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Dear David,

On behalf of the Committee of ICE Scotland Region, I detail below our views on governance of the Institution for your consideration. In coming to these views, the committee have been informed by the processes of the recent ballot, the various views expressed at the SGM, briefings on (former) Council discussions and evidence already presented to you together with independent discussions. As a Regional Committee, who lead and represent some ten thousand members in Scotland, the future interests of members have been at the heart of the deliberations. We do not underestimate the importance of the Commission. The issues being addressed are very important for the future of the Institution. Just as Conditions of Contract may not have to be referred to when all is going well but need to be opened when a dispute appears, a sound set of governance documents needs to be in place in case something awry was to happen in the future. This response has been structured to align with the tasks of the Commission.

#### **Tasks a & b: Consult widely... take account of the views of ICE UK Regions**

It is not clear that the Commission plans to visit the UK Regions but on behalf of the Committee I invite you to Scotland to hear our views at first hand. Although this topic was on the Agenda for UKRAC in March 2019 it is felt preferable to meet in a wider forum. If this is not possible then we would be prepared to arrange attendance at the extra evidence session planned in April to ensure that the Commission has the views of ICE Scotland.

#### **Task c: take account of the views of the Charity Commission and Engineering Council**

There was only a need to consult these bodies in the first place if there was felt to be a problem to solve. From the ICE Scotland perspective there was no problem to solve. The former Council and its Executive Board appeared to be agile enough (as demonstrated during the SGM process) and if there was a problem then no consideration was given to other methods of solving it and ICE jumped straight in to reforming Council.

The views of the Charity Commission were taken on a very narrow basis and there is no reason to believe the Charity Commission raised the issue in the first place. The Committee urge you to take a wider view. The Charity Commission guidance was for 3-12 Trustees and this was taken as 'law'. As practising engineers, the difference between guidance and specification is well known. Other guidance exists. The Scottish guidance is for a minimum of 3 Trustees with no maximum. There are many charities with significantly more Trustees and no reasonable attempt was taken to justify the then current ICE position. ICE is not a charity in the 'Oxfam' sense but are a charity whose purpose is knowledge transfer and qualification which is more akin to Universities and the like. Scottish Universities rejected the Charity Commission guidance with regard to Trustee numbers and there are similar examples in England.

It is understood that the Engineering Council were only informally consulted once proposals were developed and their informal advice included a request for simplification of the Bye-laws. For ICE Scotland the result of this is that the



composition of the (new) Council is not stated in the bye-laws but is in the hands of the New Trustee Board. ICE Scotland has no member on Council as of right as it used to have. This is unacceptable. The Bye-laws put obligations on members which should be balanced by rights. The Committee urge you to review this aspect.

#### **Task d: Take account of the governance arrangements of similar bodies**

The Committee have noted the detailed analysis put on the website. However, it has also been noted that several of the bodies have current governance issues of their own and do not necessarily provide good examples to be followed particularly where decision making has been put into the hands of fewer and fewer people. ICE is a member organisation of some 92,000 members – there is no evidence put forward that a smaller Trustee body takes better decisions. The Commission are urged to take an *ab-initio* approach to this issue and not to simply follow the crowd. As previously stated, the approach by universities may offer a better comparison whereby, they try to have representation from their constituent parts.

#### **Task e: Consider how governance arrangements can help...both now and in the future**

This is considered to be the meat of the issues being addressed and accordingly the response has been broken down into sub-topics.

**Purpose:** As stated many times, ICE is a member organisation whose purpose is defined by Royal Charter to be ‘the advancement of the art and science of civil engineering’. It is not formally the Institution of Civil Engineering nor The Voice of Infrastructure albeit these topics might form part of any advancement. It follows that what members want to do is paramount in any decision making and what better way is there than to have them represented in the leadership.

It is often argued that ICE must act in the public interest. There is nothing wrong with this altruistic view but close inspection of the Charter and Bye-laws shows nothing specifically written on this subject. There is an oblique reference in the Charter regarding environment and H&S (and similarly in the Disciplinary Regs) but no overt statement.

A future change or clarification on purpose would therefore sit within your remit for consideration.

**Recent change drivers:** This issue has been dealt with above. The change was driven on the false premise of ‘illegality’ and lack of agility. It is suggested that these were at best ‘not proven’ and the real drivers were for better governance processes more suited to a corporate entity. The real driver for any change should have been what do members want and what would be better for them and this was not demonstrated in the development.

If as part of the drivers it was felt necessary for the (then) Council to be more efficient and to meet more often then this should have been considered as an option and may have brought benefits.

**Impact of changes:** The main impact is that decision making now lies in the hands of fewer individuals than previously and that they also have a large say in succession planning with the perception that they are far removed from the membership. This has extended previous changes whereby much of the work of the (former) Council was undertaken by the Executive Board and nodded through by Council – not perfect governance.

It is suggested that the (new) Council can hold the Trustee Board to account annually. This is surely a ‘nuclear option’ which does not suggest ongoing good governance.

The twelve strong Trustee Board is dominated by the Presidential Team with a few members elected from the (new) Council with most appointments being through NomCo. This gives the clear perception that it is not representative of members. Of necessity the staff Directors attend the Trustee Board but unfortunately this adds to the impression of a controlling group apart from the members. There is also the possibility given the attendance that there is a muddling of responsibility between governance and management. It is a fact that as of right the members of ICE Scotland no longer have representation as they did previously which is regrettable.

Some argue that Trustees should have balanced and diverse skills and experience to permit them to act effectively – this is more akin to a corporate approach (cf Cadbury). To achieve that with a Trustee Board of twelve including some electees will be very difficult and severely restrict the options for NomCo and Presidential succession. A much bigger Trustee Board would reduce this problem. There is no firm answer but from a member’s perspective the Presidential team and representatives from each UK and International Region would be a starting point for consideration.



