishes to address this and ensure a robust approach to governance in this area, then the proposals must be strengthened and more extensive.

As currently drafted, adherence to the code is voluntary and allows the governing bodies to use it on an 'apply or explain' basis. Given the context outlined above, the EIS does not consider that the voluntary approach is sufficient to ensure accountability for the spending of public funds. The Code clearly outlines what are considered to be *minimum* standards and yet, universities can seek to explain non-compliance of what is *de minimis* without sanction. Paragraph 17 of the Code explains that the use of the word 'must' signifies the minimum requirements for an institution 'wishing' to comply with the code. There is an uneasy juxtaposition here in that the directive nature of the language is not followed through with the explanation that HEIs may elect not to comply. The EIS believes that the Code needs to be strengthened and HEIs given a clear direction in what must be complied with for the purposes of effective governance.

Furthermore, the Code does not address the relationship between the application of this Code and the Scottish Code of Good Higher Education Governance. Reference is made in the opening section to the fact that Scottish HEIs will have

to look to the Scottish Code first and will be bound by the Scottish Funding Council's accounts direction. However, there is no further consideration of the interface between those documents and the UK draft Code. It is not clear whether in 'looking first' to the Scottish Code, that document is to be given primacy. If this is the case, then in the interests of clarity and consistency of application, this should be clearly stated and areas of divergency or inconsistency highlighted for the benefit of all involved. This highlights the increasingly different context in which the Scottish Universities are operating and the importance in ensuring that there is clarity of approach in the important areas of governance.

The EIS-ULA also believes that the guidance around the constitution and operation of the Remuneration Committees could be strengthened and has explored this in greater detail in response to relevant questions later in the consultation.

2. These proposals will lead to more transparent explanations of senior post holder remuneration being provided to the public.

Strongly disagree

See above

3. These proposals will improve the linkage between the remuneration of senior post holders and other staff within institutions.

Strongly disagree

The EIS-ULA is unclear as to how this voluntary Code will improve the linkage between the remuneration of senior post holders and other staff within the institutions. Currently, the remuneration of the other staff within the universities is largely governed through the process of collective bargaining at New Joint Negotiating Committee of Higher Education Staff (New JNCHES). There is a 51 point scale and the scale is negotiated by New JNCHES. The points within the salary scale are integrated within each HEIs salary structure. This system ensures transparency of process, accountability and leads to greater parity across the sector.

The EIS-ULA believes that this scale should be extended to senior post holders in the Universities and pay collectively bargained at a national level.

The process outlined in the guidance does not meet this objective but could, if strengthened, go some way to start to address the arbitrary pay increases which have been witnessed in senior staff pay in the last decade. As currently drafted, however, it does not meet this objective. At first glance, it provides an air of transparency but when this is considered from an objective perspective, there are concerns about its validity. There is no requirement for staff and student representative to form part of the Remuneration Committees of HEIs. Whilst there may be the opportunity for staff and students to comment on the recommendation of the Remuneration Committee or in some cases, to sit on the Remuneration Committee, this does not guarantee full consideration of all relevant factors or full participation of those members in the process. The EIS-ULA believes that the Code should be amended to ensure that there is a requirement for representation from these groups on the Remuneration Committees.

4. These proposals will improve the governance of senior post holder remuneration.

Disagree

The EIS-ULA is not satisfied that the proposals will impact significantly on the governance of senior post holder remuneration. It has concerns about the links between principals and those members of the Remuneration Committee with whom he or she may have built a relationship through involvement on the Board. As currently drafted, the principal is also entitled to attend the Remuneration Committee when other senior post holders' pay is being considered and assessed. This tarnishes the objective independence of the process and the arguments against this are more fully canvassed in relation to the response given to the principles of the Code.

5. This guidance will assist institutions in demonstrating the value for money secured from the funds at their disposal.

Strongly disagree

Value for money is by its nature a subjective assessment. It will be largely determined by the view which is taken of the purpose of education and the role of the universities in delivering that vision. This process will at best explain how an individual institution has determined it will spend the public funding available. The individual institution may consider that value for money has been achieved if the strategic objectives of the institution are fulfilled. This may not equate with what government determines is value for money. There should be a link here to the strategic direction and overview of government educational policy and strategy to ensure that the funds are being spent to deliver these objectives. Such objectives have been determined by a democratically elected government and 'value for money' must be assessed in this context.

