GETTING TO GRIPS WITH
BEING A NEW GOVERNOR

RESOURCES FOR GOVERNORS OF UK HIGHER EDUCATION INSTITUTIONS

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for Higher Education

FOREWORD

As the governance of universities and higher education (HE) colleges in the UK evolves, there are major implications for members of governing bodies: increasing expectations about how they undertake their role; a greater focus on measuring institutional performance with associated implications for information and strategy; coming to terms with an increasingly complex environment in which governance takes place; and so on. All this means that governors (particularly new ones) need to be well prepared for their roles and the challenges they face so that they can contribute effectively to their boards from the outset.

To support governors, a set of materials has been commissioned to help them get to grips with key areas of concern. Produced with financial support from the UK HE funding bodies (coordinated through the Higher Education Funding Council for England (Hefce)), there are ten volumes: on finance, risk, human resources, estates, audit, internationalisation, research, academic standards and quality, Information and Communications Technology ICT, and this one - an introduction to being a new governor[1]. This volume was originally produced by GuildHE (then known as SCOP), and is now being republished in this new revised second edition. In addition, a website on governance is operated by the LFHE on behalf of the HE sector.

In an easy-to-read format, this volume provides the core information that all new governors need for a basic understanding of their roles, whether they are external, staff or students. To support the text there are quotations from various sources including governors[2]. There are also self-challenge questions and suggested activities. The content and quotations - some of which are provocative - do not represent any "agreed" view, but are designed to illustrate different opinions and to encourage self-reflection, debate and critical thinking. Although we expect that readers will agree with most of what is written, we hope that some aspects will be contested.

The material is intended to be used both by individual governors and by higher education institutions as part of in-house governor development activities. It is *not* intended to provide specialist information, although references to such material are provided in Annex A. In particular, more information is available at www.lfhe.ac.uk/governance, including a list of acronyms encountered in higher education and a brief list of key sector bodies and their functions.

An additional information source that all new governors should be aware of is the Guide for Members of HE Governing Bodies in the UK and its associated Code of Governance Practice, produced by the Committee of University Chairs (CUC)[3]. The guide and this volume complement each other: the former setting out the formal responsibilities of boards, and this volume exploring more informally what this means in practice for individual governors.

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[1] All these publications are available from www.lfhe.ac.uk/governancepublications
[2] The quotations have been obtained from a wide range of sources, including personal meetings with governors.   Where the professional background of the governor is known it has been provided.
[3] The guide is available at www.hefce.ac.uk/pubs/year/2009/200914

A note on terminology and diversity

As most governors know, governance in UK HE is complicated by the use of different terms for similar functions so, for simplicity, some key terms have been standardised throughout all the volumes in the series. The terms "governing body" and "board" are used generically to include: the governing bodies of post-1992 higher education institutions; the councils of pre-1992 universities; and courts in Scotland. Similarly the word "governor" is used to indicate a member of these different bodies: "external" governor for all boards' members from outside (whether technically independent, lay, co-opted or whatever); "chair" is the term for the person who convenes governing body meetings; "head of institution" is used for the vice-chancellor or principal; and "executive" for members of the senior management team or equivalent. Finally, the abbreviation HEI is used as the widely accepted shorthand for "higher education institution".

It is also important to recognise that the UK HE system is very diverse, which means that some aspects of what is effective governance in one HEI may not necessarily be so in another. Moreover, different governors will have legitimately different views on many of the issues presented in this material, as will heads of institutions and other senior managers. It follows that if, after working through the text, important issues are raised for governors about practice in their own HEI (and we hope they will be), then they may need to obtain more detailed information from the clerk or secretary of their board or its chair.

Because HE is now the responsibility of the devolved administrations within the UK, another aspect of diversity is the need to recognise differences in governance arrangements in HEIs in England, Scotland, Wales and Northern Ireland. Where no separate discussion of the different jurisdictions occurs, readers can assume that the content applies to all four HE systems.

How this volume is organised

To provide an overview for governors new to their role, Chapter 1 explores developments in governance generally, followed in Chapter 2 by an overview of governance in higher education. The legal and regulatory requirements falling on board members are then summarised in Chapter 3. Some of the practicalities of being a new governor are explored in Chapter 4, concentrating on their involvement in institutional life and relationships with senior managers. The crucial issue of the role of the board in developing institutional strategy and measuring performance is then discussed in Chapter 5. The final two chapters concentrate on individual governors: Chapter 6 looks at specific issues facing staff and student governors, and in Chapter 7 all readers are invited to reflect on their own performance as new governors and identify how it might be enhanced - perhaps best done after some months in the role.

Disclaimer

Although every care has been taken to try to ensure the accuracy of the content of this material, if in doubt about a specific issue governors should always check with the clerk or secretary of their own board.

Allan Schofield
Series Editor
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TEN KEY ISSUES FOR NEW GOVERNORS

1 Governance should be separate from management, and governors need to understand and respect the difference.

SEE **CHAPTER 1** ▶

2 Governors need to be completely clear about their responsibilities as defined both nationally and by their own institution.

SEE **CHAPTER 2** ▶

3 Although in the past the governance arrangements of HEIs have been similar, there is now growing diversity, and this is likely to increase in the future.

SEE **CHAPTER 2** ▶

4 All governors have a responsibility to undertake their responsibilities actively, to contribute to the overall effectiveness of the board, and to act in the best corporate interests of the institution.

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5 The accountability requirements of the UK HE funding bodies are set out in a financial memorandum of which all governors should be aware and actively monitor, including the governance of risk.

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6 A governing body's responsibility for educational character is set out in different ways in pre- and post-1992 HEIs and this has implications for oversight of academic governance.

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SEE **CHAPTER 5** ▶

10 In order to undertake the above, governors need to determine their information needs in order to be an effective board and ensure that these needs are met.

SEE **CHAPTER 5** ▶

1. AN OVERVIEW OF GENERAL DEVELOPMENTS IN GOVERNANCE

1.1 This chapter provides a brief overview of general developments in governance, including those in the private and commercial sectors. It is designed to help new governors in HEIs to reflect on how the overall nature of governance is changing, and therefore how HE governance sits within a wider context. These few pages obviously do not attempt to cover the topic comprehensively, and there are many existing sources which do this - see Annex A. Governors familiar with such developments might wish to go straight to Chapter 2.

1.2 Whatever the sector - private, public, charity, or HE - governance is an increasingly important feature of organisational life. Twenty years ago there was relatively little interest in it, but the catastrophic failures of governance in parts of the financial sector (and, before that, in companies such as Enron) have led to a much higher profile. As the importance of governance has increased, so has the number and variety of specialised applications, for example corporate governance, academic governance, research governance, clinical governance, and so on. There is now even reference to the governance of cyberspace.

1.3 Of course, reviewing governance in other sectors does not mean that HE should be uncritical in adopting practice from elsewhere, and one of the challenges for governors is to assess what parts of their governance experience are - or are not - relevant to their HEI.

What is governance?

1.4 The aim of systems of governance in all organisations is to provide a framework in which they can conduct their affairs properly (and according to the rule of law), and to protect the interests of key stakeholders - whoever they may be. The existence of a good governance system should help prevent senior managers taking the sort of action that could place these interests at risk. Recently, in the private sector the role of the board in adding shareholder value has come to the fore and with it some scandals and calls for greater regulation. However, the picture is not a simple one. Governance systems reflect the values of the times in which they were established, and there is a continuing need to review their effectiveness in the context of supporting the mission of the institution.

1.5 Although governance takes many forms, at least four common functions are found at the core of all approaches:
- Ensuring accountability, control and scrutiny.
- Approving future direction, institutional strategy and mission.
- Measuring and monitoring institutional performance.
- Appointing and ensuring the effectiveness of the CEO and the senior management team.

In addition, some approaches to governance stress the potential leadership role that a board can play in addition to that of management. For example, the Financial Reporting Council's (FRC) UK Corporate Governance Code (see below) defines a board's

"Why do we always have to copy the private sector? They've been the ones with the corporate scandals not us, and now we're told to be more like them!"

(STAFF GOVERNOR)

"My background is in the manufacturing industry in the private sector and I see a strong parallel between the functioning of a governing body and a board of directors. In both cases the relationship between the (strategic) board and the (executive) management is of fundamental importance."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

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"I found it (being a governor) completely alien to anything I had ever done before, and spent some time trying to get to grips with what was going on."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

main role in the private sector as being "to provide *entrepreneurial leadership* of the company within a framework of prudent and effective controls which enables risk to be assessed and managed" (our emphasis).

1.6   Since the underlying functions of governance in different organisations are broadly similar, governance systems tend to share many features. In the UK these typically include:

- Defined responsibilities within a recognised legal framework (often in the private sector through a company limited by shares although there are many other options).
- A line of accountability to a higher body or interest.
- A board led by a chair drawn from its membership.
- A chief executive, as the senior person responsible for the management of the organisation.
- A secretary, clerk or company secretary who has a defined constitutional position.
- A written scheme setting out the rights, duties, obligations and responsibilities of each component part of the system.

1.7   Beyond these core similarities there are also important differences. The first concerns accountability, which in the private sector is typically to owners or shareholders as the main stakeholders This is usually expressed through an annual meeting which appoints the board members of a company. In the public sector, primary accountability is not to shareholders (who do not exist) but typically to stakeholders such as government. An annual meeting does not usually exist, or its role is much less developed[4]. Other sectors which are not formally in the public sector fall between such arrangements (for example, higher education, charities, and many voluntary organisations).

1.8   A second difference is the terminology used in the various sectors. In HE, for example, the board is a board of governors or council and its CEO is the head of institution (the vice-chancellor or principal). In the private sector, the positions on the board would be occupied by both non-executive and executive directors (including the CEO) and a company secretary. In most HEIs executive directors (other than the head of institution) are rare, although this may change in some institutions in the future.

1.9   A third area of difference concerns the size and composition of boards. In the private sector the boards of even the largest companies tend to be small, and remuneration (sometimes substantial) is provided to non-executive directors reflecting board members' responsibilities. Conversely, boards in HE have been large (particularly in some pre-1992 universities), although typically the size is now being reduced (see Chapter 2), and board members are rarely remunerated. In the last few years boards in the public and voluntary sectors have tended to operate somewhere between these two positions as they have gradually adopted some of the features of private sector governance. The role of chair of a health authority, for example, is now a salaried position, and payment is now also invariably made to other board members in non-charitable organisations.

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4   A small number of HEIs that have been formally established as companies by guarantee do have AGMs. Other have courts acting as second tier bodies with membership from stakeholder bodies - see Chapter 2.

1.10 There are other differences: in HE, for example, the internal authority of the head of institution as chief executive may be much more circumscribed by an institution's collegial systems than is the case in the private sector. The position and authority of a company secretary may also be stronger than that of a clerk to the board of an HEI, although the position varies.

Governance not management

1.11 A widely recognised principle of governance is that a board exists to govern and not to manage an institution. Managing is the job of the CEO and others appointed by a board for this purpose. The following extract from the Glion Declaration expresses the distinction: *"There is a world of difference between governance and management. Governance involves the responsibility for approving the mission and goals of the institution; the oversight of its resources; the approval of its policies and procedures; the appointment, review and support of its chief executive; and an informed understanding of its programme and activities. Management, in contrast, involves the responsibility for the effective operation of the institution and the achievement of its goals within the policies and procedures approved by the board; the effective use of resources; the creative support and performance of teaching, research and services; and maintenance of the highest standards of scholarly integrity and professional performance. The responsibility of the board is to govern but not to manage."*[5]

1.12 However, while this description is generally true, there may be exceptional circumstances in which the line between management and governance becomes blurred. For example:
- In some HEIs it is quite normal for there to be overlapping membership and even joint committees between the governing body and the academic board or senate.
- There may be occasions when the head of the institution chooses to seek specialist advice from individual governors because of their expertise.
- In small institutions governors may find themselves particularly involved in operational matters because of the lack of specialist support staff.

1.13 In each of these cases the separation between management and governance can be maintained, but a board needs to be sure that appropriate checks and balances are in place to avoid an unintended blurring of boundaries. The point is that there is no fixed line between governance and management and it will move - even within the same institution - according to circumstances.

Some developments in governance

1.14 The many recent developments in governance have been fuelled as much by changes in regulation or in reaction to problems with poor governance as by operational needs. They have generally been in response to calls for more transparency and accountability or a desire to increase stakeholder confidence and security, often prompted by a financial scandal or corporate collapse. The overall trend of change in the last few years is towards greater and more rigorous codification of governance, and leaving less to discretion or chance[6].