To avoid the accusation of a lack of transparency the recent issue of notes of meetings is to be welcomed. However, these are not minutes in the traditional sense and therefore there is no transparency on variations of opinion (should that exist) which is not transparent.

There is a fear that the (new) Council will be a talking shop with its remit to act in an advisory capacity only. It has already been noted that its composition is in the hands of the Trustee Board and not the members (through the bye-laws) – this is regrettable. So, *in extremis*, Council approves the Trustee Board who decide who should be on the Council – good governance? It has been argued that Council is to address the ‘big issues’ facing civil engineering but it is not clear how it will achieve this and to do this its *modus operandi* will have to change markedly. In any event the Trustee Board does not have to accept any findings from Council. There is concern that the (new) Council will be seen as not having a meaningful role. It has been suggested that some decisions by Trustee Board should be referred to Council for approval to give a meaningful role but this might compromise the legal duties of Trustees and no doubt you will consider this. If there is no meaningful role and it is not possible to give it formal duties then why have two bodies and not just have one enlarged Trustee board?

The President chairs both the Trustee Board and Council. The VP’s are not on the (new) Council but in practice can (and apparently wish to) attend. This is a questionable. It would be much better to review the meaningful tasks, responsibilities and attendance of Council and decide how information is to flow between Council and the Trustee Board if we cannot have one body.

**Particular Issues for the Region:** The issues of democratic deficit in appointments to Trustee Board and Council have already been detailed. There are however other governance issues to be considered. A Region has little if any influence on staffing matters relating to the Regional Support Team. The Region must follow the strategic guidance of the Trustee Board (as detailed in the annual Business Plan) but has little if any influence in its preparation. A Region reports to the Trustee Board through UKRAC whereas the Regional Support Team reports to the DG. However, there is no form of dispute resolution if the two elements misalign for whatever reason. You should consider these issues.

**Communications:** Many argue that this was poorly handled during the governance change process and many members have commented on it. Whilst some members were disappointed on the timing and volume of communications the real issue is content. Members opined that the communications that did come out were ‘spin’ and were not sufficiently balanced or informative to allow them to come to a considered view. In civil engineering practice it would be usual to compare a proposition (governance change) with do-nothing (the *status quo*). Members would have found this useful and it has been suggested that if this had been available then more would have taken part in the ballot. This may be a difficult issue to write into governance rules but it is worth considering.

#### **Task f: Consider how to make SGM’s more accessible to ICE voting members**

Whilst task specific comments are provided below there are a number of related issues that are pertinent.

**The Ballot:** It is sad but true that the c9% who voted for the proposition was higher than those who normally vote on such matters. This is nothing to rejoice about and suggests that ICE has an engagement problem. The implication is that less than 10% of members could change the purpose of ICE in accordance with the bye-laws. Indeed, it was a commonly held view at the (former) Council that given the low turn-outs they could get any proposition through. This thought process is bad governance. You could consider a minimum number of members voting to achieve change on certain key issues. This is an area worthy of investigation.

**The SGM:** Arguments have been made that it is unacceptable for only 60 requisitioners to overturn a ballot. In fact, an SGM cannot overturn a ballot but it can highlight feelings on a decision taken by the Trustee Board in a practical way. It is to use current terminology a ‘backstop’ for disaffected members (and they have no other route). Of course, it is very rarely used and it is worthy to retain it.

The SGM was reasonably organised in London but the practicalities of distance affected many (including requisitioners) from attending. This unfortunately gave the impression of manipulation. Consideration could have been given to broadcasting the event (as we do to lectures) and some form of electronic voting seems obvious. As a member organisation taking part should be practically possible.

There are a number of other issues which you may wish to consider: Should there be a mandatory timeline for the issue of communications (including FAQ’s)? Should the SGM be binding on the Trustee board?



## Task g: Consider means to identify and nominate the best candidates for President and VP's

Before addressing the detail there are two clear issues that have come from discussions. First, the President and VP's need to have demonstrated meaningful involvement in ICE activities. Members reasonably expect to be led by active members. Second, candidates have to be convinced that they can spend time on the required input. Both issues may restrict the choice in candidates but so be it.

It is accepted that any group of members can make nominations. However, what has to be addressed is a perception that the NomCo allows the Presidential Team to arrange succession from a small group of members whereas member group nominations stand little chance. More transparency is necessary.

I trust that you will take the above views in to full consideration in your review. I took the opportunity of writing to the Scottish membership simply to remind them that the Governance review was taking place and that, if they wished to make comment, then the information was fully detailed on the ICE website. I have received some comments directly back to myself, and whilst this main submission has been issued, I may take the opportunity to report on these individual comments nearer the time of your next commission meeting on 28<sup>th</sup> April, as outlined at the last UKRAC meeting.

Yours sincerely.



James Young

Chair – ICE Scotland

G Edmond - Vice Chair ICE Scotland, A Templeton – Junior Vice Chair ICE Scotland, S Nesbitt – Hon Treasurer ICE Scotland, A Doyle – Hon Sec ICE Scotland, R Hunter – Council Rep ICE Scotland, J Campbell – Glasgow & West of Scotland Branch Chair, R Clark – Glasgow & West of Scotland Branch Vice Chair, E Campbell - AACE Branch Chair, K Smith – Fife & Tayside Branch Chair, S Robertson – Highlands & Islands Branch Chair, D Cole – Edinburgh Branch Chair, G Malcolm – Municipal Group Chair, Sandra Purves – PHEW Rep, L Shackman – ICE Scotland Past Chair, N Callaghan – ICE Scotland G & S Chair. M West – ICE Scotland Saltire Rep, D Shafi – ICE Scotland GSnet Rep.