As the current system only makes University Courts responsible to themselves for their own performance; there is no driver for ensuring that public money is well spent or indeed, to assess value for money in this context. In other words, whilst public money pays for the majority of the Scottish HE sector, the sector is not accountable to the public in any way. The EIS believes that this is a democratic deficit.

The EIS does believe that HEIs should be autonomous institutions, part of a coherent HE Sector but also different to each other and individually able to respond to their communities and stakeholders.

However, the EIS believes that autonomous HEIs must also be accountable, and that current HEI autonomy prevents accountability. The HEI Governing Bodies do not offer accountability – indeed they primarily seem to serve the interests of the HEIs themselves.

The EIS believes that there should be a link to Parliament (or the Government). The EIS believes that HEI Governing Bodies should be overseen by Parliament,

and that Parliament should have a range of options available if the Governing Body breaches the statute, for example:

1. Issue an improvement notice with deadline.
2. Appoint a new Chair of the Governing Body (Rector) prior to the election of a new Rector.
3. Dissolve a Governing Body and take direct control until a new Governing Body is constituted.

The EIS believes that neither the Scottish Government nor Parliament should normally have governance or managerial control at any HEI, but that it should have oversight and scrutinizing powers and responsibility.

The EIS does however believe that that the Scottish Parliament should plan and create a coherent HE Sector in Scotland, and that HEIs should have regard to such Government plans. Value for money should be assessed and considered in this context.

6. This code makes it clear that it is independent members of the governing body who are accountable for the remuneration of senior post holders.

Agree

Whilst the EIS-ULA welcomes this statement, it would wish to highlight that the independent members should also include the student and staff representatives.

7. The preamble gives sufficient context to ensure that those reading the code understand the nature of the task in determining remuneration within HE.

Agree

8. The code uses the notion of 3 elements required for fair and appropriate remuneration - a fair and appropriate level; procedural fairness; and transparency and accountability. Do you agree with these?

Agree

The EIS-ULA welcomes the specific inclusion of these three elements in the determination of fair and appropriate remuneration. However, it would recommend that these elements are extended to take account of the principles underpinning the Scottish Code.

The EIS-ULA believes that the commitment expressed in the Scottish Code to the Nine Principles of Public Life in Scotland provides a sound basis for the engagement and interaction of board members in the determination of fair and appropriate remuneration. By promoting an ethos founded on the principles of integrity, honesty, accountability and respect, individual board members should have the confidence to challenge decisions, explore issues thoroughly and act as critical friend in the governance process.

The inclusion of the principles of fair work and the reference to the Fair Work Framework in the Scottish Code are key aspects of driving forward an Institution which is balanced in terms of its rights and responsibilities and value the contribution of all. The EIS-ULA would suggest that the UK Code should reflect these nine principles and that they should form the foundations of both documents. The standards and duties applicable to HEIs should be uniform across the UK and it would be difficult to justify lower standards for those institutions not in Scotland.

10. Page 4 - Element 1 is a reasonable statement of what a fair and appropriate level might mean.

Whilst the statement in element 1 comprises some of the salient features of the definition of a fair and appropriate level of remuneration, the EIS-ULA would suggest that this definition requires further exploration and expansion.

Reference is made to performance related pay, attraction and retention payments, bonuses etc. These must all operate within a policy framework which is applied consistently and transparently across the institution, otherwise there may be issues in terms of Equalities legislation. The same policies should be applicable to all staff in the universities and should be applied consistently. An analysis of the payments made and a report compiled on the application of these policies across the institution should be produced annually and considered by the Remuneration Committee, the Board and the SFC or equivalent governmental oversight body.

Whilst HEIs are not public bodies, a considerable level of public funding is allocated to the sector each year. The importance of public accountability must therefore be emphasised in this section and consideration given to the concept of fair and appropriate levels of pay in the context of government pay policies.

