University Court, 2 May 2014

Draft Ordinance 206: Composition of Court

Report from the Secretary of Court

1. **Introduction**

   At the February meeting of Court, it was agreed to initiate a fresh consultation exercise on Draft Ordinance 206. Court also agreed at that meeting to establish a Governance working group to review responses to the consultation and to make recommendations to Court.

   Substantial responses to the consultation exercise were received from the 16 April meeting of the General Council Business Committee and from the 17 April meeting of the Council of Senate. Court’s Governance Working Group reviewed these responses when it met on 22 April. Two individual responses were also received to the consultation exercise.

   Attached to this covering paper, for reference, are the following documents:

   A the consultation document issued by Court on 19 February;
   B the minute of the Governance working group meeting of 22 April;
   C the response to the consultation from the General Council Business Committee, following the Committee’s meeting on 16 April;
   D a note from the University’s lawyer responding to certain procedural matters that were raised by members of the General Council Business Committee;
   E the response to the consultation from the Council of Senate, following the Council’s meeting on 17 April;
   F two individual submissions made in response to the consultation paper;
   G a notice advertising the recent vacant position of Rector; and
   H a legal opinion on the question, discussed later in this paper, of whether or not the role of the Rector should be considered to be independent [to follow].

2. **The views of the General Council Business Committee**

   On 16 April, the General Council Business Committee voted by 11-8 to oppose Court’s proposal to reduce from 5 to 2 the number of General Council Assessors on Court (and correspondingly to increase by 3 the number of co-opted members). This has been proposed by Court with a view to helping it satisfy the requirement, now reflected in the Scottish Code of Good HE Governance, that ‘There shall be a balance of skills and
experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence'. The Business Committee has recorded 14 specific points that give it cause for concern regarding Court’s proposals. As its minute records (Document B), the working group has considered each of the points raised by the Business Committee. While it does not consider that Court should amend the draft Ordinance in response to these points, it is proposing changes that would go some way to addressing concerns that have been raised by the General Council Business Committee. The working group

RECOMMENDS to Court:

1. that Court confirm its intention to reduce by 3 the number of General Council Assessors, from 5 to 2, and to increase by 3 the number of Co-opted members;
2. that the membership of the Nominations Committee should be amended such that in future it will always include a General Council Assessor;
3. that, in the future recruitment of co-opted members, Nominations Committee should liaise with the General Council Business Committee with the aim of encouraging applications from graduates of the University; and
4. that, in situations where graduates of the University are demitting office as co-opted members of Court, the job specification for their replacement should state that applications from Glasgow graduates are particularly welcome.

3. The Views of the Council of Senate

Discussion at the Council of Senate focused on the proposed reduction from 7 to 5 in the number of Senate members, and the corresponding increase of 2 in the number of Co-opted members. This has been proposed by Court principally with a view to meeting the Governance Code requirement that ‘The governing body shall have a clear majority of independent members, defined as both external and independent of the institution’. While the Council of Senate recognises the need for an independent majority on Court, it voted strongly against a reduction from 7 to 5 Senate Assessors, and strongly for a counter-proposal that the number should be reduced from 7 to 6.

The Governance Working Group is conscious that the Council of Senate has sought to identify a way forward that will meet the requirement of the Code, while at the same time maintaining a strong presence of Senate members on Court. It is also the case that the Privy Council specifically asked that Court’s proposed reduction to 5 Senate members should be the subject of further discussion with Senate. While Court should take these points into consideration, the working group is clear that its principle concern should be that the new Ordinance is compliant with the Code of HE Governance. The working group

RECOMMENDS to Court that:
1. if Court is confident that, in accepting the Council of Senate’s counter-proposal, it can demonstrate compliance with the Code of HE Governance, then the Draft Ordinance should be amended such that the number of Senate Assessors will be reduced by one (from 7 to 6), and the number of co-opted members increased by one; but that

2. if Court is not confident that, in accepting the Council of Senate’s proposal, it can demonstrate compliance with the Code, then the Draft Ordinance should remain unaltered, such that the number of Senate Assessors will be reduced by two (from 7 to 5) and the number of co-opted members increased by two.

Regarding point 1 above, the working group agreed that, should 6 Senate members remain on Court, then Court should not continue to seek to recruit a co-opted member ‘suitably qualified in the management of high-quality research’. Also in relation to Point 1, Court discussed whether SFC guidance should be sought, given that the Funding Council has a responsibility for ensuring that universities comply with the Code. The group took the view that the Funding Council was unlikely to feel able to give definitive guidance at this point. However, it noted as a risk that SFC could at some future time express a view that the University does not have a majority of independent members, in which case there would be a need to revisit the Ordinance.

As the following section illustrates, whether or not Court will feel able to accept Senate’s proposal will hinge on Court’s opinion on whether the Rector should, for the purposes of the Governance Code, be categorised as an independent member of Court.

4. **The Impact of the Draft Ordinance on the Composition of Court**

Court has 25 members. Aside from the post of Rector, there are:

- 12 members who are members of staff or students of the University (7 Senate assessors, 2 staff representatives, 2 student representatives and the Principal); and
- 12 members whom Court recognises as ‘independent’ (5 Co-opted members, 5 General Council Assessors, the Chancellor’s Assessor and the City of Glasgow representative).

If the Draft Ordinance were to be approved in its current form, the number of Senate Assessors would fall by two and the number of Co-opted members would rise by two. The composition of Court would therefore be:

- 10 staff / student members, plus
- 14 independent members, plus
- the Rector.

In this situation, there would be a clear lay majority, whether or not the Rector’s position was considered to be independent.
If the Draft Ordinance were to be amended, such that the number of Senate Assessors would fall by one and the number of Co-opted members would rise by one, then the situation would be less clear-cut. There would be:

- 11 staff/student members, plus
- 13 independent members, plus
- the Rector.

If Court is confident that the Rector should classified as independent, then it can accept the Council of Senate’s proposal as it would result in a clear majority (14-11) of independent members. However, if the Rector is not classified as independent, then the independent majority would be just 13-12. The view of the Working Group is that such a slender majority does not comply with the requirement for a ‘clear majority’ as required by the Code.

5. Is the Rector Independent?

Four universities in Scotland have a Rector as a member of Court. In three, s/he is elected by students: at Edinburgh, the electorate is students and staff. The Rector’s role, in terms of the 1858 Act, is that of ‘ordinary president’ of Court. However, each of the four universities now has a senior lay governor who is the effective convener of Court. At Glasgow, the expectation is that the main role played by the Rector will be to represent student interests on Court, something that is stated clearly in the material issued at the time of a Rectorial election (Document G). In practice, this representative role is difficult to address when, as has happened on several occasions, the University’s students elect a Rector who is unable to be present on campus.

One possible definition of ‘independent’ is that the person involved is not a member of staff or a student of the University, and therefore is not personally affected by decisions of Court. This definition has the benefit of being clear and, in terms of this definition, the Rector is clearly independent, since the 1966 Act of Parliament and the subsequent Ordinance 186 prohibit members of staff and students of the University from standing for election as Rector.

An alternative definition of independent might be that the person is not beholden to any group and is therefore in a position clearly to exercise independent judgment. By this definition, the Rector’s independence is questionable since, as the choice of the University’s students, s/he is expected to represent the interests of students on Court. It should be noted that the Rector is not the only lay member of Court whose independence might be queried on this basis. The recent consultation on Court membership has heard views expressed that have called into question the independence of the General Council Assessors and indeed of the Co-opted members.
A further definition of independent is reflected in the input received from the University lawyer (Document D). The Governance Code has provided guidance on the process by which Court should recruit independent members, and the University lawyer suggests that this process is important in deciding whether or not Court members are independent. By this definition, it could be argued that the only independent members on Court are the co-opted members.

Finally, as input to Court’s thinking, I have sought and received a legal opinion from a QC, and this is attached as Document H.

There is clearly no definitive answer to the question of whether the Rector is independent. It is important though that Court should come to a settled view on this question in order to inform its decision on the terms of the Draft Ordinance.

6. Further Matters raised by the Council of Senate

While much of the discussion at the Council of Senate was on the number of Senate Assessors, other important points were also raised. Court’s view is therefore sought on the following matters:

.1 the overall size of Court

At the Council of Senate, and in the individual submission from Professor Godfrey, it is suggested that Court could address the need for a clear independent majority by increasing the number of members on Court. The wording of the Scottish Code on this matter is that ‘a governing body of no more than 25 members represents a benchmark of good practice’. It would be open to Court to argue, if it were so minded, that there are good reasons why Glasgow should have a larger Court than the benchmark figure. My advice to the Council of Senate was that Court was unlikely to be convinced that there is a good reason why Glasgow, alone among Scottish universities, requires a larger Court than the benchmark figure.

.2 the workload of Senate Assessors

Concern was expressed at the Council of Senate that the Senate Assessors already carry a heavy workload and that this would only increase if their number was reduced. Much of the workload of Senate Assessors relates, not to their statutory role as members of Court, but to the duties that the University has chosen to assign to the role of Senate Assessor at Glasgow. It may be timeous for Court, in discussion with Senate, to consider afresh the expectations of the role of Senate Assessor, and whether the range of duties currently addressed by Senate Assessors might be shared among a larger group of staff.
.3 **a joint Senate/Court Working Group**

Senate has asked for the establishment of a Joint Senate/Court Working Group *to address the number of Senate Assessors on Court*. The circumstances in which such a working group might be established have been agreed by Senate and Court as follows:

> Occasionally the Principal – either on his/her own initiative, or having received advice from Senate or Court – may decide that an issue is of sufficient importance to the academic work of the University that a formal Joint Senate/Court Working Group should be established. The Group would have a remit to consider the matter and to formulate recommendations to Senate and Court, and its establishment would require the approval of both bodies.

If established, the group would have an equal number of Senate and Court members, would have the authority to call members of the University to provide information and would seek, within 28 days, to formulate recommendations to Senate and Court.

A joint working group could not be allowed to have the effect of delaying implementation of the new ordinance: Court has been clear for some time that urgent progress is needed to comply with the Code. In addition, if Court were to agree to the Council of Senate recommendation that the number of Senate Assessors be reduced to 6 rather than 5, there may not be much for a joint working group to discuss. However, if Court decides to proceed with a Draft Ordinance that proposes just 5 Senate Assessors, there may be merit in a joint working group considering the implications of this, including the effect on the workload of the Senate Assessors.

7. **Implementing the Ordinance**

Finally, **Court’s view is sought on the following approach to implementing the Ordinance:**

1. The new Ordinance should have effect from 1 August 2014;

2. With effect from that date, three new co-opted members should be appointed: two to fill the positions vacated by Kevin Sweeney and Alan MacFarlane, who complete their terms of office as General Council members on 31 July 2014; and one to fill the position vacated by Miles Padgett whose period of office as a Senate Assessor will end on 3 May 2014.

3. On the next occasion when a General Council Assessor reaches the end of his term of office, that person will be replaced on Court by a new co-opted member;

4. Should the new Ordinance provide for a reduction to 5 Senate Assessors then, on the next occasion that a Senate Assessor reaches the end of his/her term of office, that person will be replaced by a new co-opted member.
5. Should the implementation of the new ordinance be delayed until after 1 August, and should new Assessors be appointed in the intervening period, by General Council or Senate, then the terms on Court of these new appointees will terminate immediately upon the new Ordinance coming into effect.

DN, 28.4.14
MEMORANDUM

To  Professor John Briggs, Clerk of Senate
Cc   Dr Jack Aitken, Director of Senate Office
     Ms Helen Clegg, Senior Academic Policy Manager, Senate Office
From Deborah Maddern, Administrative Officer, Court Office
Date  19 February 2014

Draft Ordinance 206: AMENDMENT OF ORDINANCE NO. 182 (COMPOSITION OF THE UNIVERSITY COURT)

Under section 4 of the Universities (Scotland) Act 1966:

In 2010, the general guide for HE Governance was the Code issued by the Committee of University Chairs, which was approved by HEFCE (CUC Code). It recommended regular reviews of the effectiveness of governing bodies and so in 2010 Court set up a sub-committee comprising members of Court elected by the Senate (Senate members) along with members appointed or elected by the students and the staff and lay members, to review our governance. That sub-committee made two recommendations which related to the composition of Court, and which were unanimously agreed by Court in 2010. The first was designed to achieve a clear lay majority on Court as was called for in the CUC Code. Court already comprised the maximum number recommended by that Code, namely 25, being:-

- The Principal;
- three, including the Rector, elected or appointed by the students;
- two elected by the academic and non-academic staff,
- seven elected by the Senate; and
- twelve lay members including 5 elected by the General Council of alumni (Alumni members) and 5 who are appointed by Court for their particular skills and experience following a process of advertisement and interview (Co-opted members).

As a result, the only practical way to create that clear lay majority was to reduce the number elected or appointed by the students, staff or Senate. In these circumstances, and as the number of Senate members was greater than at any other Ancient University in Scotland, the sub committee’s recommendation was that the number of Senate members should be reduced from 7 to 4 - the same number as on the Court of Edinburgh University - and that the number of Co-opted members should be increased to 8. That would have created a Court with 10 non lay and 15 lay members.

The second recommendation was to reduce the number of Alumni members from 5 to 2 and to further increase the number of Co-opted members by 3 to a total of 11. This was recommended for a number of reasons including that:-

- the CUC Code specified that there should be a balance of skills and experience among members of the Court sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence. In 2010 the only members of Court who were appointed for their skills and experience were the 5 co-opted members;
governing bodies of this size need to delegate the detailed examination of many items proposed by the senior management to smaller committees who then report to Court. While at some Universities several topics are considered by a single committee, at Glasgow each of the main topics - namely Estates, Finance, Audit, HR and Health & Safety - is considered by a separate committee. While that may be more resource intensive, it does mean that more members of Court - staff, student and lay - are engaged in the detailed scrutiny of, and decision-making in relation to, these major topics;

- a realistic workload for a lay member of Court was membership of Court and of one of the major committees, being a workload of 12 days a year affected by meetings plus reading time; and

- the skills and experience required for each such committee are different and, as each is chaired by a lay member, most need at least one other lay member to cover sickness and absence of the chair, allow for succession planning and give Court access to a second view on matters discussed at that committee. That means that Court requires 10 Court members chosen for their skills and experience.

