

Rt Hon Alex Salmond MSP
First Minister
Office of the First Minister
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Your ref as1706

17 June 2008

Dear Alex

Stirling University & the Academic Staff Statutes

I am writing to you and, by copying this letter, to the Lord Advocate, Elish Angiolini on a matter which may come to the Scottish Universities Committee of the Privy Council on which I understand you both represent the Scottish Government.

We understand that the Court of University of Stirling will on 23 June receive a working party proposal to put a major change of the Academic Staff Statute to the Privy Council for approval. As that proposed change would be highly detrimental to the interests of our members and against the public interest, I am writing to alert you and the Lord Advocate and to seek your commitment to reject the proposal. It may be that the University Court listens to the representations which we are making, however in any event a clarification of the Scottish Government view of the matter would facilitate progress in further discussion of this matter whether at Stirling or at the Scottish level.

The workings of the Privy Council are somewhat obscure to people in Scotland but we understand that, with higher education devolved to the Scottish Parliament, Privy Council consideration of proposed changes to the Statutes of the eight pre-1992 Universities is essentially a devolved matter. As such it is, despite the obscurity, a political as well as a legal matter, with the public interest protected by your input and that of the Lord Advocate.

My explanation of the issue we face, which follows, starts with the historical background, which is necessary for the context.

Historical background

The existing Academic Staff Statute was introduced by way of Statutory Instrument in 1992, following consultations conducted by Commissioners appointed under the Education Reform Act of 1988. You will, I know, well recall the devastating impact of the funding cuts imposed by the University Grants Committee in 1981, which hit a number of Scottish Universities- Aberdeen, Dundee and Stirling- particularly badly. Margaret Thatcher discovered in the wake of those cuts that it was not easy to make academics redundant and determined to remove academic tenure by legislation, which was accomplished in the Education Reform Act 1988. However, as a result of intensive lobbying and the intervention of the House of Lords to protect academic freedom, the legislation and the subsequent "model Statute" which the University Commissioners introduced in 1992, contained significant protections. These protections introduced at that time and which have endured to date include:

- A definition of academic freedom as a guiding principle to be followed;
- A set procedure whereby any University Court would have to approach any need to reduce academic staff numbers by way of redundancy;
- Set grievance, disciplinary and dismissal procedures for academic staff;
- An appeal procedure in cases of dismissal, whether for good cause or redundancy, involving an independent legally qualified and experienced person.
- No exclusion made of academic staff on fixed term contracts (although subsequent case law suggests that a probationer covered by a formal probationary process, with separate rights of appeal, might be excluded).

The Scottish "consortium" discussions

In 2006 UCU Scotland was approached by the University Secretary and the HR Director of Dundee University (David Duncan and Pam Milne) acting on behalf of a consortium of the eight pre-1992 Universities. They indicated that the Universities shared a wish to reform the Academic Staff Statute (called Ordinance in some places but, for simplicity, referred to as Statute in this letter). They preferred to proceed by way of consultation and agreement with UCU Scotland. Following internal consultation with UCU Scotland and our eight branches concerned, I was able to confirm that we would be willing to consult at the Scottish level and, whilst negotiating rights on a matter affecting the job security of our members rested at local level, we might be able to develop a commended model.

We then awaited the promised consultation. Despite reminders to David Duncan, it did not occur. Early in 2008 however it emerged that the University of Stirling had issued their own proposals to change their Statutes, including the Academic Staff Statute. At this point, following the intervention of your colleague, Fiona Hyslop (to whom I am copying this), we received an approach from David Duncan acting on behalf now of seven universities (Stirling appeared to have departed the consortium). Separately, Fiona Hyslop appears to have been assured that Stirling University had engaged in local consultations (although as you will see, there had not been proper local consultation either).

The Scottish "consortium" level discussions are now, I am pleased to report, proceeding. Stirling University has rejoined the consortium, albeit whether as voyeur or participant remains unclear. Unlike the other seven participant universities, Stirling University Court is proceeding with the internal process aimed at changing the Academic Staff Statute, without waiting for the outcome of the consortium discussions. Stirling certainly appear to be on a path of their own, which, if approved by the Privy Council, is likely to leave them with a different governance structure in respect of Academic Staff.

