

This response was submitted to the [Children, Young People and Education Committee inquiry into the general principles of the Tertiary Education and Research \(Wales\) Bill](#)

TER 38

Ymateb gan: [Gweithgor Democratiaeth/Llywodraethu Pwyllgor Sector Addysg Uwch UCU Cymru](#)

Response from: [UCU Wales Higher Education Sector Committee Democracy/Governance Working Group](#)

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## A principle of the bill – education run for the public good

We interpret the TER (Wales) Bill as aspiring to make provision for an integrated post-16 education sector working for the public good: for learners, educators, the community, the economy and the people of Wales. As the TER summary document states, it will be important to shape a system that works for the people of Wales and the Welsh economy. The Bill provides an important opportunity to ensure that higher education (HE) establishments in Wales are in fact run for the public good, and for the good of their students and staff. Many of these institutions in Wales were established with funds originally donated by members of the public more than one hundred years ago, and continue to receive this public support through voluntary donations, charitable funding, and UK and Welsh Government funding.

## Concerns

There are, however, growing concerns that these charitable objectives are being neglected by the desire of those in leadership positions to prioritise institutional competition at the expense of collaboration and collegiality, turning them into something more akin to profit-making businesses rather than establishments working for the public good.

Is this something that the TER (Wales) Bill can help address?

## Background

Let us first give some background to the sector and some recent history, before coming to proposals which we believe will both address the aspirations of the bill and will work to significantly improve matters within the higher education sector.

Wales has 8 higher education institutions: three universities established as HE Corporations (post-92) and five established under royal charter (pre-92).

## Post-92 Institutions

The funding support and arrangement for the three post-92 institutions means that they have been able to significantly develop their role from their pre-92 existence, finding new ways to serve their communities. With their expanding influence and the perceived benefits resulting from growth, internal concerns about governance at the three post-92 institutions has been less intense than for the pre-92, or royal charter, universities. However, this is unlikely to continue, based on various bad experiences of HE Corporations in England.

## Pre-92 Institutions and governance

The primary concern at this point, rests with governance of the pre-92, Royal Charter, institutions in Wales because of the ongoing weakening of the governance arrangements (de-democratisation and a reduction

in checks and balances within their governance structures) leading to many of the problems we are currently seeing. The original models of governance adopted by the Welsh royal charter universities provided checks and balances, typically through a university Court which arbitrated and balanced the Council and Senate. The courts were composed of a diversity of public servants and interest group representatives, providing oversight and guidance to the university. In recent years most Universities have reduced the role of Courts, with some effectively removing them from governance and retaining them only as outreach bodies.

## **Marketisation**

These tripartite arrangements worked sufficiently well, not being a cause for concern, probably right up until the onset of the marketisation of higher education in the last 10-15 years. The impact of increased marketisation has resulted in these five older HE institutions increasingly being run as commercial businesses. There is now sufficient evidence that they are being steered in a way which serves the career aspirations of the cohort of individuals running them, but is not delivering the full potential of the education and research objectives set out in the royal charters of these institutions.

If there ever was a golden age of university governance in Wales, rooted in the communities that established and participated in the prospects of those universities, it has become clear that with the marketisation of university education, the tripartite arrangement of checks and balances has proved insufficient to prevent the 'executive capture' we are now seeing. Marketisation changed priorities and focus, which has led to a gradual removal of the provisions of effective oversight from these tripartite governing committees, most notably by the systematic removal of perceived opposition, and a reduction in staff members on 'Council' (governors) recruited from the "chalk/coal face" of the university: individuals that have had the organisational knowledge and institutional memory necessary to challenge unwise proposals.

## **Lay oversight**

Lay council members are, in theory, supposed to provide the necessary checks and objective oversight. However, there is sufficient evidence that university council meetings are frequently loaded with large quantities of paperwork resulting in lay committee members being unable to effectively scrutinise (or make) proposals because of the 'bandwidth' needed to carry out the role properly. With a reduced number of staff members on council, there are now fewer members present with the inside knowledge and wherewithal to flag risks. Scrutiny and direction of executive decision-making (implementing) is therefore further weakened. Staff members that are being recruited to university councils tend to be senior staff members who are either already part of the executive or are direct reports of the executive (and thus can be and *are* pressured). Staff input into governing councils, from staff members that are unintimidated and independent of the executive, is essential.