Following Court’s decision, the draft Ordinance was sent to the Senate and the General Council for consultation. The Business Committee of the General Council agreed to the proposed Ordinance on the understanding that the Court would try to ensure that there were always at least 3 co-opted members of Court who were alumni, thereby ensuring that there were at least 5 alumni on Court - as was currently the case. However, members of the Senate were concerned at the proposed reduction in the number of Senate members. In February 2011, in fulfilment of its obligations under Section 4 of the Universities (Scotland) Act 1966 (1966 Act), Court took the representations from the General Council and Senate into account and decided that the draft Ordinance should reduce the number of Senate members from 7 to 5 rather than 4, reduce the number of Alumni members from 5 to 2 as originally proposed; and confirmed that in recommending individuals to Court for co-option, Nominations Committee should identify at least one member suitably experienced in the management of high quality academic research.

As a result, the attached draft Ordinance, with the above reference number and title, was submitted to the Privy Council in March 2011. The Privy Council also received details of comments made during the consultation period. The University was informed in September 2011 that their ‘Advisers’ (which we take to mean the Scottish Government) were content for the University to proceed with changes to the lay members but that they wanted the reduction in Senate member numbers to be revisited by the University after further consultation with its Senate and after the HE Governance Review reported. This was reported in the Court minute of its meeting of 12 October 2011 (appended).

Clearly it was impractical to consult again with the Senate until the Senate and Court knew the outcome of that Review, and it was not clear how it would be possible to proceed with only that part of the Ordinance dealing with changes to the lay membership. It was therefore necessary to await the outcome that Review.

As a result, the draft Ordinance was on hold at the Privy Council while the Review of Higher Education Governance in Scotland (von Prondzynski review) finally reported in January 2012, and more during the drafting and subsequent publication of the Scottish Code of Good HE Governance, called for by that Review, which was published in July 2013.

Taken together, that Review and Code are wholly supportive of the draft Ordinance in that
between them they recommend that:-

- each governing body should have no more than 25 members and have a clear majority of independent members;
- the governing body should ensure an appropriate balance of skills and expertise in its membership;
- governing bodies should have up to two alumni representatives; and
- positions on governing bodies for lay members should be advertised externally and all appointments should be handled by the nominations committee of the governing body.

In June last year, the post-16 Education (Scotland) Act 2013 was passed. It provides that Scottish Ministers may impose a condition that the Scottish Funding Council may, when making a payment to a higher education institution, require that institution to comply with any principles of governance which appear to the Council to constitute good practice in relation to higher education institutions. It is expected that that Section will come into effect in the next few months and before the end of the current University year.

Quite separately, in 2012/3 an external review of the effectiveness of Court had been carried out - consistent with the recommendations of the Scottish Code. Court set up a sub-committee which, as in 2010, comprised members of Court appointed or elected by Senate, students and staff, together with lay members, to make recommendations on _inter alia_ the composition of Court in the light of that effectiveness review and the Scottish Code. That sub-committee recommended that:-

- the Ordinance should be implemented as soon as possible; and
- the commencement of the Ordinance should be structured so as to allow the reduction in the number of Court members to be phased in as vacancies in these positions occurred rather than simply remove two sitting Senate members from Court. This approach would secure a clear lay majority by the 31 July 2014 when it was expected the SFC would be making compliance with the Scottish Code a condition of the University’s Financial memorandum. It would require that, for a period of up to July 2015, Court’s membership would increase to 27, before then reverting to 25.

At its meeting in October 2013, Court unanimously accepted these recommendations and determined that that it wished to proceed with the draft Ordinance. The draft Ordinance as submitted to the Privy Council in March 2011 is therefore attached for further consultation. Senate’s comments on the draft are sought.

A tracked version of the current text of Ordinance (Ordinance 182), which currently governs the composition of Court, is also included, to show how the proposed changes would affect that Ordinance. Please note that this copy of Ordinance 182 includes amendments already authorised through the Privy Council in 1983 and 1996.

Court’s objectives in proposing draft Ordinance 206 are, as in 2010, to improve University governance by establishing a clear independent lay majority on Court and increasing the number of lay members appointed to Court on the basis of their skills and experience; while maintaining the size of Court at 25 members, which is a benchmark of good practice in both the previous CUC and the new Scottish Code of Good HE governance.

Court would intend that while the reduction in the number of Senate members from 7 to 5 should take place as vacancies for Senate members arise, or if later on 31 July 2015, the corresponding increase in the number of co-opted members by 2 should take place on the approval of the Ordinance. As a result, the number of Court members would
temporarily rise to 27, more than the recommended maximum, but would revert to 25 by 31 July 2015 at the latest. Court would intend that the number of Alumni members should be reduced by 2 on the expiry of the existing term of those who retire on 31 July and that the final reduction should take place on 31 July 2016 or earlier if any of the remaining 3 Alumni positions becomes vacant.

For Senate’s reference, details of Court’s discussions and decisions regarding the draft Ordinance appear in minutes of its meetings. The minutes are attached, in date order.

The further consultation period is nine weeks, with the deadline for comments being 23 April 2014.

Thank you
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To Mr Robert Marshall, Clerk to the General Council
From Deborah Maddern, Administrative Officer, Court Office
Date 19 February 2014

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Following Court’s decision, the draft Ordinance was sent to the Senate and the General Council for consultation. The Business Committee of the General Council agreed to the proposed Ordinance on the understanding that the Court would try to ensure that there were always at least 3 co-opted members of Court who were alumni, thereby ensuring that there were at least 5 alumni on Court - as was currently the case. However, members of the Senate were concerned at the proposed reduction in the number of Senate members. In February 2011, in fulfilment of its obligations under Section 4 of the Universities (Scotland) Act 1966 (1966 Act), Court took the representations from the General Council and Senate into account and decided that the draft Ordinance should reduce the number of Senate members from 7 to 5 rather than 4, reduce the number of Alumni members from 5 to 2 as originally proposed; and confirmed that in recommending individuals to Court for co-option, Nominations Committee should identify at least one member suitably experienced in the management of high quality academic research.

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Clearly it was impractical to consult again with the Senate until the Senate and Court knew the outcome of that Review, and it was not clear how it would be possible to proceed with only that part of the Ordinance dealing with changes to the lay membership. It was therefore necessary to await the outcome that Review.

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Taken together, that Review and Code are wholly supportive of the draft Ordinance in that
between them they recommend that:-

- each governing body should have no more than 25 members and have a clear majority of independent members;
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- the Ordinance should be implemented as soon as possible; and
- the commencement of the Ordinance should be structured so as to allow the reduction in the number of Court members to be phased in as vacancies in these positions occurred rather than simply remove two sitting Senate members from Court. This approach would secure a clear lay majority by the 31 July 2014 when it was expected the SFC would be making compliance with the Scottish Code a condition of the University’s Financial memorandum. It would require that, for a period of up to July 2015, Court’s membership would increase to 27, before then reverting to 25.

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A tracked version of the current text of Ordinance (Ordinance 182), which currently governs the composition of Court, is also included, to show how the proposed changes would affect that Ordinance. Please note that this copy of Ordinance 182 includes amendments already authorised through the Privy Council in 1983 and 1996.

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temporarily rise to 27, more than the recommended maximum, but would revert to 25 by 31 July 2015 at the latest. Court would intend that the number of Alumni members should be reduced by 2 on the expiry of the existing term of those who retire on 31 July and that the final reduction should take place on 31 July 2016 or earlier if any of the remaining 3 Alumni positions becomes vacant.

For the General Council’s reference, details of Court’s discussions and decisions regarding the draft Ordinance appear in minutes of its meetings. The minutes are attached, in date order.

The further consultation period is nine weeks, with the deadline for comments being 23 April 2014.

Thank you
ORDINANCE OF THE UNIVERSITY COURT OF THE UNIVERSITY OF GLASGOW NO.206 - AMENDMENT OF ORDINANCE NO. 182 (COMPOSITION OF THE UNIVERSITY COURT)

AT GLASGOW the 16th day of February Two Thousand and Eleven

WHEREAS the University Court of the University of Glasgow (the University Court) deems it expedient to amend the composition of the University Court in light of its wish to modernise the configuration and nomenclature of the University Court membership in line with good governance practice:

THEREFORE the University Court, in exercise of its powers under section 3 of and paragraph 1 of Part 1 of Schedule 2 to the Universities (Scotland) Act 1966 and of all other powers enabling it in that behalf, and having sent a draft of this Ordinance to the Senatus Academicus and the General Council, displayed notices and taken into account any representations, all as required by section 4 of that Act, hereby statutes and ordains as follows, with reference to the University of Glasgow:

1 Paragraph 1 of Ordinance of the University Court No. 182 (Composition of the University Court) is hereby amended as follows:

(a) in (c) for “an assessor”, “a representative” is substituted; and

(b) in (d) for “an assessor”, “a representative” is substituted; and

(c) in (e) for “five assessors”, “two members” is substituted; and

(d) in (f) for “seven assessors”, “five members” is substituted; and

(e) in (f) the words “of whom at least three shall be readers or lecturers” are omitted; and

(f) in (h) for “an assessor”, “a member” is substituted; and

(g) in (j) for “five”, “ten” is substituted; and

(h) after (j) and before Section 2 for “an assessor”, “a representative or member” is substituted; and

(i) after (j) and before Section 2 “or she” is added between the words “he” and “is a matriculated student”.

2 This Ordinance shall come into force from and after 1 October 2011 provided that it has been approved by Her Majesty in Council prior to that date, which failing it shall come into force from and after the date of its approval by Her Majesty in Council.

IN WITNESS WHEREOF these presents are sealed with the Common Seal of the University Court of the University of Glasgow, and subscribed on behalf of the said University Court as required by Ordinance of the University Court No. 177

Member of the University Court

Secretary of the University Court
ORDINANCE NO 182

COMPOSITION OF THE UNIVERSITY COURT

At Glasgow, the Twenty-third day of May, Nineteen Hundred and Seventy-nine

(Preamble)

1 The University Court of the University of Glasgow shall consist of:
   (a) the rector;
   (b) the principal;
   (c) an assessor a representative nominated by the City of Glasgow Council;
   (d) an assessor a representative nominated by the chancellor;
   (e) five assessors two members nominated by the General Council;
   (f) seven assessors five members, elected from among its members by the Senatus Academicus, of whom at least three shall be readers or lecturers;
   (g) the president of the Students' Representative Council for the time being;
   (h) an assessor a member nominated by the Students' Representative Council who shall be a matriculated student and whose term of office shall be one year;
   (i) two representatives of the employees of the University of Glasgow, to be selected by such methods as the University Court may approve, who shall themselves be employees of the University of Glasgow;
   (j) such persons, not exceeding fifteen in number, none of whom may be a matriculated student or an employee of the University of Glasgow, as may be co-opted by the University Court;

   provided always that no person may serve as a representative or member an assessor under sub-paragraphs (c) to (f) above while he or she is a matriculated student of the University.

2. The provisions contained in Part II of Schedule I to the Universities (Scotland) Act 1966 are hereby revoked.

3. This Ordinance shall come into force from and after the date on which it is approved by Her Majesty in Council.

In Witness whereof these presents are sealed with the Common Seal of the University Court of the University of Glasgow, and subscribed on behalf of the said University Court as required by Ordinance of the University Court No. 177. ALWYN WILLIAMS, Member of the University Court.

JAMES McCARGOW, Secretary of the University Court.

Approved by Order in Council, dated 19th December 1979.
Extracts of Court Minutes: draft Ordinance 206

13 October 2010

CRT/2010/5. Report from the Secretary of Court

CRT/2010/5.1 Review of Governance Arrangements

Over the summer, a Court working group - convened by David Ross and including David Anderson, Ken Brown, Olwyn Byron, Muffy Calder, Peter Daniels, David Newall and Kevin Sweeney - had considered how the operation of Court might be improved. The Governance Code of Practice, published by the Committee of University Chairs, recommended that a University governing body should review its own effectiveness at least once every five years. As part of the review, the group had looked at arrangements at other Scottish universities and at a recent internal audit report on governance.

David Ross explained that as part of the review, he had had discussions with his counterparts at some other institutions, covering areas including the balance of external and internal members of governing bodies, and the desirability of having a spread of professional expertise available, particularly in light of the complexities and challenges facing modern universities. A principle reflected in the CUC’s Governance Code of Practice was that the governing body should have a majority of lay members, who should be ‘both external and independent of the institution’. It was arguable that Glasgow did not in fact have such a lay majority. The other ‘ancient’ Scottish universities, whose constitutional arrangements were similar to Glasgow’s, had a clear lay majority on their governing bodies. These factors being the case, the Working Group had strongly supported the need to increase the proportion of external members, recognising the value of securing a strong skills mix. With only 5 Co-opted places currently available, vacancies for which were advertised widely, limited opportunities existed to select members with skills and experience relevant to the University.

Mr Ross added that there had been two main areas of discussion for the group: membership and attendance; and management of Court business. Court noted the report. The group’s recommendations to Court, as contained in the report were approved, as follows:

1. In relation to membership and attendance:

   .1 that the membership of Court should be revisited, such as to:
     - increase the number of Co-opted Members from 5 to 11;
     - reduce the number of General Council Assessors from 5 to 2; and
     - reduce the number of Senate Assessors from 7 to 4.

   .2 that the role of Senate Assessor should no longer carry a portfolio of HR management responsibilities.

   .3 that all Vice-Principals, including Heads of College, should be invited to attend meetings of Court, allowing Court to communicate more directly with senior executives. It was recognised that there may on occasion be a need for the agenda to include items of reserved business, which would be discussed by Court members only; and

   .4 that positions on Court should be re-styled as follows:
     - ‘General Council Assessor’ to ‘General Council Member’
     - ‘Senate Assessor’ to ‘Senate Member’
- ‘SRC Assessor’ to ‘SRC Member’
- ‘Chancellor’s Assessor’ to ‘Chancellor’s representative’

Court noted that changes to Court membership (1.1 above) required consultation with Senate and the General Council, and that thereafter the Privy Council must approve changes to the relevant ordinance.

15 December 2010
CRT/2010/17. Report from the Secretary of Court

CRT/2010/17.5 Ordinance Relating to Court membership

A formal 8-week consultation exercise on a proposed revised Ordinance on Court membership had commenced. The February 2011 meeting of Court would be informed of the full outcome of the consultation exercise, which included consultation with members of Senate and with the General Council. Senate itself had already discussed the matter at its December meeting, and a summary of its discussion appeared in the Communications from Senate.

16 February 2011
CRT/2010/27. Report from the Secretary of Court

CRT/2010/27.2 Ordinance Relating to Court membership

The Rector chaired the item, given that the convener of Court, David Ross, would speak to the paper.