11. The set of principles that underpin Element 1 are reasonable.

Are there any other principles that should be included for Element 1? Please explain.

See above.

There must be consistency and cohesion between the UK and Scottish codes, particularly if both Codes are to apply to HEIs in Scotland. The EIS-ULA would question the rationale of to different standards applying to Universities in different parts of the UK. This would not make for consistency in governance across the sector.

12. Element 2 is a reasonable statement of what procedural fairness might mean.

The EIS-ULA would endorse the statement that procedural fairness is an integral aspect of good decision making and should assist in allowing the decision makers to reach fair and reasonable decisions.

The definition of procedural fairness does not, however, appear to provide guidance on minimum standards which should be included to ensure that decisions

can be challenged or scrutinised as part of the process. This would be a central aspect of procedural fairness and should be included in the process.

This section also states that the framework must use 'appropriate evidence' and assess 'the value of the roles, the context and individuals' performance in them'. The inclusion of the reference to an assessment of the individuals' performance would appear to suggest that this will be an integral aspect of procedural fairness. However, this approach is at variance with the statement in relation to element 1 which states that performance related pay will be a matter for the individual HEIs. This anomaly should be addressed and a determination made as to whether this should be included if the Code is to ensure internal consistency.

The definition also refers to 'competent people' being involved in the process but does not define criteria for determining competence in this context. Further guidance on what is envisaged by this provision should be included to ensure clarity of understanding and consistency of approach.

The EIS-ULA believes that the decision making body should include representation from the trade unions and students to ensure that there is appropriate balance, transparency and consistency of approach across the sector. Whilst Appendix 2 appears to reflect some involvement with trade unions and student representative bodies, the definition of procedural fairness in this section does not appear to meet the minimum standards set in the Scottish Code of Good Governance. The Scottish Code states that the HEI 'is expected to seek the views of representatives of students and staff of the Institution, including representatives of recognised trade unions, in relation to the remuneration package of the Principal and the senior executive team.' It goes on to provide that 'this requirement may be implemented in part through relevant members of the governing body serving as members of the remuneration committee or attending its meetings, or may be achieved through separate consultation with representatives of the student and staff communities. The relevant process should form part of the policies and processes approved by the whole governing body'.

Whilst not fully meeting the standards which the EIS-ULA would like to see applied in ensuring that trade union and student representation form part of the Remuneration Committee, the Scottish Code goes some way to providing a degree of procedural fairness in this regard. This section of the UK Code should mirror this in its guidance on procedural fairness, otherwise a two tier approach will be adopted across the UK. Clarification would be welcomed as to the relationship between the definition given in this section and Appendix 2 of the consultation document.

The EIS-ULA welcomes the inclusion of the principle which provides that no one should be involved in deciding his or her own remuneration and that the principal should not be a member of the Remuneration Committees. However, the EIS-ULA believes that this statement should go further in ensuring that principals should have no involvement with or right to attend such committees. Currently, the Scottish Code provides that principals are consulted on remuneration relating to other senior post-holders. If the process is to be procedurally fair, this anomaly must be addressed. Involvement in setting the remuneration level for other senior

post-holders will inevitably have an impact on the level of remuneration of the principal. The EIS-ULA could not envisage a situation in which a principal would receive less in terms of remuneration than another senior member of staff. So, from an objective viewpoint, the principal could be regarded as indirectly influencing his or her remuneration.

To ensure that the process is independent, fair and transparent, the principal should have no involvement in the role of the Remuneration Committee and this should be expressly stated as one of the principles underpinning procedural fairness.

13. The set of principles that underpin Element 2 are reasonable

Are there any other principles that should be included for Element 2? Please explain.

Whilst the EIS-ULA believes that the reference to determining remuneration in the context of each institution's approach to rewarding all its staff will provide a degree of internal consistence, it will not ensure sectoral consistency and takes no account of the impact of collective bargaining through New JNCHES in this process.