"As a board member I don't want to run the institution or be too involved in operational matters but I do want to know what is going on and monitor, question and scrutinise the decisions of the executive team."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

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[5] The Glion Declaration was produced following a meeting of 20 senior figures in HE from both Europe and the USA in Glion, Switzerland in May 1998. See The Glion Declaration II: The Governance of Universities, AGB Occasional Paper 46, Association of Governing Boards of Universities and Colleges, Washington DC, 2000

[6] A fuller account of the issues summarised below can be found in Appendix B of Schofield A, (2009), What is an Effective and High Performing Governing Body in UK HE?, LFHE and CUC, at www.lfhe.ac.uk/governancepublications

1.15   In the private and commercial sectors, the main step towards codification has been the FRC codes of governance - the most recent edition being the UK Corporate Governance Code[7]. The Code sets out recommended best practice with which the boards of all Stock Exchange listed companies registered in the UK should comply. The current Corporate Code is under review, and a revised version may be produced.

1.16   While one aspect of the drive towards codification has been the development of combined documentation, another has been a move away from the voluntary principle of compliance. The UK Corporate Code operates on a "comply or explain" basis, meaning that where a company cannot comply with the code then it should explain why. This is a step on from the voluntary principle in operation previously, but is clearly a step short of outright compulsion.

1.17   As a result of such developments, most sectors now have their own codes of governance, including that produced for HE by the Committee of University Chairs (CUC) - see Chapter 2. More generally, a Good Governance Standard for Public Services has been produced as a result of the Independent Commission on Good Governance[8] but this does not apply to HE. These codes - and most similar ones - work on the same comply or explain basis as the Combined Code.

1.18   There is, of course, much discussion about the benefits of such codes of governance in practice. While it is generally agreed that they act as a good basis for ensuring that organisations have at least basic governance systems in place, many of the organisations that have suffered from major governance failures complied with their relevant codes, indicating that effective governance needs to go well beyond code compliance.

1.19   Of particular interest to HE are developments in governance in three sectors: partnerships, the voluntary sector and charities. Partnerships and associated mutual structures are relevant because they share some of the governance issues facing HE, particularly how staff should be involved and how to balance this with efficient board practices. Perhaps the most famous example of mutualisation is the John Lewis Partnership, but there are many other illustrations. The voluntary sector is relevant to HE because of its provision of public services outside government control, and their boards wrestle with many of the challenges facing those of HEIs. However, the vast range of voluntary organisations makes simple comparisons difficult. Finally, almost all HEIs are charities, and therefore not only must they meet the regulatory requirements of the Charity Commission, but the governance practice of some of the larger charities is also of interest.

The principles of public life

1.20   Since the mid-1990s, a key driver for change in the governance systems of public and voluntary sector organisations has been a push for higher standards expected of those who take part in public life. The catalyst was concern about the way in which some people were operating in local and national government in the mid-1990s. As a

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7   The Code can be found at www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx
8   Details can be found at the website of the Office for Public Management, one of the sponsors of the initiative.
     See www.opm.co.uk/ICGGPS/index.htm.

result, in 1996 the Committee on Standards in Public Life (chaired by Lord Nolan) drew up a set of seven principles which they recommended should underpin the actions of everyone in public life.

1.21 The resulting Nolan Principles, as they have come to be known, are summarised below. While most have been characteristic of good public and voluntary sector governance for a very long time, over the last few years they have been formally adopted by most public organisations as statements of the expectations of the members of their governing bodies:

- Selflessness: holders of public office should take decisions in the public interest, and should not do so for gain.
- Integrity: holders of public office should not place themselves under any financial or external obligation that might influence the performance of their official duties.
- Objectivity: in carrying out their duties holders of public office should make choices on merit.
- Accountability: holders of public office are accountable for their decisions and actions and must submit to appropriate scrutiny.
- Openness: holders of public office should be as open as possible about their actions, and should restrict information only when the wider public interest clearly demands this.
- Honesty: holders of public office should declare any private interests relating to their public duties and take steps to resolve any conflicts arising.
- Leadership: holders of public office should promote and support these principles by leadership and example.

What is good and bad governance?

1.22 Self-evidently good governance is where the defined responsibilities of the board are being met and where the inevitable challenges in strategic decision making are effectively addressed in the corporate interest. It follows that good governance is active not passive, and with a leadership as well as a stewardship role. In this sense, good governance continually adds value to an organisation.

1.23 However, good practice in governance may often be hard to recognise. Notwithstanding the attempt to codify governance, much depends on local circumstances, and what works well in one institution or sector may not in another. In particular, the relationship between the chief executive and chair of a board is crucial in all sectors. If a relationship based on trust and openness does not exist then mere compliance with a code is unlikely to ensure good practice. Moreover, the benefits of good governance may also be largely hidden from an organisation, in that events in the boardroom are largely unknown to those outside it.

1.24 Conversely bad governance may be easier to recognise because of mistakes, omissions or the absence of generally accepted processes. At a minimum, bad governance can mean not complying without good reason with any relevant good practice or regulatory requirement, but there are numerous examples where the letter of such codes have been followed but where the spirit has not, resulting in poor practice. Accordingly, it is now much more common than before for the effectiveness of governance systems to be monitored and publicly commented upon, and alleged poor governance exposed - and there are now many examples in the public domain.

1.25   Typically, bad governance can occur for a number of common reasons irrespective of the sector concerned. These include:

- Governance not being taken seriously, or being dominated by management. (The provocative quotation in the side box provides an interesting insight into this phenomenon.)
- A board membership that lacks the capacity, willingness, or time to be effective.
- Inadequate information being available to a board.
- A board not understanding the strategic complexities and business risks well enough to fulfil its role.
- An over-dominant board or chair failing to respect the boundaries between governance and management.
- A breakdown of confidence and trust between the board and management.
- Poor board processes or inappropriate chairing.

1.26   It is also important to recognise that all organisations - however large and reputable - can suffer from poor governance: a lesson now recognised from the problems of governance in part of the financial sector. Even great public cultural institutions have not been immune. To take just one example: in the USA the famous Smithsonian Institution in Washington has suffered major problems of governance. The challenge for it, and all similar institutions, was well summarised by the conclusion of the Independent Review Commission of the Smithsonian[9]: "Unfortunately the problems at the Smithsonian are not unique. As the media and Congressional oversight committee have made clear, there have been similar problems at several large tax-exempt organisations, including major museums and universities, not to mention the income and expenses excesses and governance issues at for-profit companies… The Commission believes that the boards of non-profits - especially large non-profits - should move to reform their governance structures to bring them into line with best practices that have been well documented." Similar conclusions have been drawn in other systems.

1.27   It is apparent from this brief overview and the still unfolding implications of the financial crisis, that the world of governance is continuing to change. Many of the traditional orthodoxies about governance are now being challenged and the debate about executive pay and the role of remuneration committees has added more fuel to the fire. Demands for greater diversity in board membership and for more public transparency are likely to continue to grow, and what were once private matters for the boardroom (or the remuneration committee) will increasingly need to be justified to a questioning public and media. Governance in HE is not immune from such general developments, as well as contending with the more specific challenges considered in the following chapters.

[9]   See www.smithsonianirc.org

Self-challenge questions

- Is governance taken seriously in your institution?
- As a governor, what differences have you found (if any) in the ways in which the governing body of your HEI works from those of any board you have experienced in the private, public, charity or voluntary sectors?
- Is the balance between governance and management maintained appropriately in your governing body? (In answering this question you might find it useful to think of an example of an issue where the boundaries did - or could have - become blurred.)
- What are the main changes that you predict might happen in the next five years to the way that governance occurs in the private and public sectors, and what do you think might be the implications for the governing body of "your" HEI?

2 GOVERNANCE IN HIGHER EDUCATION

2.1 In Chapter 1 the general concept of governance was explored; in this chapter the specific practice of governance in HE is considered. After reading it new governors should be aware of the key aspects of how HE governance works.   The chapter makes no attempt to duplicate the content of the CUC Guide for Governors[10] and should be read alongside it.

The responsibilities of governance in higher education

2.2 The duties for which your board of governors - and therefore you - are responsible are set out in your institution's charter and statutes (pre-1992 HEIs) or instruments and articles (post-1992 HEIs), and other legal documents which are explored in Chapter 3. As a governor you should have had access to these when appointed but, if not, you should ask for a copy.

2.3 In the most general sense the board of governors acts as the board of a private company but with substantial differences. The Governance Code of Practice in the CUC guide describes the role of the governing body as being "unambiguously and collectively responsible for overseeing the institution's activities, determining its future direction and fostering an environment in which the institutional mission is achieved and the potential of all learners maximised". It goes on to say that "all final decisions on matters of fundamental concern to the institution shall be taken by the governing body". More specifically, key duties include: approving institutional mission and strategy; ensuring financial solvency; resourcing; employment and HR; senior appointments and their remuneration; board conduct, membership and office holders; delegation; the students' union; audit; legal compliance; and (in post-1992 HEIs only) determining educational character. The detailed list of duties that apply to a board may be set out in a statement of primary responsibilities - a process recommended by the CUC.

2.4 However, a number of these responsibilities flow from more general tasks of governance, which may not be expressly referred to in the statutes or articles. They include responsibility for: an overall duty of care; accountability to funders; the regular monitoring of institutional performance; monitoring institutional reputation; holding the executive to account while also acting as a critical friend; reviewing board performance; and so on. It is precisely because these duties may not be set out in detail in the statutes or articles that they can be the most challenging duties to fulfil.

2.5 Governance in most HEIs has changed significantly in the last few years, and boards are typically much more actively engaged than in the past. The reasons for this include:
- The growth in public funding for HE, which has brought with it a greater requirement for HEIs to show accountability and value for money.
- Relations with the state have become ever more complex.
- Expectations that HEIs (along with other bodies) should strengthen governance to match best practice elsewhere.

"In my experience the council of my university seems to be largely a rubber stamp for decisions taken elsewhere."

(STAFF GOVERNOR)

[10] The CUC Guide is available at www.hefce.ac.uk/pubs/year/2009/200914

- The growth of both national and global competitive pressures on HEIs. Most institutions now compete for students, staff, and research income, meaning that institutional reputation is an increasingly important corporate concern.
- The need to ensure the maintenance of quality of HE in a time of great financial challenge.
- A substantial increase in the risks facing HEIs with a consequent need for better governance in a more volatile environment, and the need to maintain sustainability.
- An external environment which often needs major decisions to be taken quickly and in a way that doesn't easily fit with traditional collegial approaches to HE decision making.
- The need to avoid problems in governance demonstrated in many sectors.

Similar pressures have occurred in other developed HE systems, for example Australia, the USA, and New Zealand.

2.6 As a result of such developments, the way that governance is being undertaken by UK HEIs is changing and there is considerable innovation within the sector. In particular, there has been a move away from restricting governance to a simple oversight role, to one much more actively concerned with ensuring strategic development, maximising institutional performance, and building competitive reputation: in short actively governing rather than simply overseeing governance.

2.7 The pace of such change in HEIs, of course, inevitably varies, and governance practice ranges from substantial innovation in some HEIs to those who are broadly content with existing arrangements. Approaches to innovation in governance do not fit any easy form of institutional classification, and change tends to be driven by the personalities of the key individuals involved (chair, head of institution and governing body secretary) and their experience of the benefits that effective governance can bring.

2.8 Given this, a crucial challenge for governors and governing bodies is to be clear how far their previous and current roles are appropriate for the future. In the past, a dominant perspective of HE governance has been to emphasise accountability and oversight. This includes ensuring compliance with legal and regulatory requirements, but goes much further to include general oversight of the head of institution and executive. This approach tends to produce an arms-length attitude to governance, with relatively large boards meeting three or four times a year.

2.9 A more recent emphasis - driven by the factors in paragraph 2.5 and broadly encouraged by the funding bodies and many governors - has been to focus governance on ensuring institutional performance and success. This, of course, is the dominant (although not sole) purpose of governance in the private and commercial sectors, and most of the writing about board effectiveness is based on the primacy of this purpose. It does, of course, include oversight of the executive but goes much further in actively developing and achieving institutional strategy. Many HEIs are moving in this direction and now see this as the primary purpose of their governing bodies, a move encouraged by a competitive HE market place.

"Being a board member is much more demanding than I had expected. This is a hugely complex organisation, and we seem to get pushed in all directions by our funders depending on the political flavour of the day."

(NEW EXTERNAL GOVERNOR WITH PRIVATE AND PUBLIC SECTOR BACKGROUND)

"I don't see any barriers to the court [governing body] exercising 'unambiguous control' although I would argue that if it felt the need to show this muscle on a regular basis something would have gone badly wrong."