At the meeting on 13 October, Court had approved the recommendations contained in a report on Governance, including a proposal to amend the composition of Court, such that the Co-opted members would increase from 5 to 11, the Senate members would decrease from 7 to 4 and the General Council members would decrease from 5 to 2. The key drivers for the proposal to amend the composition of Court had been the desire to have a clear lay (external) majority in line with good governance practice and to increase Court’s ability to co-opt a range of relevant expertise to help it address its work effectively. A draft ordinance on Court membership had been the subject of a formal 8-week consultation exercise that had concluded on 28 January. At the December meeting of Court, a summary of the discussion on the matter at December’s Senate meeting had been provided in the Court papers. Email replies from Senate members to the consultation exercise had also been made available in full to Court members for the present meeting.

David Ross explained that the working group on Governance had met on 3 February to consider the inputs received through the consultation exercise on Court membership. The feedback from the General Council had generally been positive; that from Senate had not been, in particular on the matter of the proposed reduction in the number of Senate Assessors on Court. The working group had considered carefully the points raised by Senate. A number of the concerns appeared to reflect misconceptions, and the working group felt, in particular, that it was important for Senate to be assured that Court fully recognised the authority of Senate in setting academic standards and that it would continue, through the input of Senate Assessors and others, to give due weight to academic matters in its deliberations. Mr Ross commented also that some of the comments from Senate members had referred to the University management as the source of the proposed changes; this was not the case, since the review of Court’s composition had been the initiative of himself as convener of Court and of other Court members. Having considered the issues raised through the consultation process, and the importance of recognising the depth of feeling expressed by Senate at its meeting in December, the working group had decided to recommend to Court that it modify its proposals, such that
the future number of Senate Assessors should be 5 rather than 4, with the number of co-opted members correspondingly reduced from 11 to 10. The working group had suggested also that the Nominations Committee should ensure that, in recommending individuals to Court for co-option, it should identify at least one member suitably experienced in the management of high quality academic research.

Professor Scullion suggested that the proposed increase in the number of Senate Assessors did not go far enough, given Senate’s strongly held views on the matter, and expressed concern that the timing of the proposed changes could be very damaging in the current context of cost reduction. In addition, the changes were not strictly necessary in the context of governance. Dr Owen referred to a recent Green Paper on options for the future of higher education in Scotland and to a concern that Senate would not be content that its views had been listened to. Mr Ross explained that the guidance was clear and that a lay majority was required as a matter of good governance; in this respect Glasgow stood out among other peer institutions in Scotland as having a lack of external representation. It was of considerable importance that the institution was aligned with good practice. The Green Paper had been considered by the Working Group. Professor Scullion commented that it was the decrease in Senate representatives not the increase in lay members that was being questioned.

Mr Anderson and Professor Scott Morton expressed support for the paper and its recommendations. It was commented that consultation had occurred, and that, in such a process, not all viewpoints would prevail. Mr Macfarlane commented that the General Council through its business committee supported the proposed modifications to Court membership.

A vote was taken and by a majority of 13 in favour to 7 against, Court approved the working group’s recommendations:

1. that the draft Ordinance as submitted to Senate and the General Council be confirmed by Court, with the alteration that the number of Senate members be reduced to 5, not 4, and that the number of Co-opted members be increased to 10, not 11.

2. that Court should ask Nominations Committee to ensure that, in recommending individuals to Court for co-option, the Committee should bear in mind the desirability of having: one co-opted member of Court who was suitably experienced in the management of high quality academic research; and at least three co-opted members who, as graduates of the University, were members of the General Council.

Court noted that the priority in any individual co-option process would be to seek to secure a sustainable balance of the necessary skills and experience on Court which complied with the requirements of good governance, given the available candidates of the appropriate quality. As a result in seeking out, and ultimately recommending, any particular candidate for co-option to the Court, Nominations Committee would take into account the skills and experience of the existing members of Court and thus what skills and experience it was in the best interests of Court to secure at that time in order to achieve or maintain that balance.

13 April 2011
CRT/2010/36. Matters Arising

With regard to minute CRT/2010/27.2 Ordinance Relating to Court Membership, Olwyn Byron advised that she had received a request to ask Court temporarily to withdraw from the process relating to the Ordinance on Court membership. This would be with a view to revisiting the proposals contained in it. David Ross responded that the process was ongoing and that the need for additional lay resource was pressing: deferring the process would not help matters; it would simply delay recruitment. He did not believe there was a wish by Court to revisit the decision in February about what the new Ordinance should say, even if Court agreed to suspend the process. Mr Ross would be attending the 28 April Senate meeting to discuss the proposed ordinance and the thinking behind it. Relevant papers, including the governance working
party’s report and details of Court’s agreement, following consultation, to amend its original proposal, would be circulated ahead of that meeting. The correct course was however to continue with the process, as agreed by Court.

Muffy Calder expressed concern that the timing was not good, given other issues raised by Senate. Mr Ross reiterated that he would be attending Senate on 28 April, and that he would aim to address Senate’s concerns about the Ordinance at that time. There would also be discussion on improving communication between Court and Senate. However, it was not appropriate to reopen the debate on the Ordinance. Court agreed with this approach, and was not minded to suspend the process.

22 June 2011

CRT/2010/51. Report from the Secretary of Court

CRT/2010/51.6 Ordinance on Composition of Court

Court noted that the Ordinance on the composition of Court was now with the Privy Council for consideration. David Ross had attended Senate on 28 April to discuss with Senate members the reasons for Court’s decision to make a new ordinance. The meeting had concluded with a request, reflected in the Communications from Senate, that Court should not progress with the Ordinance at this time. This question had been raised at the April meeting of Court, when Court’s decision was that it did not wish to delay the approval process and this remained Court’s position. In the meantime the Scottish Government had announced a review of Higher Education governance and it was possible that, as a result, the Ordinance process would be put in abeyance by the Privy Council.

Court noted that Senate had agreed to establish a short-life Working Group to make recommendations on communications between Senate and Court. The remit also included the terms of the draft Ordinances concerning Senate’s own composition, which Court had considered and approved for consultation at its February 2011 meeting. The Group was to report its recommendations to Senate at its October meeting and details would be provided to Court thereafter.

12 October 2011

CRT/2011/5. Report from the Secretary of Court

CRT/2011/5.3 Ordinance on Composition of Court

The Privy Council had provided interim feedback on the Ordinance. It had suggested that changes to the lay membership could proceed but that the number of Senate Assessors on Court should remain unchanged at this stage, to be revisited by the University after further consultation with Senate and after the HE Governance Review report. Court agreed that rather than seek partially to implement the draft Ordinance, the outcome of the Governance Review should be awaited before taking further action.

9 October 2013

CRT/2013/5. Report from the Secretary of Court

CRT/2013/5.3 Court Governance Working Group

As part of its review of governance arrangements, Court had agreed in June 2013 that a Working Group should look further at the composition of Court and report to the present meeting of Court. Court approved the Working Group’s recommendation to proceed with the Ordinance relating to Court’s Composition, with the primary aim of ensuring a clear lay
majority on Court, such that the number of General Council Assessors would reduce from 5 to 2, the number of Senate Assessors would reduce from 7 to 5 and the number of Co-opted members would increase from 5 to 10. The Privy Council would be contacted by the Secretary of Court to request that the Ordinance be progressed as soon as possible. The Ordinance had been on hold for 2 years at the Privy Council, because of the Review of HE Governance.

Court also approved transitional arrangements (if the Privy Council approved the Ordinance) to the effect that 2 additional Co-opted members of Court be recruited as soon as possible, with the possibility therefore that there might be 27 members of Court on a temporary basis until July 2015, when two Senate Assessors would demit office.

Arrangements suggested by the Working Group - relating to the Chancellor’s Assessor title and that of Convener possibly being combined so that a further member of Court could be termed ‘Co-opted’ - would be discussed in more detail and a report made to Court at a future meeting. Following this, Standing Orders would be amended, if necessary, to provide a suitable mechanism for a member of Court to raise any matter that s/he did not wish to raise directly with the Convener of Court.

11 December 2013
CRT/2013/18. Report from the Secretary of Court

CRT/2013/18.1 Review of Governance Arrangements

Court had agreed in June 2013 that a Working Group should consider the composition of Court and report to the October meeting. In October, Court had approved the Working Group’s recommendation to proceed with Draft Ordinance 206, as originally approved by Court in February 2011. The draft Ordinance was intended to ensure a clear lay majority, and to assist Court in achieving a suitable balance of skills and experience. If the Ordinance were approved, the number of Co-opted members would increase from 5 to 10, the number of General Council Assessors would fall from 5 to 2, and the number of Senate Assessors would fall from 7 to 5.

The Ordinance had been on hold at the Privy Council since March 2011, on the advice of the Scottish Government and pending the outcome of the Review of HE Governance in Scotland. David Ross and David Newall had recently visited the Scottish Government to explain Court’s desire to proceed with the new Ordinance in order to comply with the terms of the new Scottish Code of HE Governance. They had asked that the Government confirm its support for the new Ordinance as soon as possible, or alternately that it clarify any concerns it may have regarding it. A response was awaited from the Scottish Government. Advice was also being sought on whether the Scottish Government or the Privy Council would require the University to undertake further consultation before finalising the text of the Ordinance.

Court agreed that, given the urgency arising from the timing of upcoming vacancies on Court in 2014, David Ross, the Principal and David Newall should brief Court by email if a response from the government was received before the next meeting. Court noted a request from Don Spaeth that Senate’s interest in this matter should be borne in mind also.
NOTICE OF DRAFT ORDINANCE

Under section 4 of the Universities (Scotland) Act 1966

DRAFT ORDINANCE 206 - AMENDMENT OF ORDINANCE NO. 182 (COMPOSITION OF THE UNIVERSITY COURT)

The Court of the University of Glasgow is consulting further with the Senate and General Council on the above Draft Ordinance, which has therefore been sent to the Senate and General Council for comment.

The Draft Ordinance has been placed in the Court Office on the first floor of the Gilbert Scott Building, Gilmorehill Campus for a period of 9 weeks, from 19 February 2014, where it may be viewed between 10:00 and 16:00 Monday to Friday (excluding public holidays).

Court shall take into consideration any representations from the Senate, the General Council or any other body or person having an interest, concerning the Draft Ordinance, received during the period referred to above. Persons wishing to make representations should address them in writing to the Secretary of Court.

DISPLAY UNTIL 23 APRIL 2014

David Newall
Secretary of Court
Court working group – Ordinance on Composition of Court

Minute of Meeting 0930 on 22 April 2014 in the Turnbull Room

Present: David Ross Convener of Court (chair), David C Anderson General Council Assessor, David W Anderson Employee Representative, Alan Macfarlane General Council Assessor, Jess McGrellis SRC President, Margaret Morton Co-opted Member, Duncan Ross Senate Assessor

Attending: David Newall Secretary of Court, Deborah Maddern clerk to Court

1. Scottish Code of Good HE Governance

The group noted from the chair that a ‘comply or explain’ approach will be adopted by the SFC in monitoring compliance with the Code by HEIs, with ‘explain’ indicating a failure to comply. At present the University does not comply with a Main Principle of the Code, given that it does not have a clear majority of independent members, defined in the Code as both external and independent of the institution. The lack of clear majority arises for two reasons:

a. there is uncertainty about the independence of the Rector under this definition, since the holder is elected by the student body, and therefore there may be a majority of non-independent members currently. The group requested that more information on this matter be sought;

b. even if the Rector were to be classified as independent, a ratio of 13:12 independent : non independent is not a clear majority.

2. Feedback from consultation with General Council

A paper was received from the General Council Business Committee (GCBC), in response to the consultation on draft Ordinance 206. The paper included a number of procedural issues for the attention of Court, together with details of members’ comments, both for the status quo in terms of the number of General Council Assessors (five) on Court and for the number (two) proposed by the draft Ordinance. A meeting of the GCBC held on 16 April had concluded with a vote of 11-8 which was in favour of the status quo (i.e. five General Council Assessors). Court was asked by the GCBC to take into consideration the outcome of the vote, procedural issues raised and the majority and minority views of GCBC members on the substantive issues, further details of which appear below and in full in the Annex to the paper received from the GCBC.

The group considered the paper from the GCBC as follows:

Procedural Issues

The meeting of the GCBC was asked to consider whether some GCBC members had a conflict of interest because they had already participated in the decision by Court to approve the terms of the draft Ordinance. The matter was discussed in the terms referred to in Annex 1 of the paper from the GCBC, which also lists what some members of the GCBC considered as procedural flaws. The group agreed that it would recommend that Court note these submissions on procedural matters
and that Court should also receive the written response of the University’s lawyer to the procedural questions that had been raised.

