

Legislative Council Panel on Education

**Response of the University Grants Committee to the Research report
on academic freedom and institutional autonomy of higher education
in the United Kingdom, New Zealand and Hong Kong**

The University Grants Committee (UGC) has been asked for comments on a document produced by the Research and Library Services Division of the LegCo Secretariat on Academic Freedom and Institutional Autonomy of Higher Education in the United Kingdom (UK), New Zealand (NZ) and Hong Kong (hereinafter called the 'research document'). The research document is lengthy and primarily factual. As such our comments below are of the nature of seeking to expand or elucidate on areas relating to the UGC in Hong Kong and on the eight UGC funded institutions.

Academic Freedom and Institutional Autonomy

2. An area extensively covered in the research document is academic freedom and institutional autonomy, and the provisions and methods by which these are protected and reinforced in the three jurisdictions covered- Hong Kong, NZ and the UK. With regard to the Hong Kong situation, we would like to make the following observations:

*Protection of Institutional Autonomy and Academic Freedom under the UGC
Notes on Procedures*

3. Paragraph 4.3.4 of the document refers to the first UGC report of 1968 which laid down five areas of institutional autonomy- but gives no indication as to whether we have continued to uphold and respect those five areas. We would like to state clearly that those same five areas of institutional autonomy remain enshrined in the latest version of the UGC Notes on Procedures – dated February 2007 - at paragraphs 1.21 and 1.22 and are reproduced below and can be found at our Website:
<http://www.ugc.edu.hk/eng/ugc/publication/note/nop.htm>

“1.21 Institutional autonomy is a complex term, and the degree of autonomy required varies, but the essential point is that the institutions are legally entitled to freedom of action in managing their affairs within the restraints of the laws of Hong Kong. The claim for autonomy does not rest upon any assumption of special privileges, but upon the consideration (based on long experience) that the institutions can properly undertake the work expected of them by the community which supports them only if they have freedom of choice and of action. This does not exempt them from public interest and criticism, nor does it mean that their policies should not be under review by themselves, and by others.

1.22 The five main areas of institutional autonomy are -

(a) Selection of staff

The institutions have unfettered rights in the selection, promotion, and dismissal of their staff. In the case of appointment of the Head of the institution, however, the importance of the post is such that some degree of consultation with Government and community leaders is desirable and normal. Nevertheless, the institutions' Councils take the final decision, and make the formal appointment.

(b) Selection of students

Whatever may be the procedures for setting or controlling entrance examinations, or for setting total student number targets, or for setting student number intake targets, the institutions have unfettered rights in the selection or rejection of students presented as candidates for admission.

(c) Curricula and academic standards

The institutions will need to take into account the other developments and requirements in other fronts e.g. primary and secondary education, other further education facilities, requirements for practising certain professions, general or specific employment opportunities, etc. and these are areas in which the UGC and the Government also have interests. Moreover, some standards and qualifications can only be attained if appropriate finance is made available, and decisions may therefore be dependent on financial resources. Nevertheless, final decisions on their own curricula and standards rest with the institutions.

(d) Acceptance of research programmes

This includes the initiation of research programmes, subject to resources being available, as well as the acceptance of research proposed by others (for example, by the Government). In all cases, academic merit, the institution's role and community needs have to be given great weight but the institution is the only judge of whether its combined resources of people, accommodation, equipment and money can or should be deployed in the manner required.

(e) Allocation of funds within the institution

Apart from earmarked and indicated recurrent grants and earmarked capital grants, the institutions are free to allocate the funds available as they see fit. In practice, this freedom is considerably constrained by the fact that about three-quarters of institutional funds are committed to staff costs, which cannot easily or quickly be changed and that part of the remaining quarter is also committed for repairs, maintenance, services, supplies etc. Nevertheless, the institutions are free to make such changes as they can manage, to decide on specific allocations, to draw up budgets accordingly, and to change such budgets."