If the procedure was to be truly fair and reasonable, then the EIS-ULA would argue that the remuneration of senior staff should be determined in the same manner as other staff, with negotiation through the New JNCHES process with reference to one spinal pay column.

As indicated above, although the second principle states that no one can have 'any part' in deciding their own remuneration, the current procedures set out in the Scottish Code ensure that the principal has an involvement in the setting of senior staff pay. This will clearly have an indirect impact on his or her own level of remuneration and the Scottish Code would have to be reviewed in the light of this principle.

The inclusion of the word 'expert' in the description of those members of the Remuneration Committees may effectively exclude a range of independent board members who should be constituent members of this committee if there is procedural fairness. There is no need for a full committee of experts and indeed, this appears to be acknowledged in Appendix 2. This drafting of this section must be clarified to ensure that it is clear what approach is being taken in relation to the composition of the Remuneration Committee and the role of experts on it.

Court members and therefore members of the Remuneration Committees need to have a range of backgrounds and experiences and have the confidence to discharge a full role in the governance processes. The key is independence. There is a danger that lay people, including trade union and student representation, may be excluded on this basis and the EIS-ULA believes that the number and role of 'experts' required to sit on the Remuneration Committee should be clarified in this third principle. The Scottish Code specifically states that the Committee should comprise of a majority of lay members. This approach should be followed.

14. Element 3 is a reasonable statement of what transparency and accountability might mean.

The EIS-ULA welcomes this commitment to transparency and accountability as these principles form the foundation of good governance. Society has a keen interest in ensuring that taxpayers' funds are being properly used and managed in the interests of students, the economy, society and also in line with the current educational policy of the relevant government. This is intrinsically linked to accountability.

Although the draft Code makes a commitment to these principals, it does not consider how this would operate in practice. Currently, in Scotland, the Higher Education sector is not, unlike further education, considered by the Audit Office to be part of the public sector. Despite this the Scottish Government channels a considerable amount of public money into the sector.

Parliament has enabled a number of non-departmental public bodies to regulate or scrutinise aspects of HEIs, these include the Scottish Funding Council, the Office for Scottish Charity Regulator and the Public Services Ombudsman. Parliament also has the ability to call persons to give evidence to parliamentary committees.

The EIS believes that the HE sector needs effective scrutiny and endorses the role which the SFC and OSCR, together with Parliament have to play in this. Ultimately, considerable sums of public money are provided to institutions which are effectively underwritten by the state although they are autonomous charities. Infrequent Audit Scotland reports also provide a rare spotlight into whether this significant public investment in the HE sector is providing value for money.

It is clear that Universities see themselves as outward looking supranational bodies that have left Scotland behind – and yet they are reliant on Scottish public funding. Furthermore, they seem to have moved from education entities seeking to work in a business-like way to businesses that deal in education. Both these fundamental changes must have taken place with the tacit support of the Government, without any meaningful public discourse on the nature or purpose of Scottish Higher Education

The Code correctly identifies the collegial nature of institutions and the fact that the success of the institution is a product of collective efforts. This statement is a welcome acknowledgement of the commitment and dedication of the staff members who have worked tirelessly to support their students and the objectives of the universities over the last ten years but who have been 'rewarded' with a series of real terms pay cuts.

The Code suggests that the process for determining senior post-holders' remuneration should take account of the relationship between senior staff and all other employees. It concludes that the aggregate senior post holder remuneration would not normally be expected to increase faster than the average of all HEIs staff. There are a number of issues with this approach. Firstly, the inclusion of the word 'normally' envisages a situation in which this could occur. The EIS-ULA cannot see any justification for this approach when the increases which have been given over the last decade ensure that there can be no parity as a base line

assessment or comparator. Secondly, it must be acknowledged that in real terms, the percentage increase of a £100,000 salary will amount to considerably more than the same percentage increase for a member of staff at salary point 10 on the scale. This is not an adequate or fair comparison.