Shortly before the Scottish consortium discussions commenced on 23 May, the employer side made available their proposals in what was marked as a seventh draft, indicating a considerable amount of unilateral employer side work over the two years since the offer of consultation with UCU had been made, accepted, but not followed up. Nevertheless, the discussions were constructive, with a measure of agreement on some matters including that the Statute drafted in 1992 could be updated to comply with the current state of employment law. A Joint Working Party was established, which is to meet for the first time on 20 June and has the aim of reporting back to the plenary consultation group by the end of September. I note that the issues involved are difficult and it is important that both sides give the process due time and care. An issue which the employer side laboured over through two years and seven drafts cannot be resolved by a few quick meetings although perhaps, had we been consulted in 2006, there might have been a mutually acceptable model available by now. I feel it necessary to make these remarks as who knows whether another University might cut and run from the consortium, making a dash to the Privy Council with unilateral proposals, as Stirling appears intent on doing. If so, you can expect them to blame UCU for dragging our feet in consultations. That would be far from the case – my reminders to David Duncan since 2006 could be supplied as proof. I remain hopeful though that the consortium discussions will actually be productive and we are committed to that.

University of Stirling initiative and "consultation"

The University of Stirling posted a consultation paper on "Review of Charter and Statutes" on the University Portal in January 2008.

The University Court clearly believes that there followed a period of proper consultation encompassing Stirling UCU. This, however, is not the case. A full account of the University's approach to the consultation is appended.

The University's initial proposals were to delete the Academic Staff Statute entirely. At Stirling the Statute is known as the "Employment Statute" and is Stirling University's Statute 17. The initial proposal stated:

"The requirement for approval by the Privy Council makes it difficult for the Statute to be reviewed and updated regularly to take into account changes in legislation in this area. We are therefore proposing to add a clause enshrining the principle of academic freedom into the Charter, with disciplinary and associated processes for academic staff

being dealt with as a standard aspect of HR procedures and documentation, approved by the Court in the normal way.”

The University Court Working Party has now moved to a different detailed proposal.

The current proposal, to be put to the University Court on 23 June, is contained in a Consultation Report dated May 2008 from the Charter and Statutes Working Group of Court. The Working Group now propose:

“ ...to confirm its original proposal to promote an academic freedom clause in the Charter but to amend its proposals in relation to Statute 17 in response to feedback from the consultation process. It therefore now proposes simply to move the Statute, in its current form and in its entirety, to Ordinances while at the same time signalling the University’s intention to take forward full consultation and negotiation with the UCU on the reform of that Ordinance at an early stage.”

This appears likely to be the formal proposal in respect of Statute 17 which Stirling University Court will, if Court approves the Working Party proposal, put to the Privy Council.

The main implication in law and in public policy, is that if the Privy Council approves the proposed change, Stirling University will no longer have an Academic Staff Statute at all. Instead there will be an Ordinance, which the University itself can change, without reference to the Privy Council.

Legal and public policy implications

We invite you and the Lord Advocate to confer on this matter and to make clear your opposition to any change of the sort mooted by the University of Stirling.

We do so for the following reasons, stated here succinctly though I would be very happy to arrange a meeting should you wish a more detailed briefing and discussion of the issues involved.

- 1** The protection of academic freedom is not only a broad guiding principle, it requires also detailed procedures and there is a public policy interest in Scottish Government ensuring that these procedures do exist and are of a high standard.
- 2** While the existing procedures set out in the Academic Staff Statute at Stirling and elsewhere are indeed capable of updating, the appropriate mechanism for doing so is, after full detailed consultations and negotiations between the universities concerned and the UCU representing the academic staff affected, for any proposals to be put to the Privy Council for approval. This would have the advantage that Scottish Government would, through Privy Council approval of any new Academic Staff Statute, maintain the regulation of University governance in the key area of detailed procedure to safeguard academic freedom, which is a matter of public interest.
- 3** It is not acceptable to allow Stirling University to achieve deregulation of its procedures protecting academic freedom and the rights of academic staff in respect of discipline, dismissal, redundancy and appeals etc. Scottish Government