4. The question of what constitutes academic freedom is a complex one and is often described as containing both rights and obligations. The UGC did attempt to articulate why academic freedom matters, in our 1996 Report on Higher Education in Hong Kong – see pages 14 and 15 attached at **Annex A** and available at

<http://www.ugc.edu.hk/eng/ugc/publication/report/hervw/ugcreport.htm>.

Here we would note that the description of 'academic freedom' which, as reported in paragraph 3.2.5 of the research document, appears in section 161(2) of the NZ Education Act, in fact includes four of the five elements that the UGC protects under what we have termed 'institutional autonomy'.

5. There have been comments, including in responses to the research document invited by the LegCo Secretariat, that the UGC is not sufficiently independent from the Government. The first sentence of paragraph 4.3.18 of the research document itself repeats a sentence contained in the Report of the Commission of Inquiry which states that it "has heard allegations that UGC is a rubber stamp, and that UGC uncritically co-operates with EMB to achieve EMB's objectives". It is unfortunate that the research document did not also

refer to Chapter 10.23 of the Report of the Commission of Inquiry, where it is stated that “.... the suggestion that the UGC was just a rubber stamp was totally unjustified.” Such a reference would have presented a more balanced picture.

6. We believe it is important to consider the facts of how the UGC has conducted itself. We consider that an objective analysis of the UGC’s actions and advice shows that it is independent of the government and has continued to fulfill its role, both of protecting academic freedom and instructional autonomy, while also ensuring value for money and public accountability for the large sums society invests in the UGC funded institutions.

7. Finally under this section, (Section 4.2 of the research document), paragraph 4.2.22 notes that the power of the Chief Executive in Council to give directions to the Hong Kong Institute of Education (HKIEd) is explicitly set out in the HKIEd Ordinance. We would like to observe- simply as a point of historical fact- that such a provision had existed in the Ordinances of several other institutions in Hong Kong in the past. While we have not fully researched the matter, we note that the City Polytechnic, Hong Kong Polytechnic and Lingnan College Ordinances all had similar provisions.

Governing Structure of Higher Education Institutions

8. As the research document notes, in the 2002 Sutherland Review of Higher Education, the UGC proposed that each UGC funded institution conduct a review of their governing structure to ensure it was ‘fit for purpose’. The reviews subsequently conducted by the institutions were wide ranging and have led to many improvements. Some areas were set out in our April 2008 information paper to the Panel on Governance structure and related matters. Some of the recommendations made require changes to legislation and are hence still in the pipeline, while most others have already been implemented. We believe that these changes have been very beneficial to improving structure and governance.

9. As regards the handling of general staff grievances, paragraph 15 of the Executive Summary and paragraph 4.4.18 of the research document appear to suggest that only some of the UGC funded institutions have set down procedures governing staff grievance handling procedures – and makes reference to a document from the then Education and Manpower Bureau of

2000. We believe the situation has improved and that all UGC funded institutions now have set down staff grievance procedures. Please refer to our April 2008 information paper.

The Nature of the UGC

10. The research document traces the history of the UGCs in the three jurisdictions covered. It documents the fact that the UGCs in the UK and NZ were disbanded and replaced by funding councils in the UK and by a Tertiary Education Commission in NZ. Specifically, the research document sets out that prior to the disbandment of the UGC in the UK, the government had some doubt about whether the UGC “*composed as it largely is of practicing academics, has too cozy a relationship with the universities and is incapable of enforcing change externally.*”¹ As for the new funding body which replaced the former UGC, *i.e.* the Higher Education Funding Council for England (HEFCE), a representative of the Secretary of State is entitled to attend as the Assessor at HEFCE’s Board meetings, though he / she would not take part in the decision making process. In the case of New Zealand, the UGC was abolished following the passage of the Education Act 1989 which provided, *inter alia*, the setting up of a centralized Ministry to manage all education sectors including universities, which required an abolition of the UGC. In 2003, the Tertiary Education Commission was set up to handle funding allocation for the entire tertiary education sector, including colleges of education, foundation education agencies and industry training organizations, *etc.* In other words, the power of the new funding body is wider than that of its predecessor.