(GOVERNOR WITH MIXED EXTERNAL EXPERIENCE)

2.10　It follows that clarifying the primary purpose of a governing body is crucial as a basis for enhancing the effectiveness of governance, and it cannot be assumed that all governors understand the primary purpose of governance in the same way. Where board members may have different views on which of these primary purposes is most important, a lack of shared purpose may lead to governance becoming ineffective.

Accountability

2.11　All of this raises the issue of accountability, and a common question raised by new governors is "to whom am I accountable?" However, the answer can be anything but simple! Unlike directors of companies limited by shares, HEIs have no shareholders, and as autonomous institutions with their own legal status (see Chapter 3) they are also independent of government and prize their autonomy.

2.12　In practice, there are multiple accountabilities, some of which may - on occasion - conflict. These include the accountability of the individual governor to:
- The board of the HEI of which a governor is a member, and to which he or she will have been appointed.
- The relevant HE funding body to meet the terms of the financial memorandum.
- Other funders to meet explicit contractual requirements.
- The relevant charity regulator in relation to the charitable status of HEIs.
- Other regulators and legislative agencies.

2.13　There is also a form of accountability to students and others who use the services of HEIs, which arises from UK HE traditionally seeing students as members of learning communities. All the UK devolved administrations are increasingly emphasising the importance of this view, and the growth of the idea of the student as a customer also raises interesting issues here. There are also specific responsibilities of a governing body in relation to student unions, which have been set down in a guidance document produced by the CUC.[11]

"On all the other boards of which I am a non-exec it is clear to whom I am accountable, but not here. When I first became a member of the University Council, I asked about it, and there was a silence in the room as if they had never thought of the question before. The fact is that if you ask council members to whom they are accountable I think you would get very different answers."

(GOVERNOR WITH PRIVATE SECTOR AND NHS BACKGROUND)

2.14　In addition, many would wish to add some form of accountability to society and local communities, and providing public benefit is an important criterion of the Charity Commission. However, this may be difficult to define other than in general terms, and the development of different HE policies in the four jurisdictions (England, Scotland, Wales, and Northern Ireland) means that this issue has a different profile in different parts of the UK.

2.15　In practice, in most HEIs operational accountability from the governing body downwards will be identified by a schedule of delegation which broadly identifies who does what and who is responsible for what. All governors should be familiar with the schedule for their own institution.

2.16　The four UK HE funding bodies seek assurance about the standards of institutional governance and how accountability for funding is maintained. All expect HEIs within their jurisdictions to meet defined standards in relation to governance, audit, risk, and associated issues, and how they do this is summarised in the CUC Guide for Governors. Overall, there has been general confidence in the governance arrangements of HEIs, which has led some of the funding bodies - most notably Hefce

[11] www.bcu.ac.uk/docs/cuc/pubs/NUSCUC-Guide_March2011.pdf

in England - to talk about reducing the accountability burden on institutions. However, this confidence in governance has recently been threatened by several developments:

- The consequences of serious governance problems at a small number of HEIs which have led some of the funding bodies to strengthen their expectations of governing bodies.
- In Scotland and Wales the devolved governments (which have responsibility for HE) are increasingly looking to the governing bodies of HEIs to respond to national education policy priorities, notwithstanding institutional autonomy.
- In England, the move to student fees and the associated financial challenges will almost inevitably result in more HEIs being at financial risk, which governing bodies will need to address, and any failure to do so might undermine confidence in the governance of HEIs or HE more generally.

The structure of governance

2.17   In the past the structures of governance have been broadly similar across HEIs, although there are significant legal differences between pre- and post-1992 institutions. However, the way these structures operate is becoming more diverse. Typically, all HEIs have a two tier governance structure, involving a governing body (or university council and called a "court" in Scotland) and a body concerned with academic governance (usually called a senate or academic board) - although the powers of this body vary (see below). In addition, some HEIs have a third body - often called a court in England (not to be confused with the Scottish court) which is a large forum focusing on broad community engagement with a minimal governance role.

2.18   This two tier structure has emphasised the importance of collegiality and participation in governance in HE, and much academic governance remains based on this collegial ideal. HEIs which have emphasised this approach have tended to have large boards with substantial representation of staff and students, and reducing board size may raise complex issues.

2.19   To enable governing bodies to give detailed attention to their business they have traditionally operated through a committee system. By regulation this *must* include an audit committee, a remuneration committee and a nominations committee. They usually also include a finance or resources committee, and it is likely - but not inevitable - that there will be other committees for specialised areas (eg estates and HR). Strategic planning may be dealt with by a committee, by the main resources committee, or by the main board itself. It is also open to a board to establish ad hoc committees. Such committees are not sovereign and must report their decisions for approval to the governing body, although the audit committee is a partial exception to this because it has an annual reporting line to its funding body, as well as to the board of governors itself.

2.20   Some (mainly pre-1992) HEIs operate joint committees, for example on matters concerned with strategic planning. The advocates of this approach believe that it provides mutual involvement on matters that involve both the governing body and the senate or academic board. Conversely, critics respond that it risks undermining the ultimate responsibility of the governing body.

"I find that the governing body is too large to be effective as a unit...The council in its present form is more like a parliament than a board, which many members, both lay and not, find very frustrating."

(GOVERNOR WITH MIXED EXTERNAL EXPERIENCE)

2.21   More recently, in those HEIs where the board meets regularly, there has also been a growth of interest in reducing the number of committees. Indeed, in a few HEIs the governing body now deals with all business without committees (other than the three required by regulation). Typically, those HEIs have also adopted a "lead governor" system whereby experienced external members oversee specific areas of responsibility. This approach has its advocates and critics: the former argue that it provides for more rigorous and informed scrutiny, whereas the latter are concerned that it potentially confuses management with governance. In any case it depends on a high level of confidence and trust between those involved, good working relationships, and lead governors who are highly credible to an executive.

2.22   Where a large number of committees exist all governors are likely to be expected to serve on at least one. However, since the tendency is for the number of committees to be kept to a minimum, such participation may not always be possible. Under the terms of the 1988 Education Reform Act, post-1992 HEIs are usually required to exclude staff and student governors from committees which deal with personnel and resourcing matters: known as "reserved business".

Academic governance

2.23   In addition to corporate committees, a governing body should also ensure the effective operation of the main academic committee (academic board or senate) which plays a key role in academic governance. This is not a governing body committee, but in most (though not all) HEIs the terms of reference are approved by the governing body. There may well be networks of academic committees beyond this reaching deep into the life of the institution, but it is rare for governors to have a formal role in these except in approving the creation of a new academic committee or closing an existing one. However, in a small number of HEIs governors may have observer status on some academic committees in order to increase their understanding of academic issues.

2.24   This process of academic governance is based on the principle of core academic decisions on matters such as academic standards, quality, assessment, and academic awards being taken by the academic staff involved. Such decisions are overseen by an academic governance structure with a senate or academic board at the top. (There are, of course, similarities with the involvement of senior doctors in medical governance.) In post-1992 HEIs the explicit responsibility of the governing body for determining educational character and mission provides a greater involvement in aspects of academic governance than in the pre-1992 sector, where there may be no such formal requirement even though - in practice - the funding bodies assume it to exist. In many pre-1992's the council is also required to consult the senate about matters with academic implications. As might be imagined, the relationship between the governing body and the main academic committees is somewhat of a mystery to many governors. In particular, external governors are often surprised that, as the core business of their institution, teaching and research are not the direct responsibility of the board.

2.25   The nature of the formal relationship between the governing body and the senate/academic board raises some important issues, including:
   • The nature, frequency and style of reporting between the senate or academic board and the governing body.

- The degree of authority delegated by the governors on matters concerning academic governance.
- Whether there are any joint responsibilities or statutory joint bodies.
- How a governing body can actively support the values underpinning academic governance.

2.26 However, the traditional systems of academic governance are increasingly coming under challenge for numerous reasons including:
- The need for speedy decision making in the face of the rapid pace of external change.
- The effect of growing complexity of funding arrangements on institutional and academic practice.
- The growth of managerial devolution to academic resource units. Where there is such devolution, in many HEIs the role of the senate or academic board is being diminished.

Partly for these reasons the CUC Guide for Members of Governing Bodies recommends that governing bodies undertake regular reviews of the effectiveness of academic boards or senates and their committees.

2.27 The whole issue of the role of the governing body in relation to academic governance, including ensuring quality and a satisfactory student experience, is considered in detail in a separate guide in this Getting to Grips series[12].

The roles of governing body members and key officers

2.28 Although the responsibilities of a governing body are carried out corporately, in practice particular issues concern the different types of members of boards and these are briefly noted below.

2.29 External members of governing bodies (who fall into different technical categories eg independent, lay, co-opted, etc) have a role similar to that of non-executive directors in private sector boards. They should bring a wide range of expertise and skill, including the ability to think strategically and to apply balanced and fair judgement. All act on a voluntary basis and although remuneration is being considered by some HEIs, this is not generally consistent with charitable status. The instrument of government of the post-1992 HEIs draws a technical distinction between independent and co-opted members. The former are broadly those with experience in industrial, commercial or employment matters, or one of the professions. The co-opted category is broader, including at least one with experience "in the provision of education". Staff and students also fall into the co-opted category.

2.30 Internal governors (ie staff and students) bring to a board the knowledge and expertise which arises from their position in the institution. Such members are not in any sense delegates of their constituencies, and their first duty is corporate rather than loyalty to any sectoral interest. As the governing instruments of an HEI will make clear, apart from restrictions relating to reserved areas of business and specific requirements concerning committee membership, all board members have equal status. See Chapter 6 for more on the roles of staff and student governors.

"I love being a governor, but I have real difficulty over understanding that the main thing this place is about (teaching and research) is something that we are not directly involved in"

(GOVERNOR WITH PUBLIC SECTOR EXPERIENCE)

"The composition of council is inherently curious, with its mix of genuine independents, representatives (particularly of local authorities) and staff."

(GOVERNOR WITH MIXED EXTERNAL EXPERIENCE

2.31   The chair of the governing body has a crucial position, and in many HEIs also chairs the remuneration and nomination committees. The CUC provides a role description for chairs[13], and also supports discussion and networking between them.

2.32   The vice-chancellor or principal as head of the institution is a member of the governing body. The charters and statutes of many of the pre-1992 universities say very little about the specific role of the vice-chancellor as executive head of the university. The term "chief academic and administrative officer" is sometimes the only formal statement of the role. There is more clarity and detail in the articles of government of the post-1992 HEIs, which generally set out a number of key responsibilities. The role, nevertheless, is one of: executive management; the submission of policy proposals to the governing body and ensuring that the agreed policy is implemented; the efficient and effective deployment of the institution's resources; the leadership and direction of staff; and fulfilling the duties of designated officer under the terms of the institution's financial memorandum with its funding body.

2.33   The role of the clerk or secretary to the governing body has become more important and closely defined in recent years[14]. In many HEIs it is combined with a senior management post, though some HEIs have adopted the model of a more independent clerk with responsibilities for governance and legal affairs, but without other duties. Where the role is combined with other tasks this should be explicitly recognised in the clerk's conditions of appointment. There has been an increasing focus on the independence of the clerk from executive management, and a corresponding development in the importance attached to the provision of constitutional, legal and other advice, to both the governors and the executive. The role is well set out in the CUC Guide.

2.34   Finally, there are two other external roles to note. First, almost all HEIs have the largely honorific role of chancellor who chairs the second tier body (court in England but not in Scotland). Second, most pre-1992 HEIs have the role of visitor, usually identified in the charter or statutes. Until recently the visitor had considerable powers under common law and by act of parliament over the internal affairs of the institution, but the visitor's jurisdiction on employment matters and student complaints has been ended, and the role is now much less important than in the past. The Office of the Independent Adjudicator for HE has largely replaced many of the functions of the visitor.

The cycle of HE governance

2.35   All governing bodies meet regularly according to an agreed annual cycle. The CUC Code of Practice recommends not fewer than four meetings a year, and most boards meet more often. Boards which meet more frequently find that a four meeting cycle does not give enough time to discuss strategy and other key issues, and they therefore arrange for additional meetings including awaydays. A few boards in HEIs now meet monthly in a manner similar to private sector boards.

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13 See www2.bcu.ac.uk/cuc/publications
14 An interesting study of the importance of the role of the secretary/clerk is available at: Llewellyn D, 2009, The Role and Influence of the Secretary in UK HE Governing Bodies at www.lfhe.ac.uk/governancepublications

2.36 Faced with a daunting calendar of meetings, and all the other time pressures in their lives, governors sometimes ask how many meetings and committees they are really expected to attend. The simple answer is "all of them". The reason is quite straightforward: the contribution of individual governors is crucial, not least because a governor is party to decisions even if he or she has not actually attended. Non-attendance is also unfair on governors who do regularly turn up, and therefore carry a greater proportion of the work of the board or committees.