## **Failures of governance – Camm Report**

In recognition that there have been failures of governance, HEFCW, Universities Wales and Chairs of Universities Wales commissioned a review led by Gillian Camm. UCU Wales has now made a careful examination of the report and it is clear that in spite of a few nice sounding proposals, due to a lack of substance, the primary outcome of several years of governance changes since the Camm review has been to entrench the status quo with senior executives retaining the ability to determine who should participate as governors further extending executive capture under a cloak of boardroom protocols derived from the private sector.

Why should any of this be a concern? It is fundamental to good governance that the checks and balances are effective. Governors should proactively direct the institution, not just rubber stamp the advice of their executives. The reality is that with the reduced levels of scrutiny in current governance structures at most Welsh HE institutions, it is now all too easy for university executives to steer where they will, and it is almost impossible to hold them to account for their actions within a meaningful timeframe. Lay council members these days are being head-hunted and recommended by the executive, and it is not clear that there are workable mechanisms for removing council members not performing or behaving appropriately. The message communicated indirectly to lay council members in these circumstances is that their role is about “supporting the executive’s well thought out proposals, if they want to see a successful institution”.

As a consequence of these culture changes, we have seen several highly-damaging and expensive failures of governance in the last 10 years. These failures in Welsh universities have been widely acknowledged, for example the very public dismissal of a vice chancellor and senior academics:

- [www.bbc.co.uk/news/uk-wales-49129345](http://www.bbc.co.uk/news/uk-wales-49129345),
- [www.bbc.co.uk/news/uk-wales-52374416#:~:text=The%20former%20vice%20chancellor%20at,July%202019%20for%20gross%20misconduct.](http://www.bbc.co.uk/news/uk-wales-52374416#:~:text=The%20former%20vice%20chancellor%20at,July%202019%20for%20gross%20misconduct.)

What follows is an inexhaustive list of failures affecting many of our Welsh HE institutions.

There have been draconian proposals for compulsory redundancies:

- [www.bbc.co.uk/news/uk-wales-54651073](http://www.bbc.co.uk/news/uk-wales-54651073),
- [www.bbc.co.uk/news/uk-wales-mid-wales-43572282](http://www.bbc.co.uk/news/uk-wales-mid-wales-43572282),
- [www.walesonline.co.uk/news/local-news/staff-in-tears-more-100-16425822](http://www.walesonline.co.uk/news/local-news/staff-in-tears-more-100-16425822).

This failure of oversight extends to inadequate academic standards:

- [www.bbc.co.uk/news/newsbeat-48717840](http://www.bbc.co.uk/news/newsbeat-48717840),

unmonitored, excessive, and unsustainable workloads:

- [www.bbc.co.uk/news/uk-wales-47296631](http://www.bbc.co.uk/news/uk-wales-47296631),
- [www.walesonline.co.uk/news/education/cardiff-university-staff-working-unhappy-17972757](http://www.walesonline.co.uk/news/education/cardiff-university-staff-working-unhappy-17972757),
- [www.walesonline.co.uk/news/wales-news/breaking-point-more-more-staff-16503609](http://www.walesonline.co.uk/news/wales-news/breaking-point-more-more-staff-16503609),

allegations of nepotism:

- [www.bbc.co.uk/news/uk-wales-south-west-wales-32908687](http://www.bbc.co.uk/news/uk-wales-south-west-wales-32908687),
- [the-eye.wales/still-taking-it-on-the-chan](http://the-eye.wales/still-taking-it-on-the-chan) ,

inappropriate use of public money:

- [www.bbc.co.uk/news/mobile/uk-wales-15200060](http://www.bbc.co.uk/news/mobile/uk-wales-15200060),
- [www.walesonline.co.uk/business/business-news/struck-off-dentists-companies-funding-2025569](http://www.walesonline.co.uk/business/business-news/struck-off-dentists-companies-funding-2025569),

high debt burdens:

- [www.walesonline.co.uk/news/education/welsh-universities-cardiff-swansea-bangor-15969375](http://www.walesonline.co.uk/news/education/welsh-universities-cardiff-swansea-bangor-15969375),
- [www.timeshighereducation.com/news/bangors-ps237-million-pfi-bill-behind-job-losses-says-union](http://www.timeshighereducation.com/news/bangors-ps237-million-pfi-bill-behind-job-losses-says-union).

This negative media portrayal results in adverse publicity for relatively minor matters:

- [www.pressreader.com/uk/western-mail/20201216/281767041815903](http://www.pressreader.com/uk/western-mail/20201216/281767041815903).