11. In respect of Hong Kong, the research document notes that:
- (a) the UGC remains non-statutory in nature;
 - (b) the Members of the UGC are all appointed by the CE in their personal capacities to give independent advice, and there is no government official sitting on it;
 - (c) its Secretariat is a government department;
 - (d) the Secretary-General is responsible to both the UGC and the SED;

¹ Research document quoting from Shattock, M. (1994) *The UGC and the Management of British Universities*, Buckingham, the Society for Research into Higher Education

- (e) there are no legal rules on how government officials should give funding instructions; and
- (f) the UGC has taken a more active role and now has a more detailed involvement in the internal affairs of UGC funded institutions.

The research document contrasts several of the above features with those in the UK and NZ and appears to suggest the features in Hong Kong are somehow lacking.

12. The UGC is fully aware that, as society changes, it is necessary to re-examine the systems and structures in place to see if they continue to be fit for purpose. It is clear from the research document that in the UK and NZ, the UGCs lost the confidence and trust of the respective governments and were replaced with (statutory) bodies more suited to the needs and purposes of the government. Paragraph 5.1.15 of the research document summarizes the position when it says ‘...both the UK and NZ governments saw a need to intensify its (*sic*) planning and monitoring roles in higher education.’. I.e. the two governments wanted more control. Whether changes are needed in Hong Kong should be based on whether or not the UGC is still seen to have a useful role by the government and by society.

13. We believe that, if a government is willing to seek advice from and listen to, an independent, expert, impartial body concerned with higher education policy, then that can only be good for both the jurisdiction concerned and for the higher education sector. We are thus pleased that, in Hong Kong, the Secretary for Education continues to seek our advice on important matters, most recently on the Development Blueprint prepared by HKIEd, and in the recent past, on merger issues, role issues and in 2002, the future direction of the higher education sector. We consider that having a body outside the highly pressured political environment of a Policy Bureau, specifically focused on trying to achieve the best policies for the higher education sector in Hong Kong, is valuable and worth preserving.

14. As regards the composition of the UGC itself, there have been suggestions that, since all members are appointed by the Chief Executive, the UGC may act in line with the government’s wishes. The first point to make is that all members are appointed in their individual capacities and there is no government official on the UGC. A body like the UGC needs to and does make up its own mind, taking into account all relevant material. This will at

times perhaps be seen by outsiders as “taking the side of” either the government or the institutions. The fact is that it does neither: what it seeks to do is to find the best policies/solutions for the higher education sector and for Hong Kong. Second, we believe that a look at the composition of the UGC should also dispel any such notions- see **Annex B**. It is fanciful to suggest that the many overseas members who are serving or previous Vice Chancellors of esteemed universities may be held sway over by the Administration. Equally, the senior figures from Hong Kong society are not the sort who would limply “follow instructions”. Finally, we have a significant body of senior academics drawn from the local institutions, who speak their mind freely- and in their personal capacities.

15. As regards funding and the composition of the UGC Secretariat, there are no doubt pros and cons to the current arrangements. Clearly some parties feel that the Secretary-General being a senior civil servant and the Secretariat being a government department are disadvantages. However, on balance, the advantage of the secretariat staff being familiar with government administration and procedures outweighs the disadvantage of being ‘seen’ to be less than independent. It must be remembered that all decisions are made by the entire UGC, none of which members are government officials.

16. As regards the relationship with government, it is important to remember that that relationship is set out and in detail – in the UGC Notes on Procedures. These Notes on Procedures delineate the responsibilities of all parties involved. The contents are agreed by all parties involved. Chapters 1, 2 and 10 are the most relevant as regards recurrent funding and interactions. We do not wish to burden readers here with quotes from large sections of the Notes on Procedures. But they do set out:

- (a) The roles and functions of the UGC (Chapter 1);
- (b) Institutional autonomy and roles and missions of institutions (Chapter 1);
- (c) The planning and recurrent/capital funding cycles- and the involvement of the administration (Chapters 2, 4, 5 and 7);
- (d) The content and process of dealing with Academic Development Proposals (Chapter 3);
- (e) Financial reporting, audit and assurance (Chapter 6);
- (f) Data collection and returns (Chapter 8);
- (g) Assessment and processing of research grant proposals (Chapter 9); and

(h) Communications and correspondence (Chapter 10)

The Notes on Procedures is a public document available on the UGC website.