**Substantive issues**

Full details of the discussion by the GCBC were provided in the paper from the GCBC. With regard to the arguments raised for the status quo (five General Council Assessors to remain on Court) the group’s comments on the 14 summarised points were *(in italics following each point):*-

1. **DO206** [the draft Ordinance] significantly reduces the role of primary stakeholders, both graduate and staff. *There is now a wider range of stakeholders than in the past, and these wider interests and the broad skills-set requirements of Court should be reflected in its composition. Regarding changes in the graduate membership of Court, it should be noted that, while the Draft Ordinance would reduce the number of General Council Assessors by 3, it would increase by 5 the number of Co-opted positions, for which graduates will be eligible to apply.*

2. The major role of Court should be Governance, not management. *Court’s role is indeed governance, but governance of a modern University requires members’ skills sets are such that they can ensure that the University management is accountable.*

3. Necessary specialists can be found within the GC or recruited on an ad hoc basis and co-opted to Court committees without the need to dilute the existing Governance arrangements on Court itself. *Court already appoints individuals with specialist skills to Committees, as with the Estates Committee. Expertise is required on Court as well as on Committees.*

4. The GCBC should be the body through which GC Assessors are identified and nominated as an alternative to the current election structure. *As such a change would require a different Ordinance, the group was not clear on the connection of this point to the draft Ordinance and noted that as the GC has a membership of c175,000 the GCBC as currently constituted could not be regarded as representative of the views of GC members.*

5. Court records show a Lay majority already exists. GCAs are already considered lay; therefore there is no reason to reduce their number. *There is not a clear ‘lay’ majority (see section 1 of minute) In addition, the reduction in the number of General Council members is proposed, not with a view to changing the number of lay members, but in order to assist Court in securing an appropriate balance of skills and expertise, as required by the Governance Code.*

6. Under DO206 too many Court members (40%) would be accountable only to Court. *All Court members, however they are selected, are required to act in the best interests of the University.*

7. The co-option process is not independent of Court and is not transparent or subject to external scrutiny. *Co-option is by advertisement and interview and is the process recommended in the Governance Code and the Von Prondzynski review for the appointment of independent members. An independent review of the process is taking place to test its robustness in terms of the Code.*

8. Insufficient value is placed on generic skills which may be applied to complex issues as opposed to specialised financial or other experience which is more directly applicable to management roles. *General governance skills and understanding are an important element in the selection of co-opted members, but specialist skills are needed also in order to challenge management effectively.*
9. Changing “Assessor” to “Member” reduces the status of the graduate representatives.  
   The change is to modernise terminology and is also being proposed for Senate Assessors.
10. There is insufficient commitment to co-optees being GU graduates. (It should be noted that in relation to this point there was a lack of agreement among Court members present.)
   If the number of General Council Assessors is reduced, then Glasgow graduates will be actively encouraged to consider applying to vacant lay positions on Court. It is not possible to commit to a quota since the process is reliant on applications and, in the interests of the institution, needs to appoint people with relevant skills and experience. See further discussion of this matter below.
11. SFC funding is on a “comply or explain” basis and guidelines are not mandatory. Compliance is likely to be a condition of grant; explanation indicates non-compliance (see section 1).
12. Two GC Assessors on Court will not guarantee sufficient graduate recognition in future years.
   Per 10 above, in addition to the two GC Assessors on Court, Glasgow graduates will be encouraged to apply for vacant lay positions.
13. Reducing the number of GCAs from 5 to 2 dilutes the SCGHEG requirement for matching authority and responsibility with accountability to key internal and external stakeholders to an unacceptable level.
   The Statutory role of the General Council is unchanged by these proposals; in addition, see 10 and 12 above regarding graduate members of Court.
14. The GCAs are the only constituency of Court Members who are independently elected or appointed. They bring a particular understanding of the University to Court. To seek to reduce the number of GCAs from 5 to 2 and replace them with more Co-opted (appointed by Court) Members is not SCGHEG compliant. The composition of Court in the draft Ordinance would retain graduate connections. The draft would not render the University non-compliant with SCGHEG. The composition of Court would be strengthened with the skills/experience sets needed for effective operation. The method of appointing co-opted members is in keeping with good practice, as reflected in the Governance Code, whereas the current method of appointing GCAs is not.

With regard to point 10 above, the group discussed further the role of the Nominations Committee and Court’s previously stated wish that (if the number of General Council Assessors were to reduce to two as per the draft Ordinance) the Committee should bear in mind the desirability of having at least three co-opted members who, as graduates of the University, are members of the General Council. To this end the group agreed that, if the Ordinance were to be granted as currently drafted, an option would be to involve the General Council in the process as follows:

- There be a General Council Assessor on the Nominations Committee as a matter of course as one of the ‘lay’ members on the Committee;
- Liaison with the GCBC ahead of any co-option process, with the aim of the GCBC assisting in increasing numbers of applicants from the Glasgow graduate body, so as to maximise the possibility of suitably experienced Glasgow graduates being appointed;
- Inclusion in the ‘job specification’ for co-opted members of a reference to applications from Glasgow graduates being particularly welcome, on the occasions when co-opted members who are also Glasgow graduates are demitting Court and are being replaced.
The group was supportive of the GCBC arguments made in support of the provisions of the draft Ordinance (as listed in the paper provided by the GCBC).

3. Feedback from consultation with Senate

A draft report following the meeting of the Council of Senate held on 17 April 2014 was provided to the group. [This has since been slightly updated following circulation to Senate, and the final version will be provided to Court].

The group noted that the Council of Senate had had a wide ranging discussion following which three motions had been proposed as follows (in summary):

- That the Council of Senate reject the reduction of the number of Senate Assessors on Court from seven to five, as proposed in draft Ordinance 206. The motion was carried by 54 votes to 6.
- Following a number of members commenting that a compromise figure of six Assessors might be more acceptable to Court in recognition of the external pressures on the University a second motion was proposed, that there should be six Senate Assessors on Court. The motion was carried by 43 votes to 16.
- Council of Senate having been reminded of the existence of a Joint Court and Senate Working Group that could be convened at the request of the Principal, a third motion was proposed that the Principal should establish a Joint Senate/Court Working Group. The remit of the Working Group would be to address the number of Senate Assessors on Court. The motion was carried by 47 votes to 11.

The group noted that if there were to be six Senate Assessors on a Court of 25 members then, given that there would need to be a corresponding reduction in the number of external members, there might then not be a clear majority of independent members, given the doubt that existed regarding whether or not the role of Rector should be categorised as independent. Therefore non-compliance with the Code, which was a key issue, could again be a problem. The group agreed that, if possible, it would wish accommodate the proposal on a possible compromise figure, as expressed in the second Senate motion (referred to above, in summary).

The group noted also that from time to time a Rector had not been able to attend meetings of Court, sometimes for the whole period of office.

The group agreed that if possible some further clarification on whether the Rector is independent or not should be obtained.

4. Conclusions for Court

The group agreed that the reduction in the number of General Council Assessors to two should remain in the draft Ordinance and that it would recommend this to Court, while also agreeing that the options in paragraph 2 above relating to the future involvement of the General Council in the co-option process should be implemented.
With regard to the response to the consultation from Senate, the group agreed that on the basis of the points discussed by the group and reflected above, the key matter for Court is compliance with the Code and the fact that a clear majority of independent members is required for such compliance. As a result the group agreed to recommend that Court should consider both the proposal to reduce the number of Senate Assessors from seven to six as well as the proposal to reduce the number of Senate Assessors from seven to five, in the light of the information on the status of the Rector to be supplied to Court to facilitate its discussion, with a view to identifying which would produce that clear independent majority.
University of Glasgow Draft Ordinance 206

General Council Business Committee Response to Court

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1 Introduction
On 16th February 2014, the University Court asked the General Council Business Committee (GCBC) for its observations and representations on Draft Ordinance 206 (DO206) on behalf of the General Council, relating to composition of Court.

This paper contains the observations and representations of the GCBC on DO206. It is based on: preliminary research by circulation, carried out by a GCBC Working Group; and the deliberations of the GCBC at its Meeting on 16th April 2014.

The response is divided in two main sections:
- A section on procedural issues to be brought to the attention of Court for comment; and
- A section on the collective response on the substantive issues.

2 Procedural Issues
2.1 Potential Conflict of Interest
The Meeting was asked to consider a proposal by some GCBC Members that other Members had a conflict of interest because they had already participated in a decision to approve the terms of the Ordinance, as Members of the body (i.e. Court) that has now asked the GC for its views by way of statutory consultation.

These Members were asked to refrain from participating in the Meeting. Support for this proposal was by way of reference to the Principal’s decision (recorded in the Minute of the Meeting of Senate on 13 October 2010) not to comment on DO206 as he, together with the Senior Management Group, were accountable to Court, so it would therefore be inappropriate for them to participate.

The proposal was considered by the Members concerned (the Principal and 4 General Council Assessors present). They took the view that they had no conflict of interest at this Meeting.

2.2 Potential flaws in the DO206 Process
The Meeting was made aware of an assertion by some Members that the process being followed for DO206 was flawed and unsatisfactory. The grounds for this assertion are set out in Appendix A and submitted to Court for consideration.

The GCBC agreed that the assertion should form part of its response to Court.

1 Acronyms and abbreviations, where used, can be found in Appendix C
3 Substantive Issues

This section describes the GCBC response to the substantive issues and the process by which it was compiled. A Working Group was established by the GCBC to co-ordinate the GCBC response to DO206. The Working Group prepared a report which was circulated to members of the GCBC in advance of the meeting on 16 April. The report summarised the results of a survey of GCBC Members’ views compiled in tabulated form in order to facilitate discussion. The summary views were debated as part of the Meeting deliberations. Additional views were expressed at the Meeting although these fell broadly within the main views already expressed.

As part of the report prepared for the GCBC’s consideration, individual (verbatim) Member opinions were analysed and categorised into a number of headings, under two opposing views:

- **Status Quo View (SQ):** the view that there should be no or little change in the number of GCAs; and that Court’s Governance concerns can be addressed by other means;
- **Court View (CV):** the view that is supportive of Court, i.e. content with the provisions of the new Ordinance.

To facilitate a comprehensive understanding of the spread and strength of views held by members of the GCBC, the verbatim Member comments are given in Appendix B.

During the consideration of DO206 in the meeting, the following main strands of argument were identified.

3.1 Arguments for the Status Quo view:

1. DO206 significantly reduces the role of primary stakeholders, both graduate and staff.
2. The major role of Court should be Governance, not management.
3. Necessary specialists can be found within the GC or recruited on an ad hoc basis and co-opted to Court committees without the need to dilute the existing Governance arrangements on Court itself.
4. The GCBC should be the body through which GC Assessors are identified and nominated as an alternative to the current election structure.
5. Court records show a Lay majority already exists. GCAs are already considered lay; therefore there is no reason to reduce their number.
6. Under DO206 too many Court members (40%) would be accountable only to Court.
7. The co-option process is not independent of Court and is not transparent or subject to external scrutiny.
8. Insufficient value is placed on generic skills which may be applied to complex issues as opposed to specialised financial or other experience which is more directly applicable to management roles.
9. Changing “Assessor” to “Member” reduces the status of the graduate representatives.
10. There is insufficient commitment to co-optees being GU graduates. (It should be noted that in relation to this point there was a lack of agreement among Court members present.)
11. SFC funding is on a “comply or explain” basis and guidelines are not mandatory.
12. Two GC Assessors on Court will not guarantee sufficient graduate recognition in future years.
13. Reducing the number of GCAs from 5 to 2 dilutes the SCGHEG requirement for matching authority and responsibility with accountability to key internal and external stakeholders to an unacceptable level.
14. The GCAs are the only constituency of Court Members who are independently elected or appointed. They bring a particular understanding of the University to Court. To seek to reduce the number of GCAs from 5 to 2 and replace them with more Co-opted (appointed by Court) Members is not SCGHEG compliant.

3.2 Arguments for the Court view:

15. GU needs to adapt in order to function well and comply with codes, especially as SFC funding will be conditional on compliance with principles of good governance.

16. Court urgently needs suitably qualified and experienced specialists they have confidence in for supporting/challenging the executive; workload; flexibility; succession planning; and international perspective. This requires a recruitment process, not an election process.

17. Court needs a clear lay majority.

18. Proposed co-optee recruitment process is robust, independent and should retain graduate presence.

19. Required governance balance is not possible if 19 Members appointed by other constituencies.

4 Conclusions

After full discussion of the issues outlined above, at its meeting on April 16th, the GCBC voted by an 11-8 majority of those present\(^2\) that it did not support Draft Ordinance 206, for the reasons given in this paper. There was one abstention.

Therefore Court is requested to take into consideration:

- The outcome of the vote;
- The Procedural Issues raised; and
- The majority and minority views of GCBC Members on the Substantive Issues.

Amber Higgins, on behalf of the General Council Business Committee
April 18th 2014

\(^2\) 11 Elected Members to 3 Elected Members plus 5 Court Members
Appendix A: Procedural comments asserting that DO206 is flawed and unsatisfactory

I. The Process followed and being followed by Court for draft Ordinance 206 ("Ordinance 206") is flawed and unsatisfactory for the reasons set out below. The reasons are grouped under distinct category headings, but are not mutually exclusive to each heading. Where a reason applies under a heading, if it has already been referred to under a previous heading it is simply referred to by number to avoid unnecessary repetition.

A. Ordinance 206 is not required either in whole or in part

1. Insofar as it relates to the reduction in the number of Senate Assessors from 7 to 5, there is a majority of lay (sic) Members already; reference is made to the Court Reports and Financial Statements 2010-13 where the number of lay (sic) Members is identified, and totals 13.

2. Insofar as it relates to the reduction in the number of General Council Assessors ("GCAs") from 5 to 2 it is premature and not appropriate. The (Court-commissioned) Lauwerys Report on Court efficiency included a recommendation that the General Council Business Committee ("GCBC") should be formally designated as the appointing body for General Council ("GC") posts on Court. At its October 2013 Meeting, Court asked that the GCBC be consulted on this recommendation but it has yet to be referred to the GCBC. A change in the GCAs selection process can only be made by Ordinance. Any alteration in the number of GCAs should properly be discussed at the same time as the proposed change in the process for selecting GCAs, and not included in Ordinance 206.

3. Insofar as it relates to the reduction in the number of GCAs from 5 to 2, even if Point 1 is incorrect (which is not accepted), this reduction is not required to ensure a clear lay (sic) majority. The extract Court Minute 9 October 2013 (CRT/2013/5.3 Court Governance Working Group) reproduced in Annex C of the Memorandum from the Court Office to the Clerk to the General Council dated 19 February 2014 ("Court Office Memorandum") which reads "Court approved the Working Group's recommendation to proceed with the Ordinance relating to Court's Composition, with the primary aim of ensuring a clear lay majority on Court, such that the number of General Council Assessors would reduce from 5 to 2, the number of Senate Assessors would reduce from 7 to 2 and the number of co-opted Members would increase from 5 to 10..." does not accurately reflect the factual position. A change in the number of Senate Assessors would suffice to achieve the clear majority.

B. Court has approved a recommendation from its Working Group on an Ordinance which in itself is flawed and unsatisfactory

4. Neither in 2010 nor in 2013 did Court's Working Group seek to ascertain the views of the GCBC before making recommendations to Court to proceed with Ordinance 206. It behoove the Working Group to do so since their ultimate recommendation would fundamentally impact on the GC. In particular this failure is even more unsatisfactory given the clear request on several occasions since 2011 by the GCBC to Court Members to have matters brought to its attention which affected the GC or the University before Court reached a decision, instead of afterwards. Court has disregarded that request in this instance.

C. Court has approved a recommendation from its Working Group without having all the surrounding information relating to Ordinance 206 presented to it.

5. Certain Members of the GCBC expressed their opposition to Ordinance 206 at the October 2013 GCBC Meeting and again at the supplementary GCBC Meeting in November 2013. One main ground of opposition was that Court should be carrying out again the statutory consultation required for an Ordinance in view of the time which had passed since the first consultation on Ordinance 206 (early 2011). The Convenor of Court and Secretary of Court were present at both GCBC Meetings. It is understood that Court was not advised about any of the opposition at its Meetings in December 2013 and February 2014.