2.37 There is also an important formal point of quoracy. A board or committee is only able to arrive at binding decisions if it is quorate when a decision is taken, and will define the critical number and what it can do if it is not quorate. This said, there will always be the odd occasion when a governor is unable to attend. At the very least, he or she should contact the clerk in advance to present apologies. It is good practice for the board or its governance committee to monitor attendance and report the outcomes annually. In the final resort, most boards will have an agreed protocol governing poor attendance and could ask a governor to stand down if this is breached.

Preparation for governance

2.38 There is now an increasing expectation that governors will be properly prepared for their role. Preparation for governance becomes even more important as many HEIs try to attract board members from more diverse backgrounds than previously. Such preparation should include:
- Induction into the role and duties of a governor.
- Regular updating and development of the knowledge and skills of governors.
- Preparation for taking on particular duties, for example committee membership.
- Preparation for taking on a specific position of leadership (which might be the chair of a committee, or even the deputy chair or chair of the main board).

2.39 Each governing body should have approved policies or codes of conduct on its expectations of governors including in relation to participating in development activities, and there is, of course, a responsibility on individual governors to take part.

The information needed for governance

2.40 Good governance depends on governors having access to robust, timely, and relevant information, involving:
- The basic information a new governor needs.
- Routine information to enable boards to undertake their monitoring role.
- Specific information required for one-off decisions (eg capital projects).

2.41 There is a fine line when it comes to the amount of information given to governors: too little, and they are not in receipt of all material facts to take a decision; too much, and the papers will not be properly read. To address this some HEIs have started to provide optional additional information on a dedicated governor website, and presentational techniques such as traffic light systems or dashboards are increasingly common. However, the onus remains with you as a governor to decide if you are comfortable with the amount of information needed to allow proper and informed participation in decision making.

"Induction programmes are arranged… but take up is patchy - given the voluntary nature of governors' work this is understandable."

(GOVERNOR WITH MIXED EXTERNAL EXPERIENCE)

"It is impossible to get this balance right for every governor all of the time. Sometimes I feel swamped by the level of papers arriving before a full meeting."

(GOVERNOR WITH MIXED EXTERNAL EXPERIENCE)

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2.42 The same principle applies to professional advice. While the clerk or secretary to the board normally provides this, a board can request external specialist professional advice in exceptional circumstances. All governors should feel comfortable about seeking extra information where necessary via the clerk.

The governance compact

2.43 A paradox lies at the heart of good governance: on the one hand, as members of a corporate board all governors are required to make up their own minds on matters. In so doing, they should not represent any specific interest, rather the focus should always be on the question: "what course of action will be in the best interests of the institution as a whole?" On the other hand, all decisions of the governing body ultimately need to be reached through consensus. Individual governors may argue a particular point of view in a meeting, but the final decision should be collective. It should then be owned and, if necessary, defended by each individual member. These disciplines and expectations can be particularly challenging for staff and student governors (see Chapter 6).

2.44 At best, the arrangements for governance provide a powerful set of checks and balances. In practice, they amount to a compact involving governors, the chair of the board, the head of institution, the academic board/senate and the clerk or secretary to the board as the custodian of due process. The cornerstone of this compact is the notion of trust and openness among the parties involved. However, it would be a failure of governance if this trust were unquestioning, and a fine line always needs to be drawn.

What can go wrong?

2.45 From time to time the governance of HEIs may come under pressure and there may at any given time be a handful of institutions regarded by their funding bodies as being at risk because they are facing particularly challenging financial or governance circumstances.

2.46 There is nothing wrong, of course, in an HEI's management and governing body working closely with a key external agency (such as a funding body) on the basis of shared information and an agreed strategy to deal with a major problem. Indeed, in extreme conditions it can amount to good governance. For this to be the case, however, the key test is that:
- Governors have identified a major problem, which may or may not first have been drawn to their attention by the head of institution.
- In conjunction with the head of institution they have approved a strategy for dealing with it.
- They have made a conscious decision to share this strategy with the relevant external agency, and to call upon any available support and guidance.

2.47 Of course, such decisions should not be taken lightly, as arguably it is governors' first duty to ensure that external interventions are never needed. However, decisions taken by a board to acknowledge a major problem and involve third parties are always preferable to an uninvited external intervention, justified on the basis of a perceived failure of governance.

"It is too easy to assume that leadership resides in a few key members, such as the vice chancellor, rather than accepting that lay members have a responsibility to fulfil a role in supporting the university through coaching, counselling and advising as appropriate."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

2.48 While some of the things that can go wrong are specific to HE (for example, tensions between a governing body and the senate/academic board), many involve generic issues which afflict governance in all sectors, for example: a breakdown in board-executive relationships or, more specifically, those between the chair and the head of institution; the dangers of governors being overly involved in operational issues and confusing governance with management; the difficulty of holding capable and high-performing CEOs and senior managers to account (the "RBS problem"); the limited knowledge base of external governors leading to a failure to understand the complexity of many HEIs; ensuring the effective governance of risk; and the related challenge of providing constructive feedback on performance.

2.49 Such challenges have led some critics to conclude that the current systems of governance cannot achieve the extent of scrutiny required, but the experience of many HEIs contradicts this. In addition, a different criticism of current practice comes from those who perceive a growth in the managerialisation of HE, and a loss of academic (and sometimes institutional) autonomy. A particular issue here is that problems associated with poor governance may be widely (and often inaccurately) reported, while the benefits of effective governance are often relatively invisible, at least in the short term.

2.50 Given the turbulent environment facing HE, the challenges facing governance are unlikely to become less acute: rather the opposite and effective governance will become more important to HEIs. Although some critics will continue to blame the funding bodies and government for the increasing emphasis on governance, the truth is that those HEIs most active in enhancing their governance practice are doing so not for compliance reasons, but because they increasingly recognise the benefits that effective governance can bring. The challenge for governing bodies in all HEIs is therefore not whether change is necessary, but what should be the nature and pace of it.

"Roughly half the members make no contribution at meetings. That percentage improves at sub-committee meetings but not all governors are actively involved in these. There is a waste of a precious resource."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

Self-challenge questions

- Overall, are you clear about the tasks and responsibilities that you have as a governor in your own HEI? If not, why not?
- Are you clear about the primary role of your governing body, and do other members share your view? If not, what are the implications?
- Have you seen the schedule of delegation for your own HEI, and do you know who is responsible for what? If not, why not?
- What are your HEI's arrangements and expectations for the induction and continuing development of governors? Have you participated, and is there anything further that might usefully be done?
- On balance, how effectively is information provided to governors in your HEI and what might be done to enhance its presentation?

3   RISK, REGULATION AND THE LEGAL FRAMEWORK OF GOVERNANCE IN HIGHER EDUCATION - WHAT IT MEANS FOR GOVERNORS

3.1   All new governors will have immediate concerns about the related areas which are briefly summarised in this chapter: the governance of risk, and the legal and regulatory responsibilities falling on governors. In both areas further information is available from two key publications: in the area of risk the separate guide in this series on Getting to Grips with Risk[15] (on which the summary in this chapter is based), and on legal and regulatory issues the CUC Guide for Governors which sets out the formal and definitive position[16].

Governing body responsibility for risk

"Risk management is central to the work of our governing body. It underpins everything that we do and our whole approach to strategy."

(SECRETARY TO AN HEI GOVERNING BODY)

3.2   In the volatile world in which HE now operates all governing bodies have an active role to play in ensuring that effective risk management arrangements are in place, and these include - but are by no means restricted to - ensuring compliance with legal and regulatory requirements. What does this mean in practice?

3.3   Formally, a number of the risk management requirements for HEIs are set out in the regulatory frameworks of the four funding bodies. Although the details of these requirements vary, Hefce guidance in England is typical: "in the context of risk management the governing body should, as a minimum, ensure that there is an ongoing process for identifying, evaluating, and managing the risks faced by the institution, and should review this process regularly"[17]. The Hefce guidance goes on to suggest that "the governing body's job, therefore, is to:

* Set the tone and influence the culture of risk management within the whole institution.
* Determine the appropriate risk appetite or level of exposure for the institution.
* Actively participate in major decisions affecting the institution's risk profile or exposure.
* Monitor the management of significant risks to reduce the likelihood of unwelcome surprises.
* Satisfy itself that the less significant risks are being actively managed, possibly by encouraging a wider adoption of risk management.
* Report annually on the institution's approach to risk management, with a description of the key elements of its processes and procedures."

3.4   A separate study of risk management in HE by PricewaterhouseCoopers[18] found that most governing bodies recognised the potential benefits of risk management, but that different boards have varying degrees of involvement in risk management procedures. This is not just because of institutional diversity, but also arises from genuine differences of view about the level of involvement that a governing body should have. In many HEIs the responsibilities of the governing body, its committees, and the senior executive for different aspects of risk management have usefully been clarified using an agreed schedule of delegation.

15 LFHE-CUC, 2010, Getting to Grips with Risk, at www.lfhe.ac.uk/governancepublications
16 The Guide is available at www.hefce.ac.uk/pubs/year/2009/200914
17 HEFCE, Risk Management: a Briefing for Governors and Senior Managers, at www.hefce.ac.uk/pubs/hefce/2001/01_24.htm
18 PricewaterhouseCoopers, Risk Management in Higher Education, 2005 at www.hefce.ac.uk/pubs/hefce/2005/05_11

3.5 All the funding bodies require the audit committee of HEIs to assess risk management, control and governance arrangements. However, this does not mean that the governing body should not be actively involved in risk: this is a matter for the whole board as well as the audit committee. In particular a governing body needs to define risk appetite: the overall level of risk exposure that an HEI is prepared to accept. Establishing the risk appetite therefore helps a board to consider how it responds to risks, and what it is prepared to undertake or not. The level of acceptable exposure will vary between HEIs, and the views of the funding bodies and other external stakeholders on risk tolerance may also be an important influence.

3.6 Given the diversity of HEIs, risks will vary in their relevance, scale and potential impact, but there are areas of common concern for boards. Most typically they are:

- *Strategic risks:* these are related to the most fundamental decisions made about the future, and on translating the mission and values of the HEI into strategic plans. By definition, all the main strategic risks should be considered by the governing body as part of the business planning and review processes, and in some HEIs the senate or

- *Financial risks:* this type of risk is almost self-evident, and relates to both overall financial capacity and to the processes that help direct and ensure financial sustainability. As such they are central concerns of the governing body.

- *Legal risks:* this category of risk is increasingly important in numerous ways, and should be familiar to governors.

- *Reputational risks:* most HEIs understand the importance of reputation quite well and trade on it all the time. However, it is not easily quantified, and some governing bodies may not - in practice - take full account of reputational risk. To do so is a three-fold challenge: understanding how and where reputational value is added (and equally how value might easily be lost); understanding the HEI's current reputation; and understanding how well the HEI can respond to challenges to reputation.

- *Operational risks:* dealing with these is, of course, a management function, but a challenge for the governing body is to encourage a risk culture which is embedded within operational life. The two main board level operational risks are people and estates/infrastructure.

- *Project risks:* finally, major project risks can be key areas of concern for governors, as they are often so central to the delivery of HEI business objectives. Although the role of the board may vary, typically it is conducted through the standard mechanisms of determining policy, involvement in key investment decisions, and receiving progress reports.

The legal basis of HE governance

3.7 The legal basis of HE governance can be confusing and may seem odd, even to those who are experienced in serving on boards in business or public life. It can be a particular concern for first time governors, who understandably want to know what the law says about their own responsibilities and liabilities. Given that HE is now a matter for the four UK jurisdictions, there are increasing differences between the legal and regulatory environment in England, Scotland, Wales and Northern Ireland.

"My initial reaction on becoming a board member was how complex everything was: lots of what I would call business units all with different needs and objectives, and no standard system of reporting. It was completely unclear how - if at all - they related to the board."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

3.8   Historically, the governance framework of HEIs varied depending upon whether they were established before or after 1992 (with the passing of the Education Act). The legal basis for the former is set down in the charter, statutes and ordinances. Most of these universities were established by royal charter; as such they are formally chartered corporations and are often referred to as "chartered universities". A few pre-1992 universities were established by a specific act of parliament; they are known as statutory corporations, as their acts include their statutes. Post-1992 HEIs are higher education corporations, whose governing arrangements are set out in the instrument and articles of government. In contrast to the pre-1992 universities, their model of governance specifies: a more powerful role for the vice-chancellor as head of institution; a larger majority of external members on the governing body; limited participation of staff and students in governance; and a lesser role for the academic board or senate. A small number of post-1992 HEIs are established as companies limited by guarantee where the governing body also acts as the company board of directors.