UGC Secretariat
October 2008

Extracted from Chapter 5 : Higher Education in Hong Kong - A Report By The University Grants Committee (October 1996)

5.6 Institutional autonomy in research is more complicated, since questions of the freedom of the individual researcher are also involved. In a broad sense, however, institutions are free to accept or reject external proposals (and finance) for research depending on their view of their role and whether their human and material resources, which are limited, are best deployed in a particular area.

5.7 An autonomy which is of major importance to HEIs in that it is a facilitator of all the other institutional autonomies is the freedom to deploy the government subvention and fee income as they see fit. We have already discussed the recurrent grant in paragraphs 4.3 and 4.4, and it remains UGC policy that earmarked and indicated grants, which can only be used for limited purposes, should be given rarely and be of short duration. Financial freedom does not, of course, mean licence. The use of the recurrent grant irresponsibly or in ways clearly at odds with government or community needs would have serious implications for future funding.

5.8 When we turn from institutional autonomy to the academic freedom of the individual, moral and ethical arguments are joined to those of providing effective service to the community. Individual freedom must, however, be tempered by responsibility to colleagues. As far as teaching is concerned, certainly below postgraduate level, members of staff will not usually be working in isolation. They will be presenting part of a course whose totality has been agreed with colleagues who will also be contributing. The course itself may form part of a larger programme to which it must make a defined contribution. Under these circumstances the individual teacher in higher education may have limited choice over the content of what he or she is to present. The teacher's freedom does not lie in the subject coverage, but in the material used to illustrate it, the views expressed about that material and, with some limitations because of integration with colleagues, the style of presentation.

5.9 Effective teaching requires the teacher to capture the student's interest and imagination and to motivate the student to explore and thus understand the subject matter. This cannot be done by rote learning of the current orthodoxy. The student must be encouraged to

question, to argue and to challenge if the material is to be comprehended properly. The teacher must be given similar freedom in argument not only with students, but with colleagues inside and outside the institution, if his or her understanding of the subject is to expand and progress. The purpose of all this is to produce qualified employees and thinking citizens who are used to querying current approaches and methods and can thus improve working practices, introduce new methods and products, and who themselves are sufficiently flexible to change to meet new challenges and opportunities both at the workplace and outside it. Academic freedom in teaching is to be encouraged as a precursor of industrial, business and community success. There is a correspondence world-wide between those countries which are relatively wealthy, and those which encourage their teachers and students to think for themselves.

5.10 In the codification and acquisition of knowledge (scholarship and research) there are very many restraints on staff in higher education. The principal one is lack of time. Most staff are primarily employed to teach, and although the actual instruction of students (contact hours) may not seem burdensome, the accompanying preparation, administration, counselling, examining and so on can occupy most of the available working week. In some subjects, particularly in science and technology, there may in practice be restriction on the area of enquiry because of the need for expensive equipment or collaborative effort. Much scientific research is done by teams of workers, and individuals may be expected to make particular contributions dependent on their expertise. In many areas, scholarship and research will be hindered by lack of resources - inadequate library facilities, outdated laboratory equipment and similar deficiencies. Then there are limitations because funding bodies (both inside and outside the institution) may well take a different view of priorities from that of an individual member of staff.

5.11 The restrictions on scholarship and research which we have described in the preceding paragraph are part of the normal expectations of those working in higher education. It is vital, however, that there is not superimposed upon them, by governing bodies, government or anyone else, a further set of embargoes based upon value judgements as to the merit of the activity, potential embarrassment by the outcome, political sensitivity of the subject matter, or any other extraneous argument. Nor should there be limitation on extending debate outside the institution through publication, or international meetings or correspondence. A high proportion of the research carried out in institutions of higher education, including that given priority in funding by peer-group and external

committees, inevitably achieves little. It is in the nature of academic research that serendipity plays a considerable part in advances and discoveries which ultimately benefit society and they come as much from unorthodox enquiry as from exploitation of known routes.