The cumulative impact of this regular appearance in the media risks reputational damage, which may well deter recruitment, assessment for league table (e.g. QS, Times) rankings, and investment.

## Treating staff as a burden

However, there has been an effect which has been more gradual and more latent. Staff are no longer treated as a primary asset (c.f. “*come to our university where you will receive an outstanding education in the company of our highly qualified, esteemed and renowned academics*”) but instead are treated as a burden and a cost (c.f. “*we need to fit your burgeoning workload into our schema so you’ll need to spend less time on session/lecture preparation, assessment and contact time*”), fully misunderstanding the fundamental nature of a university education.

Yes, buildings are important and fine buildings look good, creating for a short period an “appeal” factor with students and staff fortunate enough to be relocated to work in them. However, the focus needs to be on supporting the staff delivering education and providing the resources staff need to deliver, rather than on schemes addressing a marketing agenda.

Cherish and value the staff, and in the medium to long term they will more than deliver what is needed to attract students to study and learn in Wales. Many, if not most university staff members are innovative and creative but the environment and management culture which has developed in the last fifteen years is squandering that contribution except for a few favoured institutional “stars”.

## How can the TER (Wales) Bill work to improve matters?

Having outlined some major concerns, let’s come back to the question of how can the TER (Wales) Bill work to improve matters within the higher education sector?

### 1. Balancing regulation with governance to ensure sustainable Higher Education Institutional autonomy

We recognise that this bill is about regulation, but the boundary between regulation of the sector and institutional governance is recognised within the bill, by setting out criteria for institutional registration. We recommend that this boundary be very carefully and thoroughly explored.

During evidence given to the *Children, Young People and Education Committee* on 2<sup>nd</sup> December, we heard from some of the executive leaders of the Welsh HE sector, that institutional autonomy is essential for our higher education establishments, if we are to maintain the outputs expected.

Institutional autonomy is supported within university academia, but on the understanding that this autonomy exists so that the institution can focus on the objective of serving the public good rather than serving a partisan agenda. It is our view that this can only be achieved sustainably if universities are run democratically by their own staff and students electing staff, student and lay members as governors to university governing bodies, rather than the senior executives who are currently dominating and running university governing bodies.

**Democratic provisions** will maximise the collective intelligence that can be brought to bear on the challenges facing our higher education institutions whilst minimising the scope for empire-building and institutional harm resulting from the personal ambition of out-of-control executives.

What is needed is a way to ensure that the governing bodies of these institutions incorporate a range of voices that have at heart the best interests of these institutions. If individual governors can be drawn from different stakeholder segments and, proposed and elected democratically then we can ensure effective, responsive and politically independent governing bodies for each of our HE institutions working both to support the institution but effectively choosing, directing and scrutinising the executive. Stakeholder segments could include non-executive staff representatives (e.g. academic staff, non-academic staff),

another would be trade unions, student unions and finally lay members drawn from the wider community - some of whom could also be elected by staff.

The commission must not be established in such a way that it has the power to micromanage our institutions and turn them into public quangos run and staffed by civil servants tied to government diktat, but must have the power to ensure that robust democratic institutional governance is in place. **We are asking for "democratic governance" to be a condition of registration.** This is what will ensure a reasonable balance between governance and regulation.

Various kinds of democratic governance arrangements are responsible for running highly successful, socially beneficial and justly famous universities such as [Oxford](#), [Cambridge](#), their 70-odd [colleges](#), [KU Leuven](#) (Belgium, twinned to Cardiff University; [rector elected, students get 10% of votes](#)), [Trinity College Dublin](#) ([provost elected](#)), [Mondragon University](#) (Basque Country, Spain, [another small, semi-independent nation about the size of Wales](#)), all within a short distance of Wales, and further afield, the [University of Buenos Aires](#) in Argentina (follow links for details of their constitutions).

**We recommend** that some simple amendments to the TER (Wales) Bill, which we have set out as a proposal in the appendix for this document, would provide a framework requiring Welsh HE institutions to incorporate improved democratic representation on their governing bodies, enabling them to autonomously self-govern for the public good, maintaining harmony with charity law and other provisions, and at the same time putting into practice the spirit of good social partnership.