6. Certain Members of the GC wrote to the Privy Council Office ("PCO") in December 2013 expressing their opposition to Ordinance 206 on the basis that the statutory consultation had not been carried out again. The PCO informed the Secretary of Court that it had received representations from certain GC Members. The grounds of opposition were referred to in the papers for the January 2014 GCBC Meeting which were distributed to both the Convenor of Court and the Secretary of Court. It is understood that Court was not advised of the existence of the opposition letter at its Meeting in February 2014.

D. The GCBC has not been properly consulted about Ordinance 206.
7. Court responded to a request that the consultation period for Ordinance 206 be extended to 30 April 2014 to allow the matter to be considered at the next scheduled GCBC Meeting on 29 April 2014. Court made acceptance of that request conditional on the GCBC agreeing to postpone the next Half Yearly Meeting of the GC when 2 new GCAs are due to be elected. The GCBC voted to proceed with the Half Yearly Meeting. After the vote the Convenor of Court confirmed that the condition was not withdrawn. The next GCBC Meeting has had to be re-arranged for 16 April 2016 for consideration of Ordinance 206. As a consequence several Members of the GCBC who wished to be present at the GCBC Meeting and express their views on Ordinance 206, but cannot because of prior commitments, are being denied that opportunity.

E. Court is rushing through the consultation period for Ordinance 206 with undue haste and without adequate time allowed for full consultation with the relevant parties.

8. The Court Office Memorandum alludes to the need for Ordinance 206 to be approved as soon as possible in order to comply with the HE Code of Governance ("HE Code") and thus avoid any adverse effect on University funding from the Scottish Funding Council ("SFC"). More time should be given to consulting with the Senate and the GCBC considering the importance of the proposed changes. This can be implemented because

(i) Court does not have to adhere strictly to the statutory consultation period – it is a minimum period only.

(ii) The HE Code is not a prescriptive set of rules. It is issued on a "comply or explain basis". The University can provide a valid explanation for immediate non-compliance to the SFC. In fact Court, by virtue of the transitional provisions relating to Senate Assessors etc described in the Court Office Memorandum, proposes not to be compliant with the HE Code for a period of 2 years; the Membership of Court will be 27, 2 Members over the benchmark of good practice number of 25 contained in Main Principle number 10 of the HE Code. No doubt Court is confident that it can satisfactorily explain the non-compliance in Membership numbers to the SFC.

Point 7 is repeated here.

F. Court has not provided sufficient justification for the proposed reduction in the number of GCAs contained in Ordinance 206 for the GC to consider.

9. The proposed reduction is arbitrary, disproportionate and without objective justification. Court Working Group recommendations are referred to in the Court Office Memorandum but without any explanation as to how they were arrived at. For example the fourth bullet point on page 2 of the Court Office Memorandum concludes with a subjective statement "That means that Court requires 10 Court Members chosen for their skill and experience". No empirical evidence is produced nor is any comparison with the governance structures and numbers of similar Higher Education Institutions.
Appendix B: All Member Comments, by support for a) Status Quo and b) Court view

At its meeting on 27 February 2014 the GCBC established a Working Group to co-ordinate the initial GCBC response to DO206. The Working Group asked all members of the GCBC to complete a summary table of their views. The views submitted were analysed and tabulated as set out below and circulated with the Agenda for the meeting of the GCBC on 16 April 2014 as an aid to discussion.

<table>
<thead>
<tr>
<th>B1. SUBMISSIONS FOR THE STATUS QUO</th>
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<tbody>
<tr>
<td><strong>01. DO206 Reduces role of primary stakeholders</strong></td>
</tr>
<tr>
<td>001. The constitutional change which DO206 represents materially reduces the role and influence on Court of GU's primary stakeholders (Senate and graduates), contrary to the principles advocated by recent reviews of university governance.</td>
</tr>
<tr>
<td>002. STAKEHOLDERS: the composition proposed significantly reduces the influence of the primary stakeholders, i.e. the Senate and the alumni, on Court. This is undesirable and not in keeping with recent reviews of university governance.</td>
</tr>
<tr>
<td>003. These proposals would lead to a major change in the balance of representation and accountability on Court, significantly reducing the representation on Court of the major stakeholders i.e. the Academic Body and the Alumni. They should not be implemented without further consultation with the stakeholders.</td>
</tr>
<tr>
<td>004. DO206 materially reduces the role and influence on Court of GU's primary stakeholders, Senate and the Alumni, contrary to the principles advocated by recent reviews of university governance, including Von P and the SCGHEG.</td>
</tr>
<tr>
<td>005. The proposed constitutional changes to DO206 are major and substantive. They reduce the role of primary stakeholders and diminish the level of graduate engagement, contrary to the principles advocated by reviews such as Von P and the SCGHEG.</td>
</tr>
<tr>
<td>006. DO206 constitutes a fundamental alteration in the balance of representation on Court and significantly reduces the representation of the graduate body. There should be full consultation and discussion with this constituency (and with the Senate).</td>
</tr>
<tr>
<td>007. The proposed change in Court membership reduces the ability of the primary stakeholders to hold GU to account. This is contrary to the recent reviews of university governance.</td>
</tr>
<tr>
<td><strong>02. Court should be concerned with governance not management</strong></td>
</tr>
<tr>
<td>008. The proposed recruitment of area specialists seems intended to integrate Court more closely with the management of GU, which is neither the primary purpose nor a desirable interpretation of the function of governance.</td>
</tr>
<tr>
<td>009. The proposed recruitment of co-opted specialists seems intended to integrate Court more closely with the management of GU, which is neither the primary purpose nor a desirable interpretation of the function of Governance.</td>
</tr>
<tr>
<td>010. The roles of management and governance should not be confused or integrated</td>
</tr>
<tr>
<td>011. The predominance of 10 co-opted lay members over the representatives of the other stakeholders would distort the nature of Court, making it a Management rather than the Governance Body, appointed to Court by Court itself and thus accountable only to Court. This is far from ideal in governance terms</td>
</tr>
<tr>
<td>012. The increase in Court co-optees has not been adequately justified. The proposed recruitment of area specialists seems intended to integrate Court more closely with the management of GU, which is neither the primary purpose nor a desirable interpretation of the function of governance.</td>
</tr>
<tr>
<td>013. The perceived need for more members with specialist skills appears to betray a fundamental misconception as to the function of Court. As Von P sets out at 2.5, the Court has strategic and oversight responsibilities, not managerial functions.</td>
</tr>
<tr>
<td><strong>03. Necessary Specialists can be found on the GC or recruited on ad hoc basis</strong></td>
</tr>
<tr>
<td>014. No adequate rationale has been offered for the implicit claim that individuals of an adequate calibre to serve on Court cannot be found from among graduates of GU.</td>
</tr>
<tr>
<td>015. I disagree with the implicit claim that individuals of an adequate calibre to serve on Court cannot be found from among graduates of GU. Co-option does not in any case necessarily result in a higher calibre.</td>
</tr>
</tbody>
</table>
016. ... especially as GC members with the relevant background should be elected by the GC to Assessor posts (see Lauwerys report) and current Assessors without these skills have presumably done a good job in the past.

017. No argument has been put forward to support the implicit claim that individuals of an adequate calibre to serve on Court cannot be found from among graduates of GU.

018. Such area specialists as are identified in a skills audit can be co-opted directly to serve on the appropriate committees, rather than altering the existing composition and balance of Court.

019. The argument that an increase in co-opted members is needed because these can be appointed on the basis of their skills and experience would seem to overlook the potential wide range of skills and expertise among members of the GC.

04. Lay majority already exists or can be achieved with small change

020. There is no necessity for a 'clear' independent majority to be five; three would be sufficient (one fewer SA, one more co-optee).

021. Looked at in one way; there is already a lay majority on Court (depending on the view on the position of the Rector, whom I would regard as independent).

022. If not, reducing the number of GCAs (agreed to be lay members) on Court from 5 to 2, i.e. reducing the lay membership of Court by 3, would not seem in itself to be a way to work towards achieving this.

023. The rationale behind the proposed reduction in the number of GCAs from 5 to 2 is allegedly to increase the number of lay members. This is flawed logic, as GCAs are lay members, so why reduce them?

024. GCAs have historically been considered "lay" or "independent". A reduction in their number does not help to increase the independent representation on Court.

025. If the Rector is taken to be independent there already exists a clear independent majority on Court.

026. The requirement of a 'clear lay majority' is imprecise and open to interpretation. Currently the lay to university members are in a ratio of 13:12. Removing one seat from the GU side would result in a 14:11 ratio, a sufficiently 'clear' lay majority. Two seats being transferred leads to 15:10 which is approaching an overwhelming majority.

027. Agree that there needs to be a lay majority which can be done by reducing the Senate representatives to 5 and increasing the number of co-opted members to 7.

028. While I am not opposed in principle to a reduction in GCAs, taking it down to two begins to impact on the balance of governance, and the GC's role within that. Reducing the GCAs to 4 would allow an increase in co-opted members to 8.

05. Too many accountable only to Court under DO206; co-option process not independent of Court

029. ACCOUNTABILITY: the composition proposed also reduces the number of members accountable to their lay constituencies, with a large number accountable only to Court.

030. Increasing Court co-optees results in a substantial number of members accountable only to Court. This is not in accordance with good Governance practice, and effectively results in Court appointing the majority of its own membership.

031. The co-option process used by Court for its own appointees is not transparent or independent of Court itself. To rely on such a method for 40% of the Court membership would be unacceptable.

032. One of the underlying principles of oversight is openness. The proposal for ten co-optees means almost half of Court will be appointed by a Court committee. This will lead to a perception, at least, that Court is appointing itself and controlling its own destiny, which is government behind closed doors.

06. Changing "Assessor" to "Member" reduces status

033. There is an implied reduction in the status and role of Assessors in ensuring good governance in the proposed change the designation of "Assessors" to "members".

034. No reason is given for changing the term "Assessor" to "member".

035. DO206 seeks to change the designation of "Assessors" to "members" with an implied reduction in their status and role in ensuring good governance.

07. Insufficient commitment to co-optees being GU graduates

036. No formal commitment in DO206 that any co-optees would be graduates. Taking recent co-opted appointments into account, only 1 of the 5 current co-optees is a graduate. (Previously it was 3 out of 5.)

08. Two GCAs on Court not enough for graduate recognition
075. The DO 206 proposals only provide for a guarantee of 2 graduate places on Court, despite the fact that graduates throughout the world are highly invested in the reputation of GU and contribute generously in financial terms.

09. DO206 is not SCGHEG-compliant

099. The HE code provides that one of the overarching purposes of the governance of HE Institutions specifically entails inter alia “matching [such] authority and responsibility with accountability to key internal and external stakeholders”. The GC Membership comprises graduates of the University and also senior academics i.e. key internal and external stakeholders. Reducing the number of GCAs from 5 to 2 dilutes said matching to an unacceptable level.

100. Main Principle 10 of the HE code defines “independent” Members as being both external and independent of the Institution. There is no doubt that the GCAs meet that definition. The current Convenor of Court identified the GCAs as “the only constituency of Court Members who were independently elected or appointed as all the other large constituencies on the Court were composed either of employees of the Court or were appointees of the Court” (source: GCBC Meeting Minutes 22 March 2007). To seek to reduce the number of GCAs from 5 to 2 and replace them with more Co-opted (appointed by Court) Members is not HE Code compliant.
B2. SUBMISSION FOR THE COURT VIEW

11. GU needs to adapt to function well and comply with codes, especially as SFC funding is conditional on compliance

062. The GCBC shares the concern to serve the interests of GU and Court and is not seeking to pursue its own substantive objectives.

063. COMPOSITION OF COURT: the drive to review the composition of Court seems largely based on the need to ensure a lay majority on Court, in keeping with principles of good governance, and is clearly appropriate.

064. I support the desire of Court to achieve a structure which will allow GU to function effectively and fulfill its potential to the greatest possible extent. However, I have concerns that a number of the proposals in DO206 will not achieve that.

065. These changes are even more urgent as SFC will be able to make funding conditional on complying with their view of good governance including a. having a clear independent majority on a Court not exceeding 25; and b. Courts having the necessary balance of skills and experience among their members

066. Retaining 2 GC members reflects Von P.

067. It is not surprising therefore that the new SCGHEG, which we will need to abide by as part of a condition of funding from SFC, stresses as Main Principle 9 the importance of the balance of skills on Court.

12. Court urgently needs to recruit (not elect) large-organisation specialists that they have confidence in for workload, flexibility; succession planning; international connections

In addition to their normal committee work Court members sit on ad hoc project groups. Examples include:

- the project Board that oversaw the reorganisation, Pensions, University fees, Governance, to name but a few.

All of these require Court members with the relevant expertise

037. GU, with a very ambitious strategy, is an increasingly complex organisation of a size, scale and financial parameters which require people with the right, set of skills and experience on the Governing body, both to provide support and guidance and with the functional knowledge, and experience to hold the management to account.

038. This applies particularly currently in audit, finance, property, Health and Safety, HR and remuneration. For this reason Court needs to have the ability to select sufficient people with the skills and experience required who can lead and participate in the relevant committees and advise Court.

039. As convenor of both the HR and Remuneration Committees (and former Chair of the Pension Fund) my international HR background enables me to fulfil the role described above. The role of all Court committee members is one of great responsibility since it is in the committees that the detailed work in the functional areas is carried out on behalf of Court.

040. The functional expertise brought by co-opted lay members provides a vital external perspective in addition to the in-house perspective provided by others. Court meetings themselves cannot examine every area of strategy in detail. It is essential therefore that the Lay contribution in these committees comes from people with the relevant expertise and who have the confidence of Court.

041. The HR committee e.g. meets 5 times per year as well as regular engagement with HR Director and others, for sharing ideas as well as providing support and challenge. This can only be done by someone who has relevant professional experience and credibility.

042. By way of example a completely new HR Strategy has been developed alongside a new performance management approach.

043. There has also been a lot of work on the management of organisational change, diversity, career development, and the salary structures in addition to all the continuing HR input on change management in support of the reorganisation. There is also an extensive Training and development input. There are similar examples for all the functional areas listed in 1 above.

045. Court needs the flexibility to properly plan succession in these functional areas and increasing the co-opted members provides this.

046. E.g. HR Committee will shortly lose Alan MacFarlane (HR) this July; essential to replace with someone with expertise and to deputise/take over as convenor when I retire in two years’ time. Similar examples in Audit, Finance, Health and Safety and Estates.