recently consulted on a list of matters suitable for deregulation in respect of University governance. It was made clear in that consultation that there was no intention to deregulate in respect of the Academic Staff Statute. Stirling University is however taking its guidance from the intentions of government in England and the actions of a few English universities, missing the point that the University of Stirling is covered by the devolved responsibilities of the Scottish Parliament. It is not and should not be any part of the Scottish Government's agenda to deregulate Scottish University governance in respect of academic freedom and the protection of academic staff.

- 4 The Further and Higher Education (Scotland) Act 2005 contains a duty on all fundable bodies (universities and further education colleges) to protect academic freedom as defined in the Act for a defined group of staff. This is a duty on both the Universities concerned and, in order to ensure that they meet the qualifying conditions to be fundable bodies, it is also a duty on the Scottish Funding Council. The fact that there may have been little detailed follow up action to ensure that this aspect of the 2005 Act has been properly implemented is certainly no reason to dismantle the detailed provisions and regulation of those provisions, which do exist in the eight pre-1992 Universities. Indeed the provisions of the 2005 Act confirm the public interest in monitoring and maintaining provision in this area of governance.
- 5 Once Stirling University has been allowed to downgrade the Academic Staff Statute to the level of an Ordinance, Scottish Government will lose or dramatically impair any capacity to ensure that there are adequate detailed protections for academic freedom and the rights of academic staff. It would be a leap of faith, faith in the capacity and good intentions of the University Court and management to negotiate properly with UCU as the union representing the academic staff. As in negotiations there is generally more power in the hands of the employer, in a matter where legislation and public policy requires a special degree of protection for academic staff, it is inadequate to rely merely on the usual approach of negotiations between management and union.
- 6 Our experience as a union, at Stirling University (and, it must be said, at a number of other universities) is that there has been a failure to observe the provisions of the existing Academic Staff Statute and of employment legislation in respect of compliance with the Statute in cases of proposed redundancy of fixed term academic staff covered by the Statute and lack of proper collective consultation in accordance with S.188 of TULRA 1992, where redundancies are contemplated. These are matters which we are addressing, partly through being ready to support members in internal appeals against redundancy and to raise Employment Tribunal proceedings (whether on behalf of individuals or as a collective matter in relation to S.188). However our main emphasis is on achieving agreement of the employers on a better approach to the avoidance of redundancy embodying an emphasis on effective prior consultation on avoidance of redundancy as required by the legislation. The Scottish consortium level discussions offers a constructive route

whereby a suitable approach may be developed and commended. Giving any University a free hand would simply facilitate ongoing and probably more damaging departures from both legal requirements and good practice.

- 7 Scottish Government has made clear its advocacy of a partnership approach throughout the public services and its commitment to the avoidance of redundancies. Both of these principles point to a need to insist that the eight Scottish pre 1992 universities, including Stirling, pursue in good faith the consortium discussions which have commenced and that they do so mindful of the importance of ensuring an outcome i.e. any new commended Academic Staff Statute and associated procedures, which is geared towards the avoidance of academic staff redundancy and not intended as a levelling down exercise to make academic staff more easily disposable.

I look forward to your response on this matter and would be happy to discuss with you, with Elish Angiolini and of course with Fiona Hyslop as the Cabinet Secretary responsible for higher education.

With best wishes

David Bleiman
Assistant General Secretary Scotland

enc: Encl

cc: The Rt Hon Elish Angiolini QC
Fiona Hyslop, Cabinet Secretary
Mark Batho, Director of ELL Directorate
Lawrence Howells, Acting Chief Executive, SFC
Professor Christine Hallett, Principal, University of Stirling
Members of Court, University of Stirling (via Court secretariat)
David Duncan, Secretary, University of Dundee (for information of consortium)
Iain Ferguson, President, UCU Stirling
Jim Bradley, Hon Sec, UCU Stirling
UCU Scotland Executive