## 2. Academic freedom

The TER (Wales) Bill is far too weak on individual academic freedom, which university leaders are currently trying to suppress, under the plausible cover of maintaining freedom of speech. However well-meaning they are, university leaders and administrators lacking a deep understanding of a particular field should *not* be ordering individual academics to perform or not to perform particular research. This includes the plausible sounding 'corporate' reasons of 'economies of scale' or 'critical mass' or 'playing to our strengths', which are frequently pretexts used by empire-builders. Experience shows that critical mass can often be better achieved by external collaborations, which can have numerous other benefits such as cross-fertilisation between different groups and institutions. Those with the best knowledge should be allowed to make teaching and research decisions as they see fit, and do the best work they can. In the aggregate, society as a whole will benefit from this in the medium to long term, as it has in the past. Power about research decisions should never be concentrated in the hands of too few, unknowledgeable people, or in the hands of those who might have a conflict of interest with the general good.

**We recommend** that revisions be made in section 15 part 1 of the bill to ensure that *both* university institutions *and individual* academic staff members have academic freedom. Further to this a third clause should be inserted determining the rights of individual academics ensuring individuals are free to research, debate, and teach without fear of reprisals.

### **3. Freedom of speech**

This principle is a cause of contention within Higher Education institutions, in all 4 countries of the UK. There are fears among educators that the current thrust of freedom of speech upon this individual sector is in-fact a move to allow outside influences to meddle in what is said and taught in schools and campuses. **We recommend** that the relationship between academic freedom and freedom of speech needs much deeper thought and adjustment of the wording.

### **4. The composition of the regulatory authority.**

The documents describing the bill contain sections listing students as stakeholders and sections on student voice, which we welcome, however student voice must be carefully balanced with staff voice, and we are perplexed by the lack of consideration given to the contribution staff can make. We note that there is no list of stakeholders within the bill.

We propose that the constituency with the greatest interest in ensuring educational and research standards, and securing the success (and continuation) of the HE sector, are the employees, and their representative bodies, the trades' unions. As perpetual bodies, the HE trades' unions have the greatest interest in the long-term success of the sector. We are pleased to see that staff trade unions are to be included in the regulator. We have a concern that there may have been a revolving door between university executives/governors and HEFCW and there should be safeguards built in to the new commission to minimise this.

**We recommend** that

- (i) whenever stakeholders are listed in bill or in supporting documents, staff be included;
- (ii) further clarity is required regarding the role of the trades' union representatives, to ensure that it is meaningful;
- (iii) consideration needs to be given to how many trade unions are required to achieve this, while representing the vast diversity of the sector; and we view it as essential that voting privileges are allocated;
- (iv) the committee consider methods for engaging with both elected and paid union officials.

## Appendix: Proposed Amendments to TER Bill.

### 1. Part 2, Chapter 1, Section 29

Insert into Section 29 (ongoing mandatory registration conditions):

"(b2) for universities, a condition requiring democratic governance; at a minimum:  
(i) at least half of governors must be proposed and elected by staff,  
(ii) at least one governor must be chosen by each campus trade union,  
(iii) at least two governors must be elected by students;"

[43 words]

### 2. Education Reform Act 1988 Schedule 7A

Sets rules for post-92s' Wales Higher Education Corporations' top-level constitutions - Instruments of Government. Amend in a technical manner, to be consistent with the above. This can be done, preferably in the TER Bill itself, or by Order of the Welsh Ministers (subsidiary legislation, Statutory Instruments).

Including (but other changes may be needed):

(3)(1)(a) Delete "and not more than twenty-four" so it reads:

("The corporation shall consist of—

(a) not less than twelve ~~and not more than twenty four~~ members appointed in accordance with the following provisions; and")

(4)(3) Delete "independent" and insert "proposed and elected by staff" after second "members" so it reads:

"In making such a determination, the corporation shall secure that at least half of all the members of the corporation, when constituted in accordance with the determination, will be ~~independent~~ members proposed and elected by staff."

(3)(2)(b) Replace second "up to" with "at least" and "may" with "must" so it reads:

"up to two may be teachers at the institution nominated by the academic board and ~~up to~~ at least two ~~may~~ must be students at the institution nominated by the students at the institution; and"

Insert at end of (3)(2)(b) "at least one must be chosen by each campus trade union; and"

Delete (3)(4)

~~"A person (other than a person appointed in pursuance of sub paragraph (2)(b) above) who is—~~

~~(a) employed at the institution (whether or not as a teacher);~~

~~(b) a full time student at the institution; or~~

~~(c) an elected member of any local authority,~~

~~is not eligible for appointment as a member of the corporation otherwise than as a co-opted member."~~

Delete (4)(4)

~~"Such a determination shall not have effect so as to terminate the appointment of any person who is a member of the corporation at the time when it takes effect"~~