047. Purpose: Court wants to modernise its composition so that it has the appropriate skills and experience necessary to fulfil Court’s responsibilities for 6000 employees, an income of £469 million and 26,000 students operating in an increasingly competitive and uncertain world.
048. Necessary Skills & Experience: Court’s size means most of the detailed work has to be dealt with by the major Committees- Finance, HR, Audit, Estates, and Health & Safety, each chaired by an independent with skill and experience in the relevant field.

049. Effective succession planning requires a second such Independent on each. Other important committees like Research and Remuneration also require such Independents. Presently, we do not have enough suitably qualified Independents—there are none on Health & Safety or Research and only one on Audit; and we must find suitable qualified replacements for members retiring from Audit and HR by 2016.

050. Membership of Court and one major Committee, plus other demands and reading is a realistic workload for each independent so we need 10 suitably qualified Independents to cover these 5 major Committees.

051. Recruiting qualified Independents is best done by advertisement/interview, using specialist media. It builds a more diverse Court.

052. Recruiting qualified independents is not best done by election from those who care to stand. Many good candidates will not stand.

053. Replacing 2 SAs and 3 GCAs with 5 co-optees gives Court 10 qualified Independents, and 4 other Independents- Convenor, City Council member who does not sit on Committees, and 2 to help with other committees.

054. Allow some of the Independents to be based outside Scotland and so provide the broader view so important to a world class University.

055. An effective and diverse governing body is essential to ensure GU’s long-term sustainability, and to maintain its relationship with all our many stakeholders and the wider public.

056. It is crucial that the Court has the full range of skills which allows it to effectively discharge its primary responsibilities: skills which allow it to challenge and advise me and my senior team as we manage GU on a day-to-day basis.

057. These primary responsibilities include, amongst other duties, approving and monitoring the strategic direction of vision of University, its long-term business planning and annual budgets, GU’s performance relative to the key performance indicators (KPIs) adopted as part of the strategy and annual budgets, and GU’s compliance with funders (not least the Scottish Funding Council, Research Councils and major charities) and ensuring that GU has proper systems of control and accountability.

058. Given the range of major Court Committees (Audit, Finance, HR, Estates, Health and Safety) it is important to have a wide range of specific skills amongst independent Court members (i.e. not staff or students of GU) to adequately cover the Convenorships and membership of these and other committees, which perform the bulk of the functions of Court.

059. In recent years there have been many projects in which independent Court members’ advice and scrutiny has been crucial to our success (e.g. the purchase of the Western Site; the scrutiny of investment managers’ performance by the Investment Advisory Committee; the revision to our HR procedures; and the development of GU’s rolling 5 year capital plan). With a major campus estate redevelopment the demand on their time will increase.

060. With the current 5 co-opted independent members, it is not possible to ensure the required range of skills across all the functions of the Court.

061. There is a need to select more Court members in relation to their skills and experience, and 10 co-opted members would allow this. The DO206 achieves this by proposing that 3 of the GC members are replaced by co-opted members, and with the appointment of two more co-opted members by reducing the Senate membership (thereby achieving a clear independent majority and keeping the size of Court at 25—see Main Principle 10).

13. Court needs clear lay majority

068. Lay Majority: Court of 25 has 12 members who are not independent as defined by the SCGHEG, namely the Principal, 7 Senate, 2 student, 2 staff members, and student elected Rectors when they attend.

069. Thus a clear lay majority needs at least 14 independent members (“Independents”). Realistically this can only achieved by replacing 2 Senate members by 2 Independents.

14. Proposed co-optee recruitment process is robust, independent and retains graduate presence

070. Court’s process: follows the SCGHEG and Von P; produced graduates as successive Convenors of the Estates Committee overseeing the £0.5/1bn Western Development; and is being externally reviewed.
071. Conclusion: Generations of students have benefitted from GU's ability to adjust to meet changing circumstances and challenges. Court unanimously agreed that DO206 is in the best long-term interests of GU, giving it a Court fit for purpose to meet future challenges, while, as Court has agreed, seeking to retain a significant graduate presence through the co-option process.

072. In the case of GC/alumni, the intention of the reform is to achieve a better skills balance without losing the GC/alumni link, by ensuring that the nominations committee bears in mind the desirability of at least 3 co-opted members being graduates and GC members, thus achieving the original intention of GC membership of Court.

073. The use of an open, transparent appointment process, involving advertising of positions externally (see Main Principle 11) is good practice, and reserving some Court positions for GC/alumni members allows us to satisfy the main principles of the code, whilst maintaining our vital link to the alumni community.

15. Required governance balance not possible if 19 Members appointed by other constituencies

074. An underlying theme of some of the governance debates in Scotland has been the imperative to ensure more diverse Governing bodies (by gender etc). This is simply not achievable when 19 positions on Court are selected by various constituencies. It is not possible for a nominations committee to achieve both the skills balance objective and a more diverse Court with only 5 co-opted members. With 10 co-opted members it is more likely that we could achieve this objective. There is no doubt in my mind that Universities will come under increasing scrutiny in terms of our diversity.
## Appendix C: Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Explanation</th>
<th>Term</th>
<th>Explanation</th>
</tr>
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<tbody>
<tr>
<td>GU</td>
<td>University of Glasgow</td>
<td>SA</td>
<td>Senate Assessor</td>
</tr>
<tr>
<td>GC</td>
<td>General Council</td>
<td>GCA</td>
<td>General Council Assessor</td>
</tr>
<tr>
<td>GCBC</td>
<td>General Council Business Committee</td>
<td>von P</td>
<td>Prof von Prondzynski Report</td>
</tr>
<tr>
<td>DO206</td>
<td>Draft Ordinance 206</td>
<td>CSC</td>
<td>Committee of the Chairs of Scottish HEI</td>
</tr>
<tr>
<td>HE</td>
<td>Higher Education</td>
<td>SCGHEG</td>
<td>Scottish Code of Good HE Governance</td>
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<tr>
<td>PCO</td>
<td>Privy Council Office</td>
<td>MP</td>
<td>Main Principle of the SCGHEG</td>
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<tr>
<td>SG</td>
<td>Scottish Government</td>
<td>SFC</td>
<td>Scottish Funding Council</td>
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To Amber Higgins, Clerk to the General Council

Dear Amber

I refer the papers for the meeting on Wednesday, and in particular to Appendix D of Item 8.2 (pages 13 and 14 of 20) in which George has set out some comments on procedures relating to Draft Ordinance 206. Also to Item 8.2.1, where Helen sets out a concern about a possible conflict of interest on the part of members of Court who will be present on Wednesday,

I shared these papers with the University’s lawyer, Laurence Ward of Dundas & Wilson, together with the consultation document that was sent to the GCBC by Court in February 2014. Laurence has replied with the following message, which starts with some general observations on Membership of the University’s Governing Body/Court, and goes on to respond to the points raised by George (Procedural Comments) and to those raised by Helen (Conflicts of Interest).

David Newall
I refer to our conversation last week regarding the proposed changes to the composition of Court in order to comply with the Scottish Code of Good HE Governance ("the Code") and to the series of emails with attachments that you forwarded to me following that conversation. I have reviewed the documentation and I have set out my observations below:

**Membership of the University's Governing Body/Court**

As you well know the Code contains a number of Main Principles supported by Guidelines. Main Principles 9 and 10 are key in this context.

Main Principle 9 applies to the membership of the Governing Body as a whole and provides that "there shall be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities.... The governing body shall draw up and make public a full evaluation of the balance of skills, attributes and experience required for membership of the governing body [as a whole] which shall inform the recruitment of independent members......[and] shall establish appropriate goals and policies in regard to the balance of its independent members in terms of equality and diversity....".

Main Principle 10 states that "the governing body shall have a clear majority of independent members, defined as both external and independent of the Institution. A governing body of no more than 25 members represents a benchmark of good practice".

Perhaps the first question to be asked therefore is whether GCAs are both external and independent of the University? It seems to me that they may be, but that the process by which they are appointed does not guarantee that they will be. Is there anything to preclude the GCBC appointing an individual who is a staff member or who has some other interest in the University? The Principles and Guidelines are not particularly helpful in this regard but my view is that it is not intended that individuals appointed by a designated constituency – be it staff, students, alumni or even the local authority – should be regarded as "both external and independent of the institution". In support of this view the Guidelines are quite specific about the process (through a nominations committee) for seeking out and recommending new independent members of the governing body. Appointments by the GCBC do not meet those requirements. In addition, if the governing body's ability to appoint independent members is restricted (by virtue of some independent members being appointed by a third party such as the GCBC) it is difficult to see how it can ensure the right balance in terms of equality and diversity.

I recognise that my analysis, if accepted, only exacerbates the problem! In any event, you may have had discussions with the SFC and they may be prepared to accept that alumni appointments count towards the number of independent members. In either case, it is clear that in order to reduce the size of Court to the benchmark of 25 (in time) and at the same time having a majority of independent members, the number of members appointed by representative groups such as the GC and Senate must be reduced. I turn therefore to the procedural points put forward by George Tait.

**Procedural Comments**

It is perhaps worth stating at the outset that the Procedural Comments raise issues that are similar to those that one would raise if seeking a Judicial Review of a decision by a public body. Is the decision wrong in law? Did the person making the decision have power to do so? Did he/she exercise those powers correctly? Did he/she take all the relevant information into account? Has there been a breach of duty to act fairly? Has there been a failure to consult? Has there been any bias? Have legitimate expectations not been taken into account?
Argument A: Ordinance 206 is not required either in whole or in part

You will appreciate from my comments above that I disagree with the view that merely by reducing the Senate Assessors a clear majority of independent members is achieved. In fact this argument rather supports the view that GCAs are not independent because their appointment process completely ignores the key guidance regarding the appointment of new independent members and the requirement to ensure a balance of skills etc and balance in terms of equality and diversity.

Argument A boils down to “the procedure is flawed because it is unnecessary”. There can be little doubt that changes to the composition of Court are required in order to comply with the Code. Even if one takes the view that an individual GCA may satisfy the test of being external and independent, I have grave doubts that deeming 5 members appointed by the GCBC as independent would satisfy the overall requirements of the Code.

Argument B: Court has approved a recommendation from its Working Group on an Ordinance which in itself is flawed and unsatisfactory.

The argument here appears to be that the Working Group did not consult properly with the GCBC. I think that I will have to defer to you in relation to this matter as it is really a question of fact.

Comment from DN:

1. The arrangements for consulting with the General Council and Senate are laid down in Section 4 of the 1966 Act. Court has complied with these.
2. The GCBC approved the draft Ordinance in 2010/11 on behalf of the General Council and, until the decision to re-consult the GC and Senate, in February 2014, there was no obligation on Court to consult further.
3. The GCBC was kept informed as to what was happening; e.g. through the Convener’s report after the June 2013 Court and the GCBC discussions later in 2013.

Argument C: Court has approved a recommendation from its Working Group without having all the surrounding information relating to Ordinance 206 presented to it.

Again it is a question of fact whether or not all relevant information was taken into account. The fact that there were objections by some members of the GC may indeed be relevant information for Court to be aware of but I would have thought that the views of the GC/GCBC are of more relevance than letters written by individual members to the Privy Council Office. I think that Court could reasonably surmise that there will be opposition from any constituency whose representation on Court will be reduced and one might assume that Court will have taken that into account in its deliberations. As to whether the letters of opposition are relevant or not will depend on their content - do they raise any issues that were not, in fact, considered by Court? If they were never actually made available but only referred to in passing then it is difficult to argue that Court should have considered them.

Argument D: The GCBC has not been properly consulted about Ordinance 206.

Argument D largely repeats Argument B and turns on the facts. (DN comment – see notes under B above).

Argument E: Court is rushing through the consultation period for Ordinance 206 with undue haste and without adequate time allowed for full consultation with the relevant parties.

The argument is again about lack of consultation coupled with unnecessarily limiting the time for consultation. It is undermined to some extent by placing reliance on the SFC not seeking to enforce the Code through grant conditions. If a court were to find grounds for criticism it would most likely look to whether consultation process started early enough rather than the deadline for it coming to an end which is largely determined by the SFC and the Scottish Government.
Argument F. Court has not provided sufficient justification for the proposed reduction in the number of GCAs contained in Ordinance 206 for the GC to consider.

This is the weakest of all of the Arguments in my view when one has regard to requirements of the Code. The continued appointment of 5 GCAs out of 25 members in total and out of 13 independent members will simply not meet the good governance requirements set out in the Code in my view.

Conflicts of Interest

Turning finally to the suggestion that the Principal and the GCA's should not attend the next meeting of the GCBC as they have a perceived conflict of interest. It seems to me that if there is a conflict (and I am far from sure that there is) it only arises by virtue of holding office. It is not a personal conflict. Certainly in the case of the Principal, he is a member of Court ex officio and I cannot see any conflict arising in relation to the question as to whether there are 2 or 5 GCAs. The perception that there is a potential conflict seems to stem, however, from the fact that Court has already considered this matter and that the Principal and the GCAs may come to the meeting having already decided on the issue. Again, if one were to accept that as a conflict of interest precluding one from attending or participating in a meeting of the GCBC, it would have far reaching effects and operate in many situations to entirely defeat the purpose of having the Principal and the GCAs present. The Principal's and the GCAs interest as members of Court is so self-evident that I do not think it necessary even to declare it although that could be done if it were felt helpful to allay any concerns.

Please do not hesitate to contact me if you wish to discuss.

Kind regards

Laurence
University of Glasgow

Council of Senate

Communication from the Council of Senate to the University Court

Draft Ordinance 206: Amendment of Ordinance No. 182 (Composition of the University Court)

At its meeting on 17 April 2014, the Council of Senate received a memorandum from the Court Office dated 19 February 2014. The memorandum detailed the context and history of proposed changes to the composition of Court. With the memorandum, the Council also received a copy of the proposed replacement Ordinance and extracts from the minutes of Court at which the matter had been considered. These were dated 13 October and 15 December 2010, 16 February, 13 April, 22 June and 12 October 2011 and 9 October and 11 December 2013. These documents had also been circulated to Senate on 19 February 2014, notifying Senate of the formal consultation process on the draft Ordinance and the opportunity to submit views on the proposals. The memorandum noted that the deadline for the submission of comments was 23 April 2014.