"I had a fair idea about being a charity trustee, but further information about the subtle differences of being an HE trustee would be helpful."

(GOVERNOR WITH CHARITY EXPERIENCE)

3.9   All HEIs have charitable status, usually that of exempt or excepted charities. The 2009 Charities Act has substantially changed charity legislation and the implications for HEIs are still developing. Information should be available from the clerk/secretary of each governing body. In England Hefce is acting as the agent for the Charities Commission as the principal regulator for HEIs, but different arrangements apply in the other UK jurisdictions. In England, it remains to be seen whether there will be a conflict of interest for Hefce in acting as both a major funder and principal regulator of HEIs.

3.10   There are significant potential benefits of charitable status: it can be helpful in public relations and fundraising, and provides significant tax advantages. These advantages are partly offset by restrictions on the commercial activity that HEIs can undertake (although separate companies can be established to overcome this), and the need to comply with public benefit requirements.

3.11   For HEIs with charitable status, members of governing bodies also act as charity trustees. This involves a specific set of responsibilities and trustees are not permitted to benefit financially from their activities. Given the changes to charity legislation, many governing bodies have reviewed their arrangements on complying with charity law, and details of practice should be available from the clerk/secretary to the board. The position in some HEIs may be complicated if there are long standing charitable trusts of which the governing body is the trustee. The students' union is a separate charity and the specific implications for governors can also be obtained from the clerk/secretary.

3.12   Beyond meeting the specific legal requirements falling on an HEI, governors face an increasingly complex range of general legislative requirements, and should be made aware of them by the clerk/secretary. Areas of special importance are: equality and diversity; health and safety: student matters (including aspects of the governance of the student union[19]); freedom of information: data protection; and HMRC provisions.

[19] See CUC guidance on students unions at www.bcu.ac.uk/docs/cuc/pubs/NUSCUC-Guide_March2011.pdf

3.13   In addition to complying with the law, a governing body also has to comply with a range of regulatory requirements, most obviously from the four HE funding bodies for England, Scotland, Wales and Northern Ireland. They lay down important requirements in the regulation of resources, principally through a financial memorandum or funding agreement, the provisions of the separate annual grant letter, audit codes of practice and other related requirements to provide them with assurance that HEIs are being governed adequately. The financial memoranda vary in the four jurisdictions and details can be found on the respective websites.

3.14   All the funding bodies have explicit accountability and audit requirements including: the provision of internal and external audit; the establishment, constitution and terms of reference of an audit committee; internal risk management systems; and reporting requirements. All four have agreed to support the CUC Governance Code of Practice, and HEIs are required to state in their annual accounts whether they have followed the Code or to explain why not.

3.15   In addition to the funding bodies, HEIs have to comply with numerous other regulatory requirements, including those of the research councils and other funders, the Quality Assurance Agency in relation to academic provision, the United Kingdom Border Agency (UKBA) concerning international students, and various technical audits. Such requirements change regularly. For example, changes in student funding in England require all HEIs wanting to charge higher fees to have an "access agreement" approved by the Office of Fair Access (OFFA). Similarly, in Scotland a requirement is being introduced for HEIs to produce and implement outcome agreements as a condition of funding.

3.16   Some of the four HE funding bodies have attempted to reduce the "accountability burden" falling upon HEIs, but this remains a contentious issue. Many - but not all - HEIs are critical of what they see as an onerous level of regulation and audit, given that HEIs are usually risk averse and that generally low levels of risk have applied in HE. Poor governance practice in a few HEIs has not helped to make the case for less regulation.

The liabilities of governors

3.17   Most new governors want to know: "If things go wrong what is the nature and extent of my personal liability?" Providing information on this is an institutional responsibility and the clerk/secretary to the governing body should provide guidance, and also explain if professional or trustee indemnity insurance cover is provided.

3.18   Overall, the law relating to personal liability is complex and relatively untested by the courts. The CUC Guide provides good general advice, which in summary is that if governors act honestly, diligently and in good faith, avoiding real, potential or perceived conflicts of interest, and contribute only to corporate decisions, issues of personal liability are unlikely to arise. So governors would only find themselves at risk if they were to act recklessly, ignore professional or other advice, or be in breach of fiduciary or governance duties.

3.19   From time to time legal action will be taken against an HEI. The responsibility for dealing with this will fall either on the secretary/clerk, on a specialist legal officer (if the HEI has one), or on other senior staff. In general, matters relating to staff will be managed by HR professionals and may be considered initially by an employment tribunal, and in many pre-1992 universities there may be additional complications about dismissal or redundancy in relation to those academic staff with tenure. So far as students are concerned, complaints that have exhausted all the internal procedures will initially be referred to the Office of the Independent Adjudicator for HE; and various contractual or other matters may be heard in the county court. Cases involving significant risk will normally be reported to the governing body.

Self-challenge questions

- Are you clear about the governance of risk in your HEI?
- Does your governing body have satisfactory systems for ensuring that its legal responsibilities are discharged to the satisfaction of the board?
- Are you confident that the clerk or secretary to your governing body provides accurate and up-to-date information on the legal and regulatory issues facing the board?
- Do you know of your responsibilities as a trustee under charity legislation and, if not, why not?

4 GOVERNOR INVOLVEMENT IN INSTITUTIONAL LIFE AND RELATIONSHIPS WITH SENIOR OFFICERS

4.1 An immediate issue for new members of governing bodies (particularly external ones) is what kind of involvement they should have and how much they should take part in the life of the institution. On the one hand, they need to be informed as fully as possible about relevant issues: on the other hand, time is limited and they need to steer clear of getting involved in activities which are not part of their responsibilities.

4.2 The main sorts of involvement considered below are:
- The involvement of members of the governing body in general institutional life, and how much they should "get to know" their HEI.
- The involvement of individual governors through committees and specific responsibilities.
- The involvement of the governing body in providing advice and support to senior officers and the resulting relationship issues.

4.3 In practice, the extent of involvement is likely to depend on the style of the board (probably heavily influenced by its chair), the structure of governance (including how often the board meets), and how the board perceives its role (for example the members of a board extensively engaged in monitoring institutional performance are likely to be more involved than those on a board mainly involved in just oversight).

Involvement in institutional life and knowing the institution

4.4 Involvement should start with a governor's induction: all governors should expect a well-organised induction programme, to some extent personalised to reflect their particular needs. In practice the quality and extent of induction varies between HEIs, and improvements could often be made. Typically, in addition to the provision of basic written information, induction arrangements include discussions with relevant senior managers, campus tours, visits to departments or faculties, mentoring with experienced governors, and the opportunity to meet some students.

4.5 An aspect of governor recruitment and induction that is sometimes overlooked is the need for governors to undertake their own due diligence before taking up their role, on whether the commitment and involvement expected is appropriate for them. It is better that to clarify any differences in expectations and style at this early stage than allow them to become a source of frustration later.

4.6 Once induction has taken place it is important for governors to get to know their HEI and, conversely, for the institution to know its board, or at least to know what its board is doing. However, because governors may not visit the institution very often, some HEIs provide a range of opportunities to increase knowledge and involvement including: briefings before or after board meetings for members to talk to senior academics or visit departments; presentations before board meetings on important aspects of the institution's work; participation in events such as degree ceremonies; displays and exhibitions being made available to governors; involving governors in social events which enable members to meet more informally, and many board meetings are preceded or followed by lunch or supper.

"All new independent governors need to be on a steep learning curve… the character and work practices of an academic institution are very different from those of commercial companies and the public sector."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

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4.7　More controversially, governors may be invited to take an interest in a particular faculty or department (sometimes through a formal "twinning" arrangement), and this can lead to a greater understanding. However, this approach needs careful handling to avoid bringing governors too close to internal issues and risk jeopardising their independence. If introduced, such an arrangement needs managing so that both parties are clear about expectations. A casual approach whereby a governor may get in touch with a specified department if she or he wants seldom works.

4.8　It is also important that governors are known to their institution, and it remains the case that few board members are well known to even relatively senior staff, never mind "ordinary" staff and students. To try to make them better known many HEIs now publish reports on the work and decisions of their boards in a more accessible and informative way than just having minutes available (an approach encouraged by the requirements of the Freedom of Information Act), by publishing issues concerning the governing body in the institutional newsletter, and by having information about governors on the intranet.

4.9　More formally, it is now common practice for governing bodies to hold awaydays (often involving detailed discussion of major strategic issues) so that members can work together in less formal situations. These may also allow governors to meet senior managers who do not usually attend board meetings. HEIs may also give governors the chance to meet external experts by inviting them to discuss new initiatives or to explore new or changing responsibilities. However, such activities need to include genuine opportunities to participate, and a common complaint from governors about awaydays is that they tend to be dominated by presentations of information, with less time for discussion on the strategic implications of the issues raised.

4.10　A study for the CUC[20] identified a number of good practice activities concerning governor involvement which are in relatively widespread use:

	EXAMPLES OF GOOD PRACTICE
Presentations and workshops	Governors attend frequent special events with senior academic colleagues. Social events (dinners etc) to help external members to meet senior academics. Presentations to the governing body by students on aspects of the student experience. Informal evening briefing meetings for external governors (as well as pre-meeting briefings). Governors invited to annual management conferences or similar events.
Faculty or school liaison	Governors with commercial experience sit on faculty advisory boards. Governors link with an academic or administrative function for a period. Briefings or visits to faculties/departments before meetings.

20 CUC, 2004, Good Practice in Six Areas of the Governance of Higher Education Institutions, at www2.bcu.ac.uk/cuc/publications

	EXAMPLES OF GOOD PRACTICE
Information flows	Website hosting documents supporting the governing body/committees. Governors have full access to the institutional intranet. Regular flows of topical information (eg CUC newsletters, funding body briefings, etc) via the clerk. Subscription to Times Higher newspaper for all governors. Clerk produces a monthly digest of information for governing body members.
Briefing by head of institution	Briefings at the start of each session on key policy. Updated at each board meeting. Informal lunches or dinners of members with the head of institution throughout the year.
Formal events	Governors invited to all ceremonies and formal HEI events (inaugural lectures etc).

Involvement through committees and specialist activities

4.11   Many governors feel that they are most involved in decision making through their membership of sub-committees of the governing body or in other specialist activities - for example being a lead governor overseeing a particular area. There are a number of reasons for this:

- The size of the group means that there is more chance to participate.
- Discussion is likely to be more focused on areas in which governors can contribute with confidence.
- Members may have been selected for specific skills or attributes.
- Members hear of ideas earlier and feel they can make more of a contribution.

4.12   However, greater involvement for some governors may leave others feeling uninvolved. For example, members on planning and resources committees (or the equivalent) often receive detailed papers and have significant discussions with senior managers early in the process of developing strategic plans or responding to external factors. When such matters come to the governing body the papers may be less detailed and other governors may feel that key decisions have already been taken, and that the role of the full board is relegated to a more formal one of rubber stamping the work of the senior committee.

"If you are not on a sub-committee it may be difficult to ask questions about detailed issues that have been debated there."

(STAFF GOVERNOR)

4.13   In some large governing bodies there may be a core group of senior governors who, for whatever reason, exercise more influence than others. In some HEIs this may be formalised into an executive or chair's committee, with terms of reference and some means of reporting to the full governing body. Such groups may meet between full board meetings, and can provide a forum for the executive to have preliminary discussions with governors on important topics. However, despite obvious potential advantages, this runs the risk of making other governors feel uninvolved and acting as rubber stamps, and there is no consensus on whether such an approach is good practice.

The other forms of involvement

4.14 Sometimes external governors have additional forms of involvement because they sit on committees with specific functions, and can bring to bear their experience of topics such as venture capital, intellectual property, etc. Although such membership can be invaluable, their roles must be clear so that they don't get drawn into management issues which might challenge their independence.

4.15 There may also be other situations where new governors find themselves in unfamiliar territory. For example, some internal grievance or disciplinary procedures for staff may include an appeal to the governing body, and a panel or hearing may be set up to hear it. The clerk or secretary, together with the professional staff concerned, will give briefings and support, and it is usual for relatively new governors to be paired with more experienced colleagues to hear such cases. Nevertheless, such detailed practical involvement may be a surprise to those expecting to find a clear distinction between governance and management.

