

Dear John,

I am writing to you in connection with proposals to merge Shetland College, Train Scotland and the North Atlantic Fisheries College. Whilst the EIS is supportive of the proposed merger, it has significant concerns about recommendations which are emerging from the Shadow Project Board that any new entity will be an unincorporated body.

The EIS believes that this move would be detrimental to the security of educational provision in Shetland, with delivery being undertaken by a company limited by guarantee which would not be subject to the same governance arrangements in place for incorporated colleges in Scotland.

In response to the ONS reclassification decision, the Scottish Government did not pursue any changes to legislation to remove colleges in Scotland from the public sector and endorsed the accounting practices applicable at that time, with the view being taken that the level of governmental control over colleges was appropriate. Scottish Ministers were clear that the controls, enhanced by the Post-16 Education (Scotland) Act 2013, were the right solution for Scotland and were appropriate given the significant public investment in colleges.

This decision to confirm Scottish colleges as public bodies and to retain their incorporated status ensured the continued level of public accountability and Parliamentary scrutiny in relation to the governance and financial arrangements of the college sector at that time. Audit Scotland continued to have a key role in providing reports to the Scottish Parliament about the financial stability of incorporated colleges and Ministers can ultimately intervene to remove a Board of Management where this is deemed appropriate in terms of statute.

In recent years, however, new entities in the college sector have been formed as unincorporated bodies. These new bodies appear to have been located primarily in the Highland and Islands to date, established as companies limited by guarantee with the maximum liability of directors being limited to £1.

These unincorporated bodies are not public bodies and do not have the same level of accountability enshrined in statute as incorporated bodies. Incorporated bodies are regulated by Scots law and are accountable to the Scottish Parliament. However, unincorporated colleges can change their governance structures by amending their Articles of Association. As such, changes to governance arrangements are recorded at Companies House and controlled by Company Law which is a reserved matter. Whilst such bodies may be formed with a regulatory structure which would mirror the statutory provisions applicable to incorporate bodies, the Articles of Association can be changed at any time following a decision by the Board of Management. This does not provide the security of regulatory provision which would appear to have been envisaged by Scottish Ministers at the time of reclassification.

Furthermore, any changes in terms of the collective bargaining framework for incorporated colleges must be consulted upon in terms of section 18 of the Post-16 Education (Scotland) Act 2013. These provisions do not apply to unincorporated bodies. Given the recent commitment to the Fair Work Framework, advocated by the Scottish Government, the creation of any new unincorporated bodies would represent a departure from this policy objective also.

It is clear that any move to the creation of an unincorporated body essentially results in the delivery of Further Education ('FE') by a private company. Given the level of public funding which is invested in FE, this would appear to be contrary to the expressed intention of the Scottish Government to ensure that governance and accounting structures are robust. The EIS believes that the delivery of FE in Shetland deserves the same level of public accountability, security and Parliamentary oversight as is applicable to the incorporated bodies in the central belt and other areas of Scotland.

The EIS has raised these concerns directly with the Project Board. However, it would appear that concerns about financial viability are driving decisions around the legal status of the new entity. It seems anomalous that efforts are being made to cut costs in terms of governance arrangements when this new body will be funded by public money.

I would urge you to use your good offices to intervene in this situation and ensure that the new college which will emerge is incorporated and as such, accountable to the Scottish Parliament. The delivery of FE to students in the Highlands and Islands deserves to be protected in the same way as it is for those in the central belt.

Yours sincerely,