The memorandum also sought Senate’s views on the draft Ordinance. On 6 February 2014, Senate had resolved to establish the Council of Senate, with a remit to consider the normal business of Senate on Senate’s behalf. The draft Ordinance was accordingly considered at the meeting of the Council on 17 April 2014. The meeting of the Council was attended by 71 members of the Council, with other members of Senate and other staff of the University present. The meeting was thus not quorate.1

To help inform its discussions, the Council also received a briefing paper from the Clerk of Senate setting out the background of the proposal and its chronology and reminding the Council of the views expressed by Senate when it had previously considered the matter. This document noted that, at the Senate meeting in December 2010, the draft Ordinance, which then proposed reducing the number of Senate Assessors on Court from seven to four, was rejected by the majority of those members attending Senate at that meeting. It had been subsequently proposed by Court to reduce the number of Senate Assessors to five. Since then, discussions had not moved further on finding an agreement on the appropriate number of Senate Assessors on Court.

In January 2012, the Report of the Review of Higher Education Governance in Scotland, chaired by Professor Ferdinand von Prondzynski, had been published. The recommendations had been welcomed by the Cabinet Secretary for Education and Lifelong Learning, and they had formed the basis for the publication in July 2013 of the Scottish Code of Good HE Governance.

The Code had come into force on 1 August 2013, ‘with universities working during the 2013-14 academic year to implement any required changes’ (Preface)2. It was noted that the University was now close to the end of that 12-month readjustment period, and thus needed to reach a decision on the composition of Court. The Code made it clear that ‘all universities in Scotland will be expected to comply with the Main Principles contained in the Code and to observe the provisions set out in the supporting guidelines’, and that ‘the Scottish Funding Council [SFC] will require institutions to follow the Code as a condition of a grant of public funding’. Failure to comply with the Code from 2014-15 onwards would therefore jeopardise funding from the SFC.

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1 The quorum for meetings of the Council of Senate is 80.
2 Senate received a note of the implications of the Code where they have a bearing on Senate itself in October 2013.
A key matter in the context of considerations of the draft Ordinance was Main Principle 10 of the Code, which stated that: ‘The governing body shall have a clear majority of independent members, defined as both external and independent of the institution. A governing body of no more than 25 members represents a benchmark of good practice’.

Currently, Court met the requirement of 25 members. The Clerk of Senate’s paper noted, however, that, while there was a majority of independent members, because they only numbered 13, as opposed to 12 University members (the Principal, two employee representatives, two student representatives and seven Senate Assessors), it was possible that this would not constitute a clear majority within the spirit of the Code. Court’s current proposal to reduce the number of Senate Assessors from seven to five would therefore reduce the number of University members to 10 and provide Court with the opportunity to increase the number of independent members to 15.

At the meeting, the Clerk of Senate opened discussion noting that there were probably only three possible options to consider in terms of providing a response to Court.

1. Seven Senate Assessors as now. This would maintain the current size of Senate’s voice on Court and would ensure that the academic voice of the University, our core business, was well heard, and that the breadth of academic activity across a complex institution like the University was well-represented. If, however, the benchmark of good practice of 25 members of Court were to be observed, this would give a University:independent split of 12:13, a majority of one, which, again, was unlikely to meet the requirement in the Code of a clear majority. However, to ensure that there was nonetheless a clear majority on Court, there was the possibility of increasing the overall size of Court to 27 or 28 members, for example. The Clerk of Senate cited the Code statement: ‘Where universities have a material reason for being unable to comply, they must explain why; this principle of “comply or explain” is a widely-accepted governance concept.’

2. Five Senate Assessors, as currently proposed by Court. This would result in a University:independent split of 10:15, thus meeting the benchmark of good practice of 25 members and a clear majority of five for the independent group of members. The University would therefore be clearly compliant with the Code. However, this would reduce the size of Senate’s voice and Court would lose some of the breadth of experience from across the University which the current complement of seven Senate Assessors brought to Court discussions.

3. There was also potentially a third option, that of six Senate Assessors. On the benchmark of good practice of 25 Court members, this would produce a University:independent split of 11:14, an independent majority of 3. Whether Court would be content that this would represent a clear majority would be a matter for Court.

The Clerk of Senate continued that he did not see any more than these three options. Senate had already rejected the proposal for fewer than five Senate Assessors. He also very much doubted that a proposal for more than seven was feasible.

Professor Briggs added three further general points. Firstly, he noted that a reduction in the number of Senate Assessors would have increased workload implications for that reduced number of Senate Assessors. Currently, Senate Assessors took on important and very time-consuming tasks such as membership of Reward and Recognition committees, Promotions committees, and of Periodic Subject Review panels. In this context, the Clerk of Senate wished to take the opportunity to thank the Senate Assessors for all the work they did for the University, often with little recognition.
Professor Briggs noted that, whilst there were potentially other ways of dealing with these workload issues, the Council of Senate should be aware of this as a consequence of a reduction in the number of Senate Assessors.

Secondly, whilst the focus of discussion was very much on the number of Senate Assessors on Court, the point needed to be borne in mind that, regardless of the number of Senate Assessors, there was still the requirement for an inbuilt clear independent majority which the Senate Assessors and other University members would have to deal with in their engagements with Court.

Thirdly, Professor Briggs reminded the meeting that, when Senate had deliberated on the establishment of the Council of Senate, Court showed the courtesy not to make any observations on the size of the Council, and he hoped that the Council would return the courtesy and focus solely on Senate membership on Court, although it might also be properly mindful of any implications for the consequent size of Court in any decision the Council made.

The Principal thanked the Clerk of Senate for this exposition of the issues to be considered by the Council and invited the Council to discuss the matter.

In discussion at the meeting, the Council welcomed the opportunity to discuss and submit comments on the draft Ordinance. The desirability for a constructive and collegial working relationship between the Council of Senate and Court was noted. The disagreement between Senate and Court on the number of Senate Assessors was described as a dark and unfortunate episode, and it was hoped that consensus would be found when the University formally submitted its proposals to the Privy Council. It was also regretted that the opportunity to convene dialogue between Senate and Court on the matter had not been taken in the period since Senate had expressed its opposition to the reduction from seven to four Assessors.

There was widespread agreement on the great importance of the academic viewpoint continuing to be effectively asserted in University decision-making.

Consideration was given to means whereby conformity with the Code might be achieved. What would constitute a ‘clear majority’ was debated. It was noted that there was currently a technical majority of lay members, although there was also recognition that this was unlikely to satisfy many interpretations of the Code’s intentions. The Secretary of Court reported that Court was concerned to ensure a lay majority, and that it was not likely to accept that a majority of 13:12 did represent a ‘clear’ majority. The view was put that there was effectively a double intention underlying the proposed changes, in that it sought to ensure a clear independent majority at the same time as doubling the size of the co-opted group, and that the draft effectively conflated the two intentions, with the necessary effect of diminishing Senate representation. The Principal stated that it was essential for good governance that he and the Senior Management Group were effectively challenged and that this necessitated both an independent majority and that the number of external members was sufficient to provide an appropriate range of relevant expertise. The view was also expressed that a majority of 15:10 would make for an overwhelmingly non-academic balance. The Council was reminded, however, that, as was the case for all members of Court, the Assessors were individually and collectively responsible to Court and were not appointed as Senate delegates. The Principal also noted that, in practice, voting did not take place frequently at Court, but that, in his experience, voting had never taken place along bloc lines.

In the view of some present, co-opted members owed their status as Court members to their appointments only, rather than to being the representatives of an external organisation such as a professional or civic authority, and this in fact made their independent status questionable.
However, it was reported that, in the Code, ‘independent’ meant external to the University. Professor French commented that, in his experience, the lay members of Court did act very independently of management.

The Principal also noted the recent election of Mr Edward Snowden as Rector and the circumstances under which he was presently living, in exile and with freedom to perform the duties of the post severely restricted. The place of the Rector on the University Court represented one of the group of independent members. While this did not form an appropriate basis on which to define the size of Court, it was likely to provide a practical difficulty in that there would be no majority of independent members while the Rector’s present circumstances continued.

Arguments were made for extending the composition of Court beyond 25 and providing a majority of independent members through increasing the number of co-opted members slightly, while retaining the present level of Senate representation. The Secretary of Court reported that it would be very difficult for Court to accept a model which involved departing from the terms of the Code and exceeding the benchmark maximum composition of 25. The Principal also stressed the importance of the University complying with the terms of the Code. In his personal view, it might be difficult to explain a departure such as increasing Court’s size beyond the benchmark figure. He further noted that, in the event of changes to the Code in the future, he, Court and the University would be obliged to respond to these changes positively also. If, for instance, changes required then did not coincide with the view of Court, Court would have to comply regardless, just as Senate had an obligation to help comply with the current terms of the Code. A number of members challenged the need for strict adherence to a body with no more than 25 members and found it difficult to accept that it would not be possible for the University to have a slightly larger Court. The reference in the code to the ‘comply or explain’ principle was again cited, and it was noted that the ceiling of 25 was, as a benchmark, strictly a recommendation rather than a requirement. To propose to increase the proportion of lay members while retaining the present overall size of 25 made matters unnecessarily complicated. It was considered that it would be reasonable for a large and diverse university to argue that it required a larger governing body, while adhering to the spirit of the Code and its desire to reconcile breadth and balance in its composition with the effectiveness of a smaller body.

The view was also put that it was not possible to anticipate fully the range of consequences of reducing the number of Assessors. If this were the case, it would be appropriate to reserve the right to review the matter at a later date and give the matter further consideration in light of experience.

Consideration was also given to the implications of a reduction in the number of Senate Assessors on their ability to be effective and on workloads. The Secretary of Court and Dr Spaeth, the Senior Senate Assessor, explained that there were two main dimensions to the role of the Assessors: their appointments to Court and the fulfilling of their role in the governance arrangements of the University under its constitution; and their fulfilling other duties assigned by the University, such as participating on Periodic Subject Review panels. Dr Spaeth confirmed that, even with a contingent of seven Assessors, workloads were problematic. The role was time-consuming and demanding. In a review c. 10 years previously, it had been decided that the Assessors would no longer sit on all appointment panels as they had hitherto. However, the Assessors were still involved in the appointments of senior staff. Given that Assessors could not sit on promotion committees or appointment panels for staff in their own College or on Periodic Subject Review panels for schools in their own college, a reduction in their numbers would reduce flexibility as well as increase demand. Dr Spaeth did not anticipate that the lay members of Court would be able to assume such duties. The Principal reported that he placed great importance on the role that the Assessors as well as
student representatives played in performing duties such as appointment panels, as they brought a
different and vital perspective to decision-making.

It was noted that, if there were fewer Assessors, in addition to higher workloads, there would be
proportionately greater pressure on postholders to be effective in conveying the academic
viewpoint to lay members of Court. Professor Martin, who had previously been a Senate Assessor,
made the point that the opportunities for interaction between the Senate Assessors and lay
members outwith Court meetings themselves had decreased in recent years. The Council considered
means of ensuring continuing effectiveness. It was suggested that a second tier of senior Senate
members might be established to carry out some of the duties of the Assessors not directly
stemming from their appointments to Court. This measure had been adopted informally at times in
the past. It would also benefit succession planning: acting in this capacity could be regarded as
valuable preparation for subsequent appointment as a Senate Assessor.

The Council gave consideration to ways in which it would agree upon its views to convey them to
Court. Three motions were proposed.

The first motion, proposed by Professor Godfrey and seconded by Professor Munck, was to indicate
the Council’s rejection of the reduction of the number of Senate Assessors on Court from seven to
five, as proposed in draft Ordinance 206. The motion was carried by 54 votes to 6.

A number of members commented to the effect that a compromise figure of six Assessors might be
more acceptable to Court in recognition of the external pressures on the University and offer a
pragmatic solution to the question. Accordingly, a second motion was proposed by Professor Wyke
and seconded by Dr Duda proposing that there should be six Senate Assessors on Court. The
motion was carried by 43 votes to 16.

Professor Munck reminded the Council that Court and Senate had previously agreed that a Joint
Court and Senate Working Group would be provided for and established by the Principal. The Group
would have the remit to consider the matter at issue and formulate recommendations to Senate and
Court. A third motion was accordingly proposed by Professor Munck and seconded by Dr Roach,
that the Principal should establish a Joint Senate/Court Working Group. The remit of the Working
Group would be to address the number of Senate Assessors on Court. The motion was carried by 47
votes to 11.

It was agreed that the record of the discussion at the Council meeting and the various views
expressed should be communicated to Court as the Council’s submission to the consultation on the
draft Ordinance.
Submission by Professor A M Godfrey to the Consultation on Draft Ordinance 206: Amendment of Ordinance 182

I strongly oppose the proposed reduction in the number of Senate Assessors on Court, and caution against increasing the number of co-opted members.

I believe Court has adopted an untenable and unnecessary interpretation of the relevant governance principles, and that the proposed changes are not required by those principles.

Senate and (most recently) the Council of Senate have overwhelmingly rejected the reduction to only five Senate Assessors. I submit that it would be inappropriate to proceed with the Ordinance with that reduction in place.

In this context I would remind Court that in the “Communications to Senate from the meeting of Court held on Wednesday 12 October 2011”, communicated to the Senate meeting of 16 January 2012, it was stated by the Secretary of Court in relation to the first submission of the Ordinance that “The Privy Council had provided interim feedback on the Ordinance. It had suggested that changes to the lay membership could proceed but that the number of Senate Assessors on Court should remain unchanged at this stage, to be revisited by the University after further consultation with Senate and after the HE Governance Review report. Court agreed that rather than seek partially to implement the draft Ordinance, the outcome of the Governance Review should be awaited before taking further action.” (Italics added.) Senate actively requested further consultation in its meeting of April 2011. Members of Senate, including myself, submitted a representation to the Privy Council on 24 May 2011 objecting to the Ordinance. Court has avoided any consultation with Senate until embarking on the current statutory consultation, and that is a matter for regret. To proceed with the Ordinance without Senate’s consent to the proposed reduction in Senate Assessors would be inappropriate, and I urge Court to remove the reduction in the number of Senate Assessors.