4.16 Governors may also have roles which involve them outside the institution. For example, external governors are often asked to join activities concerned with raising the external profile, lobbying or fundraising. The importance of these roles for external governors is likely to grow as institutions develop their interest in fundraising. However, practice in this country has not followed that in the USA, where there is an expectation that trustees of private universities will have a significant external role arising from their being active financial donors.

4.17 In undertaking any external role governors will probably need to be aware of an HEI's codes of conduct about external contact, for example, limiting contact with the media or other bodies. If governors have not been briefed on this they may wish to ask about it in advance of any such involvement.

Relationships with senior managers

4.18 It is crucial for the governing body and its committees to have sound working relationships with senior officers and managers, particularly the vice-chancellor or principal as head of the institution. Successful relationships are based on trust, openness and mutual respect on all sides, and governance is much more difficult without these. Where crises of governance occur they frequently involve the breakdown of such relationships with inevitable damaging consequences. The most crucial relationship is between the chair of the board and the head of institution as this sets the tone for the overall relationship between the board and other officers.

4.19 Important aspects of the effectiveness of existing relationships include:
   - The formal position of senior managers in relation to board membership.
   - Interpersonal relationships.
   - The attitude of the executive to involving governors.

   Each of these is reviewed briefly on next page.

4.20   T*he formal position of senior managers in relation to board membership.* This varies
        between HEIs. Typically, in pre-1992 universities the head of institution and a small
        number of senior academic officers (eg cpro-vice-chancellors) are members of the
        council. In post-1992 HEIs the instrument of government gives the head of institution
        the choice of opting out of governing body membership, but almost all are full
        members of their boards. In addition, other senior officers or managers may be in
        attendance at meetings to present papers and give advice. In practice they will often
        be the source of much information that is vital for the governing body and they may
        be closely questioned on issues in their areas. A board needs to have particular
        confidence in the finance director.

4.21   *Interpersonal relationships.* The role of the governing body in providing constructive
        challenge while acting as the critical friend of the executive is crucial here, and an
        open and mutually supportive relationship usually improves the effectiveness of the
        governing body. However, achieving this can be difficult, and both the executive and
        the board (particularly the head of institution and the board chair) need to value each
        other's opinions and how they are given. A helpful and supportive critique is good,
        whereas destructive personal criticism is not and may simply lead to defensiveness
        and secrecy.

4.22   This relationship will vary depending on a number of factors, with the personalities of
        those involved and the culture of the institution being particularly important. In
        addition, both parties need to observe the distinction between management and
        governance, which may be difficult when discussing key issues. Thus the chair of the
        board should be supportive, but constructively challenging and should ensure (with
        the assistance of the clerk or secretary) that important issues are brought to the
        governors at the right time. The chair should expect to be consulted informally on
        sensitive or potentially contentious matters, and the executive should keep the chair
        (and therefore the board) properly briefed.

4.23   However, if the governors are to have the right amount of independence it is
        important that the relationship is not too close,. In particular, the chair has a key role in
        the system of checks on executive power, and should use judgement to intervene
        where necessary. Some of the most serious governance failures in recent years in HE
        have occurred when over-dominant heads of institution, either unchecked by their
        governing bodies or with their tacit support, got their institutions into difficulties.

4.24   *The attitude of the executive to involving governors.* Although rarely discussed in public,
        one of the key factors determining an effective relationship between the board and
        the executive is simply the attitude of the key personalities involved. Does the
        executive really want an active and fully involved board? Does the governing body
        really want to maximise board effectiveness and expend the effort required on what is
        - after all - a voluntary activity?

4.25   The CUC good practice study cited above found very different attitudes to the active involvement of governing bodies, which can be summarised in the following diagram:

	The chair and governing body seek actively to maximise their effectiveness	**The chair and governing body do not seek actively to maximise their effectiveness**
The executive seeks the active involvement of the governing body	*Partnership approach to governance*	*Under-developed approach to governance*
The executive does not seek the active involvement of the governing body	*Conflict approach to governance*	*Managerial approach to governance*

4.26   In this diagram there are four possible approaches to governance:

- *A partnership approach* - where both the executive and the governing body seek active involvement and are jointly committed to an effective board. The benefits are close collaborative working and governors having an active role. The main potential drawback is the danger of bridging the governance and management divide and drawing the board too closely into institutional affairs.

- *A conflict approach* - where the executive seeks to deny the board the active involvement it wants, preferring it not to undertake its full responsibilities. This is potentially unstable with governance becoming a battle about who has the right to decide what.

- *An under-developed approach* - where the executive seeks the active involvement of the board, which for some reason is unable or unwilling to respond (probably because of the views of the chair or a lack of experience of the membership). This leaves the executive with a lack of support, and an under-developed governance system. Changing senior board membership may be required to address this.

- *A managerial approach* - where the executive is in an overly dominant position because of neglect by the board of their responsibilities, and they become a rubber stamp. Some of the main problems of governance in HEIs have occurred when this has happened, and in the long term there may need to be a change of senior board membership, or - in extremis - changes in the executive.

4.27   A further factor influencing relationships between the governors and the executive is institutional size and complexity. Small or specialist institutions tend to develop distinctive cultures, and often do not have the financial resources to employ the full range of specialist support staff. In these circumstances some governors may find themselves drawn into a role of providing such services, which can then make the role of independent and critical scrutiny difficult to carry out.

SUGGESTED TASK

Which of the four approaches in Para 4.26 comes nearest to describing the position in your own institution? In practice what are the specific advantages and drawbacks of this approach, and is it a satisfactory situation from your point of view?

How much time should governor involvement take?

4.28　A question that many new governors ask is how much of a time commitment is required to fulfil the role effectively? The simple answer is that there is no norm and that practice varies widely. At an absolute minimum, participation by external members may be no more than attending four meeting a year, plus preparation time. However, this commitment can rapidly grow when a board meets more often or when members are involved in committees, participate in external events, and perhaps attend a graduation ceremony.

4.29　Calculating the overall time involved is difficult because many meetings take place in the evenings or at other times convenient to governors, but some HEIs have estimated that board members spend a minimum of approximately 15 days a year and often much more. In many institutions the amount of time expected of a governor may be set down in induction documents.

Self-challenge questions

- As a governor, in what ways are you involved in the life of your own institution? Are these effective in terms of the information gained and the time taken?
- How would you characterise working relationships between your governing body and the executive and, if there are difficulties, what might be done to address them?
- When you were invited to join the board, you might have been given an indication of the time commitment that would be required. How has this worked out in practice, and do you think this is a reasonable amount of time to be involved?
- How effectively is your time used and what might be done to make it more effective?

5 DEVELOPING INSTITUTIONAL STRATEGY AND MEASURING PERFORMANCE - THE ROLE OF THE GOVERNING BODY

5.1 All four UK HE funding bodies expect the governing bodies of the HEIs they support to be involved in the development, measurement and monitoring of institutional strategy. In addition, the CUC Guide[21] refers to monitoring institutional performance several times, and one of the four tasks included in its Code of Governance is: "monitoring institutional performance against plans and approved key performance indicators (KPIs), which should be, where possible and appropriate, benchmarked against other institutions". The same point is picked up elsewhere in the Code in connection with reviewing the effectiveness of the governing body.

"If we're really supposed to be 'unambiguously responsible' for the University's activities then I can't see any way of us not measuring performance: we simply have to know how this place is doing."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE))

5.2 This chapter answers some of the basic questions that new governors may have about the role of the governing body in this area: what is being done, why, and who should do it. Such questions include:

- In what way should the governing body be involved in institutional strategy?
- What is good performance for an HEI?
- Is monitoring performance the same as measuring performance and, if not, why are the two terms sometimes used as if they were interchangeable?
- What performance data should governors reasonably expect to be provided by their institution?
- How does measuring (and monitoring) relate to the strategic responsibilities of governing bodies?
- Is measuring solely the responsibility of the board and, if not, how can it be shared with others?

5.3 It needs to be recognised that parts of this chapter are contentious, and practice differs between HEIs. Active performance measurement is a new area for some boards and many HEIs are still developing the processes to carry it out. Your own board may not yet have a full set of processes.

Governing body involvement in strategy

5.4 The CUC Code of Governance also emphasises the role of the governing body in relation to institutional strategy: "approving the mission and strategic vision of the institution, long-term business plans, KPIs and annual budgets, and ensuring that these meet the interests of stakeholders." But what does this mean in practice?

5.5 All governing bodies, of course, formally approve institutional strategy, but at a minimum this could be no more than routine confirmation of the strategic plan. The question is how should the governing body be more involved without undermining the role of the executive to write, propose and implement the strategy? All the issues raised above about the style of governing bodies, interpersonal relationships between the board and the executive and so on are relevant here. Determining and approving strategy should not be a battle of wills between different "sides", but a mature evidence-based process where those involved respect the roles of others.

[21] The CUC Guide is available at www.hefce.ac.uk/pubs/year/2009/200914

5.6 However, this remains one of the most challenging areas of governance. An executive should be committed to its strategic plans that will have be drawn up on the basis of substantial expertise and experience, and to have a governing body challenge them can easily be construed to be an insult to professional competence. Conversely, the board has to be confident that the strategy optimises opportunities in the interest of the institution, is consistent with mission, is evidence-based and is financially sustainable often in the face of substantial potential risk.

5.7 What are some common problems in how boards consider strategy? They include:
- A governing body lacking knowledge and credibility to assess a draft strategic plan in an informed way.
- An executive taking board approval for granted or trying to bounce it into approval - for example by not providing initial strategic options for a board to discuss.
- A lack of data on key aspects of the strategy, with the result that a board has to take the strategy on trust.
- A lack of financial rigour in a draft strategy or an over-optimistic set of assumptions.
- A lack of time for governors to consider a strategy fully given the complexity of some HEIs and the limitations of time for voluntary governors.
- A lack of consistency in parts of the strategy - for example the HR elements of a strategy not aligning with other aspects.
- A lack of understanding of the external policy environment by either (or both) the executive or board.

5.8 Such difficulties can only be addressed if the HEI and its board has a shared strategic planning process in place with a common understanding about roles. In summary, this is likely to include:
- An expectation that it is the job of the executive to construct, propose and implement the strategic plan.
- Agreement about the initial criteria on which the strategy is based, using proposals from the executive and directly related to mission.
- An arrangement so that, ideally, the governing body has at least two opportunities to discuss the detail of the strategy (and any sub-strategies): an initial scoping discussion when the overall framework for a strategy is considered, and a second opportunity to discuss the draft strategy based on the agreed framework.
- An understanding that the governing body is clear about what evidence it expects to see from the executive to support a proposed strategy, and thereby create the basis for performance indicators to measure the success of subsequent implementation.
- Agreement about how the strategy will be reviewed, and the data required for this.

5.9 It follows that a board needs to work hard on its engagement in strategic issues. At the most basic level, governors need to read and understand often complex strategic documents (notwithstanding the responsibility of the executive to make

"Unfortunately, the chairman of my board doesn't encourage us to examine the main strategic issues facing the university, and is happy to leave them to the vice-chancellor. Board meetings tend to be short, very formal, and frustrating."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

them as readable as possible!). Going beyond this, a board also needs to have sufficient expertise to understand the key strategic issues and to comment on them knowledgeably. It is for this reason that governing bodies actively engaged in approving and reviewing strategy are increasingly changing traditional governance structures so that they meet more often and have a more carefully selected membership.

Why is monitoring and measuring performance important?

5.10   In the competitive environment of current HE it is now widely accepted that HEIs and their governing bodies need to be actively aware of their own performance. Important drivers behind recent moves for governing bodies to become more involved in this area include:

- Governors in many HEIs increasingly recognise that they need performance information in order to review how management have delivered strategic objectives. Even though some of the levers of HE governance may be less clearly linked to outcomes than in much of the private sector, accountability still holds. Boards also need performance data to compare their institution against relevant peer HEIs.

- In most HEIs senior managers welcome active performance monitoring because of the need to maximise value from increasingly scarce resources and invest in high performing areas.

- The funding bodies are encouraging it to enhance accountability, value for money, and - in England and Wales - student fee planning.

- Resources in some areas - most notably research - have become highly selective, with a greater emphasis on performance as opposed to just reputation.

5.11   However there are some tensions in what governing bodies are expected to do in practice. Not only are there the obvious potential differences of view that exist in almost all organisations between a board and its managers around setting and meeting realistic targets, but there may be difficulties caused by conflicting priorities arising from external pressures. In particular, there may be tension between some institutional objectives (and therefore performance) and public policy as mediated through the funding bodies. For example, some HEIs are much more sceptical about meeting national policy on widening participation than others. In Wales this issue has come to a head with the Welsh Assembly Government arguing for substantial institutional restructuring to provide a greater HE policy emphasis on the overall needs of Wales rather than the interests of specific HEIs. All governors will find that there are potential difficulties here in balancing changing (and often relatively short term) government priorities with long term institutional strategic objectives.