Thirdly, this does not reflect the approach recommended by the Scottish Government in setting the public sector pay policy. Whilst the EIS-ULA acknowledges that the universities are not strictly speaking within the public sector, the consultation document acknowledges the importance of transparency and accountability in relation to the spending of public funds. It would therefore be appropriate to have regard to this. This policy focuses on fairness and affordability and recognises the impact which austerity has had on the lower paid. It places a limit on the earnings of those earning £80,000 or more to £1,600. It limits the pay progression for Chief Executives to a maximum of 1.5%; maintains the suspension of non-consolidated performance related pay and continues to expect a 10% pay reduction in new Chief Executive remuneration packages.

Whilst the EIS-ULA believes that this should be applied to all HEIs, it also believes that there needs to be a whole sector pay policy and that it should be funded as one sector. This would then lead to greater transparency of processes and may result in greater consistency across the sector.

15. The set of principles that underpin Element 3 are reasonable.

Are there any other principles that should be included for Element 3? Please explain.

See above.

16. The explanatory notes are useful.

Yes.

There are some explanatory notes that are problematic. There are principles that need further explanatory comment.

Yes:

- (i) The note which deals with remuneration taking account of the context in which the institution operates would benefit from further reference to the gender pay gap and should highlight the importance of HEIs meeting their statutory obligations in this regard within the agreed timescales.
- (ii) The note which refers to the link between remuneration and value through performance is unhelpful. Experience does not always equate with a right to higher pay. The link between this and performance related pay needs to be more fully considered.
- (iii) The note which relates to the range and value of the roles takes no account of the links between universities and the delivery of wider governmental policies or of the role which senior staff and the principal, in particular, have in the delivery of key strategy objectives. It is also concerning that this note makes no link to the consistent application of policies such as recruitment, attraction and retention and

their application to the wider staff. If the Code wishes to ensure transparency, consistence and fairness of process, then this should be highlighted here.

- (iv) The observations made in paragraph (iii) above also relate to the section dealing with performance related pay. The EIS-ULA believes that the Remuneration Committee has a role in taking an objective overview of performance related pay in the individual institution rather than the Chair of the governing body. Concerns have already been outlined in this response about the potential of losing objective impartiality if the Chair has a role in the determination of this part of the remuneration package, given the potential close working relationship between the Chair and the principal. A clear and distinct separation should exist between the discharge of the governance and the executive functions.
- (v) The EIS-ULA believes that paragraph 52 of the draft Code is problematic. In effect, it acts as a barrier or disincentive to staff and student members sitting on Remuneration Committees. The EIS-ULA is unclear how this will sit with the position outlined in the Scottish Code and would suggest that the emphasis of this explanatory note is changed to take a more inclusive approach.
- (vi) In relation to paragraph 67, the EIS-ULA would suggest that if there is a desire for greater assurances around value for money, then the Remuneration Committees' reports should be subject to external review by a body such as the Audit Commission.
- (vii) Appendix 2 sets out the details of the proposed updated HE Code of Governance. This refers to the Remuneration Committee composing of a majority of independent members but does not state that they should be lay members as is specified in paragraph 78 of the Scottish Code. The EIS-ULA believes that the Codes should be consistent on this point and would welcome assurances that there will be a majority of lay representation on these Committees throughout the UK.

Appendix 2 indicates that the Remuneration Committee report would not normally be withheld from any members of the governing body. The EIS-ULA cannot envisage circumstances when withholding of this information would be appropriate if the principles of transparency and accountability are to apply. Clarification would be welcomed as to the range of circumstances in which it is thought that it may be appropriate to diverge from the norm.

I believe that this code will help to improve public confidence in the role of remuneration committees in HE.

Whilst the EIS-ULA welcomes the opportunity to consider this important issue and to respond to the consultation, it is not convinced that the current proposals are far reaching enough to restore public confidence in the remuneration process for senior staff. It is also unclear as to how the proposals contained in this consultation will supplement the provisions outlined in the Scottish Code. Concern has been expressed in this response about the relationship between these proposals and the existing Scottish Code, the potential for overlap, divergence of approach and

inconsistency between the two. It is essential that these concerns are addressed moving forward to ensure that there is clarity, transparency and consistency across the UK in this important area.