My detailed objections and comments follow:

The maximum size of Court

- in the Memorandum dated 19 February 2014 from Court Office to the Clerk of Senate and circulated to Senate (“the Memorandum”), it is stated with reference to the CUC Code that the “maximum number recommended by that Code” is 25 (p.1 of the Memorandum). This is inaccurate and misleading; the Code merely states that 25 represents “a benchmark of good practice”. Similarly, the same form of words is used in the Memorandum at p.3 where it is inaccurately stated that the Scottish Code of Good HE Governance recommends that a governing body “should have no more than 25 members”. The Memorandum later correctly refers to the measure of 25 members of a governing body as merely “a benchmark of good practice” but Court does not appear to have addressed itself to the difference between a mandatory requirement and a benchmark of good practice.
as a result, Court has unnecessarily restricted the choice of different ways to achieve its purpose of establishing a larger external and independent majority ("lay" majority in previous usage) by relying on the incorrect argument that "As a result the only practical way to create that clear lay majority was to reduce the number elected or appointed by the students, staff or Senate." (Memorandum p.1.) In fact, to repeat, there is no requirement to have only 25 members. It is simply a benchmark of good practice which is to guide the whole HE sector, and individual institutions are not bound in any direct sense to limit the size of the governing body to 25 or indeed any other number, if good cause exists for a different size. I would submit that a benchmark provides a standard against which to measure practice; therefore, a governing body of 26 or 27, for example, is still on any view very close to the benchmark (8% above it), and therefore acceptable since it does not constitute a material divergence from the benchmark. A governing body of 40 might not be, since it is 60% in excess of the benchmark. Court has inexplicably failed to address this point in the period of over three years since it was first clearly made in the course of the first consultation of 2010-11 on the proposed changes. Achieving a larger majority of independent and external members of court could be achieved by increasing the size of Court to 26 by the addition of one co-opted member, and I recommend that course of action.

it is therefore misleading to state that the Code is "wholly supportive" of the draft Ordinance. The Code is neutral. The Ordinance may simply be consistent with the Code. But so would other approaches which Court has failed to adequately consider. The Code could be said to be "wholly supportive" of any change which is consistent with it.

further, Court is not required by the condition of grant which may be imposed by the SFC to limit the Court to 25 either, as will be explained in the next section.

Compliance with the Scottish Funding Council’s requirement to comply with the Scottish Code of Good HE Governance

Court correctly notes that legislation now permits the Scottish Government to impose a condition in return for funding that the Scottish Funding Council must "require the institution to comply with any principles of governance which appear to the Council to constitute good practice in relation to higher education institutions."

Court has failed to appreciate the principles of compliance which the Code sets out to explain how to assess whether any particular institution is compliant or not with the principles of governance. In fact, the Code would permit a governing body with more than 25 members, and the principles of compliance provide for a "comply or explain" approach under which the institution can depart from benchmarks in the Code but be held to account for its governance arrangements through provision of an explanation. The need for a very large and diverse university covering all major academic disciplines to respect its traditional stakeholders, its traditions of governance and representation, its engagement with the local community and to provide sufficient internal academic expertise to give its governing body the necessary competencies to evaluate university business and academic life, provides a very obvious basis for explaining why Glasgow
can justify a slightly larger Court than the “benchmark of good practice” would otherwise suggest.

- the Scottish Code of Good HE Governance (“The Code”) allows for such exceptions, though stating that these will be rare. Its preface states that

  Where universities have a material reason for being unable to comply, they must explain why; this principle of “comply or explain” is a widely-accepted governance concept. Any such exceptions to compliance with the Code will be disclosable through the process of audit.

This is reinforced on p.1 of the Code:

  Given the diversity of Scottish Higher Education Institutions it is possible that certain of the Main Principles can be met by means different to those envisaged in the Guidelines. Accordingly the Code is issued on a “comply or explain” basis. This approach is widely accepted as the most suitable means of achieving good governance in an effective and transparent way.”

The Code itself provides for a process of audit whereby this would be disclosed to the SFC. There is no current guidance indicating that this would in any way prove unacceptable.

- The need to maintain sufficient academic representation on Court to provide adequate expertise and representation provides an explanation why Glasgow may require a slightly larger Court than the benchmark suggests – the Code itself requires that “There shall be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence” (p 4, para 9). Given that in December 2010 Senate overwhelmingly rejected the reduction in the number of Senate Assessors, and in April 2014 the Council of Senate again overwhelmingly rejected the proposed reduction, proceeding with the current Ordinance would clearly contradict this requirement of the Code, since clearly Senate does not have confidence in a reformed Court in which the number of Senate Assessors is reduced to five as currently proposed.

**Achieving a Majority of External and Independent Members**

- there is and always has been a majority of external and independent members on Court (currently 13 members out of 25), and this is reflected in the earlier structure of Court as provided for by statute in 1858, 1889 and 1966. Previously the argument was made by Court that the Rector could not be seen as external and independent. However, the Rector fits precisely within the category of “independent members, defined as both external and independent of the institution”, and does so just as much as any other external member. Election by a constituency within the university, in this case the student body, does not subtract in any way from the “independence” from the institution of such an elected representative.
Other Objections

- Court’s constitutional role and function and need for substantial academic expertise is ignored

In approving the overall set of proposals, Court seems to have misconceived its own role. In the Working Group proposals a prominent emphasis is given to the management and executive decision-making role of Court. There seems to be a failure to recognise the wider and equally important constitutional role of Court within the university, as provided for by statute under the Universities (Scotland) Act 1966. An extraordinary degree of legal power is given to Court under this legislation. But for the exercise of its legal powers to carry the necessary legitimacy within the university, Court must be constituted in a representative manner which gives sufficient voice to the academic staff who in collegiate terms constitute the absolute core of the university and literally embody its central mission. Alongside this there is the need (referred to above) for Court to have adequate skills and expertise (the Code’s requirement that “There shall be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence” (p 4, para 9)). Shifting the balance of representation towards external members who are co-opted by Court itself would damage Court’s legitimacy as a constitutional body, deprive it of necessary academic skill and experience and thereby undermine its role in governance.

- External co-opted members are not fully independent, since they are appointed by Court itself

The concept of independence must not be confused with external expertise: coopted members are appointed by Court itself and so constitutionally cannot be described as completely independent. Increasing the number of coopted members actually decreases the proportion of independent members of court in this sense, and decreases their actual number, if this is to be at the expense of elected members who represent the historic community of the university and the different stakeholders who are part of it. Having 20% of the members of Court coopted, as it already the case, seems a fairly significant proportion, given that coopted members sit by invitation and not in a representative capacity.

- Role of Senate Assessors in the University

Senate Assessors have a large burden of work beyond immediate Court business, and act as representatives of Court in a number of essential university activities (e.g. promotions committees, senior academic appointments, periodic subject reviews). This is another practical reason why it would be wrong to reduce their number.

- Transitional Governance Arrangements
The proposed transitional governance arrangements providing for a temporary increase in the number of members of Court strike me as incompetent. They would have to be set out in the body of the Ordinance to be legally effective.

Mark Godfrey

A. M. Godfrey,
Professor of Legal History, School of Law, University of Glasgow
23 April 2014.
From: John McColl  
Sent: 04 April 2014 10:40  
To: Helen Clegg  
Subject: RE: new item on Discussion Forum - consultation re representation on Court

Dear Helen,

Thank you for your e-mail this morning, covering the note from Mark Godfrey reminding us in more detail of the background to this matter. I would like to express my concerns about the proposals to change the composition of the University Court.

I cannot see that the current proposals from Court have taken account of the concerns raised by Senate or counter-suggestions made by Senate the last time this was discussed (about two years ago). Those concerns appeared to be endorsed by the response received from the Privy Council at the time.

I continue to question the need for any change to the composition of Court, since its current composition appears to guarantee a majority (13 – 12) of members who are not staff or students of the University. The fact that one of those external members is elected by the students, rather than appointed by the City Council or co-opted by the Court, seems irrelevant in this regard.

I believe that, in order to be effective, the Court needs strong representation from its academic staff as well as from other stakeholders in higher education. The reduction in the number of Senate members seems likely to leave the Court short of academic expertise.

Constitutionally, Court and Senate have complementary roles to play in the management of the University. I cannot see how reducing the (already small) overlap in membership of the two bodies will improve their ability to work together for the good of the University of Glasgow.

I do not believe it is good practice for a body such as Court to give itself the right to determine 40% of its own membership by co-option rather than by a process that makes members accountable to a wider constituency for their actions while in office. Senate ‘assessors’ are accountable to Senate.

By the way, Helen, I will not be able to attend the Council of Senate meeting on 17 April. Please would you note my apologies.

Best wishes,

John

John H. McColl  
Professor of Learning and Teaching in Statistics  
School of Mathematics and Statistics  
University of Glasgow  
Direct line: +44 (0)141 330 4749  
FAX: +44 (0)141 330 4814  
15 University Gardens  
Glasgow G12 8QQ  
The University of Glasgow, charity number SC004401
ELECTION OF RECTOR

Monday 17 and Tuesday 18 February 2014

The Rector of the University of Glasgow is elected by the registered students of the University and the main role of the Rector is to represent the University’s students.

The next Rectorial Election will be held on Monday 17 to Tuesday 18 February 2014, and the person elected will hold office for a period of three years.

In the words of the Universities (Scotland) Act 1858, the Rector is the 'ordinary president' of Court, the University's governing body. The Rector shares the chairing of Court with the Convener of Court, who is currently Mr David Ross, a General Council representative (lay member) on Court. The Convener of Court also undertakes the other responsibilities associated with the chairing of a governing body.

The University Court has a membership of 25 persons and is currently composed of the following:

The Rector
The Principal and Vice-Chancellor
A representative of the City of Glasgow Council
The Chancellor’s Representative
Members of the General Council of the University - five in number
Members of the Senate - seven in number
The President of the Students’ Representative Council of the University
An Assessor of the Students’ Representative Council of the University
Employee Representatives - two in number
Co-opted Members - five in number

Membership is currently under review, with the aim of increasing external (co-opted) members to reflect good governance practice and augment professional expertise, but will remain at 25.

The University Court normally meets five times a year, generally on a Wednesday afternoon, and also holds a one-day Strategy Day and two half-day briefings.

The Rector brings to the attention of the University authorities matters of concern to the students of the University, and for that reason he or she has a close working relationship with the Students’ Representative Council.

Notes on eligibility for nomination

The Universities (Scotland) Act 1966 states that no person holding an appointment in any of the older universities shall be eligible to be elected as Rector.

Ordinance No. 186 states that no registered student of the University, nor any part-time student or individual registered for examination or graduation purposes only, is eligible to be nominated for election as Rector.

November 2013

DAVID NEWALL
Secretary of University Court
THE UNIVERSITY OF GLASGOW

OPINION

1. The Issue

I refer to the instructions of 25 April 2014 arising out of proposals to alter the composition of the University Court. In particular I am asked whether the University Rector falls to be treated as an independent member of the University Court. The context of the question is informed by the provisions of the Scottish Code of Good HE Governance.

2. The Rector's position

In approaching this issue I consider what are the components of the role of Rector. The role has an ancient provenance but has altered over the years at least in part through statutory intervention. The Universities (Scotland) Act 1858 at section 4 provides the rector shall be 'the ordinary president with a deliberative and a casting vote' of the University Court. Section 9 of the 1858 Act also provided that 'A rector to be elected by the matriculated students' would be a member of the University Court. The Universities (Scotland) Act 1889 at section 5(1) provides that 'The rector may before he appoints his assessor, confer with the students representative council.' The Universities (Scotland) Act 1966 provides at section 11 that 'No person holding an appointment in any of the older Universities [including Glasgow] shall be eligible to be - (a) elected as rector of that University... '.

It may be seen from the foregoing that Parliament saw the rector as elected by students and to a degree guided by the students representative council. As continues to the present day the University rector is elected by the student body. The University envisages pursuant to its notification in November 2013, that 'the main role of the rector is to represent the University's students'. It also
appears that a rector may in fact not be in place (see 2004 when no nominations were received) and
that a rector need not attend the University Court, it being acceptable that they may not be in a position
to fulfil their responsibilities, eg the current rector Edward Snowden. This liberality suggests a basis in
acceptance of the students' choice which in turn suggests a link between rector and students.

In my opinion there is a reasonable case on these facts alone to characterise a rector as not independent
of the electing student body.

3. Independent Members

Conceptually independence may be considered to be where no direct financial or fiduciary relationship
exists or where a party is free from any other relationship or circumstance that could interfere with the
exercise of judgment. The Oxford English Dictionary - online gives a definition as including 'not
depending on the authority of another, not in a position of subordination or subjection; ... Not
depending on others for the formulation of opinions or guidance of conduct; not influenced or biased by
the opinions of others; ... '. This broad definition takes one only so far.

In the present issue the question arises in the context of the Scottish Code of Good HE Governance.
In a broad sense all members of the University Court are expected to be independent in that at Main
Principle 6 at page 4, it is stated 'All members shall exercise their responsibilities in the interests of the
Institution as a whole rather than as a representative of any constituency.' It might therefore be said
notwithstanding a rector may be perceived as being a representative of the student body as deriving
office from that body, the Code provides guidance towards an exercise of independence in carrying out
the rectorial responsibilities. The Code however distinguishes much more narrowly the nature of
independence in context. Main principle 9 at page 4-5 describes 'independent members' as being
recruited where certain criteria are fulfilled and not being simply equiparated to any other member.
This is put beyond dispute by Main Principle 10 at page 5 which divides the University Court as the
governing body into independent members (who are to have 'a clear majority') and other members.
Independence is defined in context as 'both external and independent of the Institution'. While involving
a certain circularity of definition, it is clear that acting in an independent fashion pursuant to Main
Principle 6 supra is not enough to qualify the definition. At page 13 of the Code reference is made to
'independent members' being distinguished from 'staff and student members of the governing body'.
When it comes to discussion at page 22 of Main Principle 9 supra the distinction of independent
members becomes sharp - independent members are to be recruited (ie not elected) and that by
reference to an evaluation of 'skills, attributes and experience required for membership of the
governing body'. Plainly election of a rector by way of a simple vote of the student body is not a
means of achieving the recruitment envisaged by the application of the principle. Advertising for and
appointing independent members (see pages 23 and 24 respectively) demonstrate further the narrow
meaning ascribed by the Code to independent members.
4. Conclusion

On the assumption that the University seeks to achieve an alteration of its governance structure that is compatible with the Code (which of course is not mandatory being guidance rather than stipulation), then in my opinion it should not count the rector as an 'independent member' of the University Court. I do not detect scope for the rector to meet the narrow meaning the Code attaches to 'independent member'.

In any event on a broader approach to meaning, it is still not easy to regard the rector as occupying an independent role for the reasons discussed at paragraph 2 above. Furthermore while a rector as is any other member, encouraged by the Code to eschew a representational role, there is no clear sanction were a rector minded to decide issues by consideration of the interests of those who elected him or her.

Finally the desideratum of the independent members having 'a clear majority', is not guaranteed by reliance on a rector who even if characterised as 'independent', may not or cannot attend the University Court or who, as in 2004, is not actually in existence.

Lord Davidson of Glen Clova QC

Edinburgh

29 April 2014