5.12 Society benefits from workers reared in an atmosphere of free discussion because they can react successfully to changing circumstances and are themselves the agents of change. Research which is unfettered by ideological considerations gives the greatest chance of new discoveries which will enhance wealth creation and social good. As well as these pragmatic arguments there are underlying less material considerations. In summary, they aver that the freedom of a higher education institution to choose its own staff and students and for the individual members of its staff to teach and research as they think best is part of a wider liberty which must be safeguarded in a free society.

Annex B

Membership of University Grants Committee

<u>Name</u>	<u>Title</u>
<u>Chairman</u>	
The Hon. CHA, May Lung Laura, SBS, JP	Non-executive Deputy Chairman, The Hongkong and Shanghai Banking Corporation Limited, HK
<u>Members</u>	
Mrs CHAN WONG Shui, Pamela, BBS, JP	Former Chief Executive, Consumer Council, HK Patron, Consumers International
Professor Jack CHENG Chun-yiu	Pro-Vice-Chancellor and Vice-President, Professor of Orthopaedics and Traumatology, The Chinese University of Hong Kong, HK
Professor Roland CHIN Tai-hong, JP	Vice-President for Academic Affairs (Deputy to the President), The Hong Kong University of Science and Technology, HK
Mr Clifton CHIU Chi-cheong	Chairman, Harvester (Holdings) Co. Limited, HK
Professor CHUNG Yip-wah, BBS	Professor of Material Science and Engineering, Professor of Mechanical Engineering, Northwestern University, USA
Professor Glyn DAVIS, AC	Vice-Chancellor, The University of Melbourne, Australia
Dr Judith EATON	President, Council of Higher Education Accreditation, USA

Professor Willard FEE	Edward C. and Amy H. Sewall Professor of Otolaryngology / Head and Neck Surgery, Stanford University Medical Centre, USA
Professor Malcolm GRANT	President and Provost of University College London, United Kingdom
Professor Edmond KO, JP	Adjunct Professor of Chemical Engineering, The Hong Kong University of Science and Technology, HK
Mr Irving KOO Yee-yin, SBS, JP	Managing Director, Trion Pacific Limited, HK
Mrs Stella LAU KUN Lai-kuen, JP	Headmistress, Diocesan Girls' School, HK
Sir Colin LUCAS	The Warden, Rhodes House, UK
Mr Tim LUI Tim-leung, BBS, JP	Partner, PricewaterhouseCoopers Ltd., HK
Professor John Graham MALPAS	Pro-Vice-Chancellor and Vice-President, The University of Hong Kong, HK
Professor John NILAND, AC	President Emeritus, University of New South Wales, Australia Former Vice-Chancellor and President, University of New South Wales (1992-2002), Australia Chairman, The Centennial Park Trust, Australia Independent Director, Macquarie Bank Limited, Australia Member, Board of Trustees, Singapore Management University, Singapore Chairman, Campus Living Funds Management President National Trust Australia (NSW)

Professor Judy TSUI Lam Sin-lai	Associate Vice President, Dean, Faculty of Business, Director, Graduate School of Business, Chair Professor of Accounting, The Hong Kong Polytechnic University, HK
Professor WEE Chow Hou, PhD, BBM, PPA, FCIM	Professor and Head Division of Strategy, Management & Organisation, Chairman, Nanyang Executive Programmes, Nanyang Business School, Nanyang Technological University, Singapore
Dr WONG Chung-kiu	Chief Executive Officer, iASPEC Services Limited, HK
Professor WONG Yuk-shan, PhD, FIBiol, BBS, JP	Vice-President for Administration and Business, Professor of Biology, The Hong Kong University of Science and Technology, HK
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Ex-officio Member	
Mr Philip CHEN Nan-lok, SBS, JP	Chairman, John Swire & Sons (China) Limited, HK