5.12   Such tensions may lead to the undesirable position of a governing body having two sets of goals and targets against which to assess performance: those it sets itself and those that its funding body has set for it. Of course, in practice, almost all HEIs incorporate funding body policy guidelines and priorities into their corporate plan, so that major tensions or conflicts do not arise. Nonetheless, from the governors' point of view, this means that some of the institution's goals and targets are externally generated, while others are internal.

"I'm not at all sure that my governing body really - I mean really - measure institutional performance, and if we try to do it then it might mean major changes for the way we operate."

(CHAIR OF A GOVERNING BODY)

"I think our board is quite good at measuring performance, and every meeting has at least one item on some aspect of it. Our chair sees it as a high priority."

(STAFF GOVERNOR)

5.13 This situation affects different institutions in different ways, and governing bodies in HEIs with a diverse set of income streams from non-funding body sources are likely to be able to assert more independence in approaches to performance monitoring. Indeed, in England, given that the introduction of student fees is a fundamental change to funding arrangements, it is likely that in the future a few financially secure universities might even consider giving up parts of government funding in an attempt to maximise their freedom of action.

Issues in measuring performance

5.14 As governing bodies strengthen their responsibilities in this area, they typically face a number of important challenges. The first concerns terminology: are they measuring or monitoring performance? There is no agreed definition of the two words (and in practice they may be used interchangeably). However, generally it is held that:

- "Measuring" is a much stronger and more active concept, usually involving setting specific targets against objectives, identifying key performance indicators (both quantitative and qualitative), defining other data requirements, and then measuring performance against them on a regular basis.
- "Monitoring" is a slightly weaker and more reactive concept, which may focus more on the governing body receiving reports. For example, the duty of boards to receive an annual report has always been a central element in fulfilling the monitoring role but, as traditionally practised, this can scarcely be said to be measuring performance. Monitoring, therefore, is a part of measuring, but not the other way round.

5.15 A second internal issue concerns where the responsibility for performance monitoring and measuring lies. For example, should a board set measures and targets themselves, or should they ask senior managers to set targets and select appropriate measures and then agree them? The second approach is almost always adopted (as it maintains the distinction between governance and management), but boards then need to be clear that they are getting the data they want rather than that which managers may choose to provide – although, ideally, there should be no distinction. Often targets will follow from the strategic plan, but there is a danger of performance measurement becoming too instrumental and concentrating on short term factors. A now widespread practice is for a board to identify a small number of *key* performance indicators (KPIs) - see below.

5.16 A third issue is the scale and frequency of the measurement process. An annual cycle for monitoring is widely used, but active measurement needs to be an on-going activity, and strategic questioning should take place regularly. Institutional requirements will differ depending on the portfolio of activities undertaken, but boards will need to be clear about their needs in relation to the timing issue.

5.17 Finally there are issues of data quality, robustness, timeliness and intelligibility. Put simply, does a board get the performance data it requires, when it needs it and to an appropriate standard?

"Other than for the basic finance stuff my board scarcely monitors performance at all. In truth, I think the chairman is scared of the whole subject!"

(GOVERNOR WITH HEALTH SECTOR EXPERIENCE)

"The fact is that we are wholly dependent on officers for the information that we receive. Most of the time it's fine, but sometimes not and then it may take ages for improvements to work their way through to us."

(GOVERNOR WITH PUBLIC SECTOR EXPERIENCE)

"There needs to be more emphasis on the production of integrated management information as opposed to receiving one off reports."

(GOVERNOR WITH MIXED EXTERNAL EXPERIENCE)

What does good institutional performance in HE mean?

5.18   For most governors coming to HE for the first time there are problems in understanding how institutional performance can be measured. In the private sector there are, of course, widely accepted measures such as shareholder value, but in HE there is much less agreement about what good institutional performance means. For example, it is not the production of sound financial surpluses (notwithstanding the importance of this for sustainability), but rather must be associated with providing high quality learning, teaching and research - and measuring these is not a simple task.

5.19   So, from a governing body's perspective, what is successful performance in an HEI? In one sense it's a matter of meeting measurable strategic targets in relation to teaching, research and related activities, but how is a governing body to know what a realistic target might be? In most cases a board would want to take the advice of the bodies involved in academic governance (academic boards, senates and so on) as well as senior executives.

5.20   The most elementary way of assessing performance is by comparing actual achievements against what had been planned, and most HEIs have mechanisms in place for this kind of reporting to the governing body. However, such assessment may say little about the targets established in the first place, and whether they were realistic or challenging enough. Moreover, the achievement of a series of small targets does not tell a board much about overall institutional performance.

5.21   For many academics, good performance is measured in terms of reputation, either of a department (or subject) as a whole or of individuals. Often this is informal (and therefore almost entirely beyond the capacity of a governing board to know about), but in the area of research it may be based on specific impact indicators. It is such indicators that allow the various forms of research selectivity to operate, and to serve as a (controversial) proxy for quality. However, for teaching, reputational indicators of performance are much weaker, although boards should receive QAA and other quality reports

5.22   It is because of such difficulties that league tables seem to hold initial attractions for some governors, but they are fraught with difficulties as serious measures of performance. Newspaper league tables are assumed by many outsiders to HE to be a fair picture of comparative performance, but in fact they can be extremely misleading and, without very close analysis, should never be taken as a performance indicator. Among the reasons are:
- They only report on things that are easily measurable.
- Some of the data they use is out of date.
- They usually take a number of indicators and aggregate them to produce an overall ranking.
- Their indicators (and the weighting given to them) do not necessarily represent the measures that an institution would set itself. Only if all HEIs chose those indicators as their own KPIs would a national ranking make sense.

- Some of the indicators are much criticised, for example, using the number of volumes in a library as a quality indicator, when almost all librarians are moving to an emphasis on access to electronic materials rather than the number of items held on shelves.
- The indicators may change from year to year (often without explanation) and therefore can make year on year comparisons misleading.

5.23 Even the quality rating systems that the HE sector has devised for itself are not immune from such criticisms. Many governing bodies pay close attention to the National Students Survey[22] but the reality is that the differences between institutional ratings can be very minor and are therefore misleading when formed into the inevitable league table.

5.24 However, league tables are here to stay - no matter how misleading - because they sell newspapers, and prospective students and their parents want to read them. Accordingly, the reality is that governors will wish to know where their own institution appears on any particular list and what the reasons are for any "poor" scores. If these reasons are the result of an alternative emphasis in the strategies that their institution has adopted, governors should not be concerned.

5.25 The introduction of student fees in some parts of the UK will add a further dimension to the way in which a governing body measures performance, with more attention on customer satisfaction. Many HEIs already carry out detailed student satisfaction surveys, which in most (not all) cases are reported to governing bodies and more information of this kind is to be expected.

How to measure and monitor performance and the use of KPIs

5.26 The implication of the above for governors is that it is often very difficult to identify simple causal links between performance and the use of resources in many areas of institutional activity. For example, most boards find that there is little robust information on the extent to which the often substantial investment in information and computer technology has made student learning more effective. Of course, this is not a reason for not trying to collect appropriate data, but is rather a health warning about relying on over-simplistic measures of performance.

5.27 At a minimum, institutional performance is being measured and monitored in a number of ways required by external bodies. All governing bodies should be receiving:
- Annual returns made to the respective funding body.
- An annual report and associated documents for approval.
- Annual accounts and financial statements.
- Some kind of annual review of the implementation of the strategic plan.
- External quality reports such as those produced by the QAA and numerous other professional bodies.
- Specific information relevant to performance measurement by sub-committees, for example data to assess the achievement of HR strategy and so on.

"Initially when I saw my university well down in a newspaper league table I was really worried, but the vice-chancellor reassured us that the data was misleading. Nonetheless it's worrying to think about the implications for potential students."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

"As a board we have to avoid confusing our own KPIs with all the other stuff that we have to collect for government."

(GOVERNOR WITH CHARITY EXPERIENCE)

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[22] In Northern Ireland, the general duties on public bodies to promote equality are similar but broader in extent, as they cover religious belief, political opinion, age, marital status, sexual orientation and whether or not people have dependants. The duty to promote good relations is extended to include different religious beliefs and political opinions.

5.28   In addition, some other institutions are providing a great deal more for their governing bodies. In particular there has been a substantial growth in the use of key performance indicators (KPIs), usually derived directly from institutional strategies. These are statistics that tend to be produced at regular intervals, most often yearly to fit the annual academic cycle. The CUC has undertaken significant work for governors in relation to the use of KPIs, and two useful reports are available on their website[23].

5.29   Given the diversity of HEIs, a large number of potential KPIs might be used to measure performance. Although senior managers will be concerned with numerous indicators which provide measures of the details of performance in specific areas, boards are generally more interested overall in a small number of key indicators - perhaps around ten or so - that sum up how well the institution is reaching its main strategic goals. Much more than this and many boards find it difficult to concentrate on the really big strategic issues.

5.30   Determining which KPIs to adopt and how to measure them subsequently is a challenge for many governing bodies. It might be expected that all HEIs would choose to adopt similar KPIs, but - as noted by the CUC - this is not the case, and this reflects the diversity of the sector and the fact that different institutions have chosen to set themselves different objectives. For example, in relation to a student-oriented KPI one highly selective HEI might adopt a quality-related indicator, whereas another institution facing challenges over recruitment might adopt the more limited measure of simply recruiting target student numbers. This example also makes the point that KPIs should not be set in stone but need to reflect different needs during any point of the strategic planning cycle.

5.31   Beneath the main strategic plan and its associated KPIs there will be a set of more detailed strategies, for example the financial strategy, the estates strategy, the HR strategy and so on. Each of these will be accompanied by the relevant performance indicators needed by a board or its sub-committees for reviewing at a more detailed level.

5.32   Other issues to consider when thinking about the use of KPIs to assess your institution's performance include:
- Can performance measures and KPIs be linked directly to key institutional strategies so that the board can assess success in achieving them?
- Can the board find indicators to tell it about qualitative factors (morale, quality of teaching, student satisfaction etc) as well as the more obvious quantifiable factors?
- Are the indicators that your board has identified incorruptible (or can they be perverted or manipulated) and is there a risk that their use might distort behaviour?
- To what level should indicators go? Does the board need to look at the performance of individual faculties and/or departments or just the institution as a whole?
- Can trend data be developed to help performance reviews, a perspective that many boards find invaluable?

SUGGESTED TASK

Suggested task:
Imagine that your HEI is planning to start an overseas franchise programme in China with a target of enrolling 500 students a year in three years' time. What kind of KPIs: (a) should be collected for management purposes? (b) should be reported to senate or the academic board, if any? (c) should be measured by the governing body?

[23] Conducting Equality Impact Assessments in Higher Education, ECU, 2007

5.33 Other approaches typically used by governing bodies to review institutional performance include:

- First, benchmarking performance against comparable HEIs. This is becoming more common and many HEIs compare performance within their various sector groups (eg the Russell Group etc). Where peer HEIs agree to collect and share common performance data, the way is open for regular comparisons and the development of trends over time. While obvious competition issues may limit such benchmarking, publicly available data from HESA and other agencies can be a starting point.

- Second, some institutions have begun to adapt approaches to performance review used in other sectors, such as the balanced scorecard or the European Foundation for Quality Management (EFQM)[24]. These have the potential to be valuable tools to integrate management information.

- Third, given the challenging external environment, HEIs are increasingly using KPI data to monitor key risks and are generally better integrating risk management and performance management.

- Finally, HEIs are increasingly conducting formal mid-term reviews of their strategy in order to encourage increased flexibility in responding to numerous competitive challenges. Such reviews typically enable KPI data to be brought together, ideally in the context of identifying trends over time.

Conclusions

5.34 Irrespective of the approach, an important question for a governing body is the timing of performance measurement: is it enough to look at KPIs and other performance measures just once a year? There might be some areas where a governing body would expect management to act quickly to address issues. For example, one university considers its commercialisation income flows so vital that it obtains statistics at monthly intervals in a special governors' sub committee. Other universities have spread aspects of their performance review and evaluation through the year and look at separate areas at each meeting of the governing body. Others try to time the presentation of key performance information with the start of the new cycle of strategic planning.

5.35 A final thought brings us back to the rationale for the involvement of the board in assessing how the institution is performing. A governing body can undertake its activities in two ways: as part of an oversight process looking at what the executive has done; or as part of a more integrated performance culture where the governing body itself plays an active role, and - with the support of the executive - may seek to enhance institutional performance through its own actions. The test of the second approach is: how much value can the board add to the review process, because of the skills and objectivity of you and your fellow governors? In some institutional cultures this second model of a governing body may not be easy to achieve, as it requires the willing collaboration of the head of institution and senior executive alongside solid working relationships with the governing body and its chair.

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[24] Examples of these are given in the CUC's good practice report.

Self-challenge questions

- How effectively does your governing board review and assess institutional strategy before approving it?
- What are the strengths and weaknesses of the way your own governing body measures institutional performance?
- What are the requirements of your main funding body with regard to the role of the governing body in assessing institutional performance?
- What are the KPIs that are reported to your governing body and are they fit for purpose?
- In practice, does your governing body understand the performance data that it is given and any technical flaws it may have?

6   ISSUES FOR STAFF AND STUDENT GOVERNORS

6.1   This chapter has been designed primarily for staff and students who are members of governing bodies. However, it may also be useful for external governors who wish to discover more about the specific issues facing internal members[25]. Among the issues considered are:

- Why do governing bodies have staff and student members?
- How are staff and student governors appointed?
- The issues facing staff and student governors.
- How can staff and student governors be effective in governing body meetings?

6.2   Staff and students have always had some part in the governance of HEIs - indeed it is a role going back to the idea of a university being a self-governing "community of scholars". In the managerial 21st century the idea of that such collegiality should continue to be the basis for governance is more contested but the traditions still run strong in many - although not all - institutions. Moreover, HEIs are not alone in involving their staff in governance and many mutual, partnership, or cooperative organisations do so as well.

6.3   The arguments for staff and students being members of governing bodies are generally felt to be:

- Recognition that in many professional organisations the idea of participation in self-government remains strong.
- That staff and students bring direct experience of institutional life to a governing body.
- That such membership enables links to be made with other aspects of governance (for example academic governance).
- That in times of institutional crisis having staff and student governors can be a way of ensuring communication within the HEI as a whole, which may reduce tension.
- Some HEIs have found that in times of a governance crisis staff and student members may be more willing to hold the executive to account than external members.

The extent to which these potential benefits are achieved in practice depends on individual board members - the better the quality of their participation then the greater the benefits are likely to be. However, the trend towards smaller boards inevitably raises questions about the number and role of staff and student governors.

6.4   The formal position concerning staff and student members is set out in the CUC Guide[26]:

- "The representation of staff and students on the governing body is important in all institutions" (paragraph 2.55).
- "Members nominated by particular constituencies should not act as if delegated by the group they represent. No member may be bound, when speaking or voting, by mandates given to him/her, except when acting under approved

"As a staff governor do not over-estimate the influence that you can have.... It is unlikely that you or your fellow staff governors will be able to re-shape university policy single-handed."

(STAFF GOVERNOR)

"It is almost impossible for a university council to engage in high level strategic debate in the presence of a wide range of employee, student and other sectional interests... While there is an understandable wish for decision making to be as open and transparent as possible, the structure of governing bodies is not ideal."

(CHAIR OF A GOVERNING BODY)

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25 The NUS and the main staff trade unions were consulted in the original production of this volume, and their cooperation is gratefully acknowledged.
26 Available at www.hefce.ac.uk/pubs/year/2009/200914

arrangements as a proxy for another member of the governing body" (paragraph 2.55)

- "The governing body should exercise its responsibilities in a corporate manner: that is to say, decisions should be taken collectively by all members acting as a body" (paragraph 2.9).
- "Certain items may be declared 'reserved', that is, business which for reasons of confidentiality is not open to discussion by the whole governing body" (paragraph 2.6).

6.5 These requirements mean that many HEIs think that staff and student governors have a potentially valuable role to play on governing bodies but are bound by the same responsibilities as all other members. These shared responsibilities are an important element of governance, and many HEIs have a strong desire to strengthen collective responsibility and to avoid "them and us" distinctions between internal and external governors.

6.6 However, in practice, there are often drawbacks, including:
- A general lack of experience of student and some staff governors in the key areas of governing body responsibilities.
- That the nomination and election processes for staff and student governors may produce members who are popular with their constituencies rather than competent governors.
- That in some institutions the nomination and election processes have become politicised.
- It may be extremely difficult for a governing body to take a rigorous strategic perspective in the face of the vested interests of internal board members.

How are staff and student governors appointed?

6.7 The method and length of appointment vary between institutions. However, common approaches are:
- *Student members:* tend to serve for a one year period of office following elections either organised by the students union or by the governing body secretariat. The president of the student union is usually an ex officio board member.
- *Academic staff members:* tend to serve for three years with an electoral or nominations process usually organised by the governing body secretariat.
- *Administrative and support staff members*: tend to serve for three years with an electoral or nominations process usually organised by the secretariat. Not all HEIs have members drawn from this group.
- *Academic staff members drawn from the senate or academic board:* tend to serve for three years following elections from the committee membership concerned. Not all HEIs have members drawn from this group.

In addition, in some pre-1992 universities some members of the senior management team may also be governors (usually pro-vice-chancellors).

6.8 In some - not all - HEIs there are concerns about aspects of the electoral process for internal members, most usually that:
- It is not uncommon for staff and students to be reluctant to stand for office, sometimes leaving vacancies unfilled or leading to inappropriate candidates being elected.

- The turnout in elections may be low.
- Whereas HEIs are increasingly recruiting external governors on the basis of their specific experience (eg finance) this may not be the case for internal governors, thus increasing the knowledge gap about governance between internal and external members.

6.9 Some of these weaknesses can be addressed through an active induction programme, good handover arrangements by previous internal governors, and on-going support (for example briefings by the clerk), but the one year period of office for student governors means that a steep learning curve is needed. Because of such difficulties with electoral arrangements, some HEIs now involve the nominations committee in the selection and appointment of staff governors as for all other members except students.

Specific issues facing staff and student governors

6.10 Because they work or study in the institution of which they are a governor, a number of specific issues face internal board members. These are briefly summarised below; however, whether these potential difficulties actually occur will vary depending on many factors, including the individuals involved, the culture of the institution, how the governing body is run, the extent of trust and openness among members, and so on. The issues are:
- Potential conflicts of loyalties.
- The limits of the role.
- Avoiding parochial issues.
- Interacting with other governors.
- Getting the views of constituents and reporting back.
- Personal credibility within a board.

6.11 *Potential conflicts of loyalties:* whereas external governors are explicitly recruited to bring independence to a board and to declare any interests (this is why they are required to be in a majority), internal governors are not in such a position and the resulting potential conflicts of interest are often a cause of concern. Such conflicts might include being a member of staff (or to sharpen the potential conflict further, a senior manager) of an academic department whose resources are being considered by the governing body, or being a student member when sensitive issues concerning the students' union are being discussed. Such potential conflicts of interest can be multiple, for example, departmental manager, trade union representative, academic committee member, and elected board member could all be the same person.

6.12 Another example concerns whether board members drawn from particular groups can in any sense be mandated; that is, expected to support a particular view irrespective of whether it is in the best corporate interests of the HEI concerned. This, of course, is inappropriate, but a few years ago was a major issue and caused difficulties for many governing bodies; however, there now appears to be widespread recognition of the primacy of corporate responsibility. Nevertheless, someone new to being a board member may well feel a sense of obligation to "their" constituency, and this may need to be clarified in induction briefing material.

"I think I've made my most useful contributions by trying to make governors see that life's very different in the classroom to the boardroom, and governors need to be in touch with what really goes on."

(STUDENT GOVERNOR)

"I have a good relationship with my head of department, and also feel loyal to the senior managers who are really my employers. I therefore feel a real conflict of interest when the governing body is discussing something which might make things more difficult for either of them."

(STAFF GOVERNOR)

"The student fees issue was really difficult for me because I wanted to vote against fees but realised that the governors really had no choice but to agree to them. In the end I put my personal views to one side but it was hard."

(STUDENT GOVERNOR)

"I often feel like a second class member of the governing body. One minute they ask for our views, and the next they ask us to leave because it seems that they don't trust us."

(STAFF GOVERNOR)

6.13   In this context, it is crucial to note that although staff and students are sometimes called representatives (including - confusingly - in the CUC Guide), this term needs to be used with great care. An important distinction is that staff and student governors are representative of the particular constituencies from which they are drawn, but they do not represent those constituencies. The subtleties of this distinction may not always be clear in practice, but the principle is straightforward: that board members have a corporate responsibility which over rides any representational role that they may be perceived to have. Unfortunately this distinction sometimes gets blurred not only among those concerned, but also among other governors. For example, a poorly worded invitation by a board chair to seek an opinion from "the representative of the students" is generally inappropriate and likely to confuse matters.

6.14   In the same way that staff and student governors cannot be mandated, internal governors who may also be senior managers need to understand that they too have a primary loyalty to the corporate role of the board, and that their responsibilities are not defined (or limited) by any line management responsibilities to the chief executive. The clerk or secretary to the governing body needs to be alert to any abuse of this principle and, if necessary, needs to raise the matter with the chair of the board. In a few cases major problems with governance in HEIs have resulted from a breach of this principle.

6.15   *The limits to the role of a governor:* although staff and student governors are fully responsible for the collective decisions of a board, there are areas where - in practice - their role is limited. First, and most obviously, these are limitations set out in statutes (pre-1992 HEIs) and articles of government (post-1992s) regarding the membership of certain committees. Practice within institutions varies depending upon the structure, but in most post-1992 HEIs student and staff governors are not usually members of finance, audit, and employment committees (or the equivalent), and never members of remuneration committees.

6.16   Issues concerning areas with no staff or student committee membership will often be taken under reserved business towards the end of a board meeting, when staff and student governors will be required to leave. Notwithstanding overall collective responsibility, clearly staff and student governors cannot reasonably be held to be responsible for decisions to which they have not been party (eg senior staff salary determination).

6.17   Second, both staff and student governors need to be realistic about what can be achieved as members of governing bodies. Many of the issues which most concern the general body of staff and students involve details of operation and management, and are therefore not the responsibility of the governing body. As a result staff and student governors are often frustrated about their inability to influence events and the associated feeling of powerlessness.

6.18   *Avoiding parochial issues:* as noted above, a board should explicitly not become involved in management, or to try to second guess the executive and management

structure. It follows that any student and staff governors new to their role who try to get the board to discuss parochial issues are likely to receive short shrift. One fairly frequent example of this is internal governors trying to reopen debates already fully and properly concluded elsewhere because they disagree with a decision.

6.19 A different kind of parochialism occurs when vested interests are at stake, and here it is particularly important that internal governors step back from their own concerns and take an overall perspective. An obvious example might occur when restructuring or merging departments is considered, when - difficult though it is - staff and student governors need to rise above their own concerns and try to see things from an institutional perspective rather than a local one. Similarly, many student governors have found themselves in difficulties in discussing the level of student fees in England, Wales and Northern Ireland.

6.20 *Interacting with other governors:* sometimes - perhaps often - there is almost no interaction between internal and external governors between board meetings, but on occasion staff or student governors may feel they need to contact external members. Should they, and if so in what circumstances? In general, the answer is no, unless the interaction stems naturally from governing body business, for example following up issues of mutual interest. Where such contact does occur, it might be wise to keep the clerk or secretary of the board in touch with what is being done.

6.21 The most usual example where staff or student members might seek to contact external governors is if they wish to lobby on particular issues. Overall, such an activity is unwise, although there may be isolated occasions when it is appropriate for governors to talk to each other about key issues before meetings. Lobbying needs to be seen in relation to the comments made above about separating specific personal or sectional interests from an overall corporate responsibility. Almost always such lobbying is better done by officers of special interest groups, and governors should rarely act in such a way. Similarly trying to lobby the chair of the board to take a particular course of action is also unwise.

6.22 Informal interaction is another matter, and ways of involving governors in institutional life are considered above. In order to avoid a them and us approach some HEIs plan contact between external and internal governors, for example, student union or departmental visits, joint attendance at events, mentoring, and so on. Such activities are usually organised through the clerk.

6.23 *Getting the views of constituents and reporting back:* in order to fulfil their role effectively staff and student governors need to communicate with their constituents, both informing them of governing body issues and also seeking their views on key policy questions and reporting back without infringing confidentiality. This can be a perfectly appropriate action, but care needs to be taken to ensure that confidentiality is not breached. Making unrealistic commitments as to what might be achieved through obtaining and then conveying such information to a board also needs to be avoided.

"The relationship with the senior management team at governors' meetings is an interesting dynamic - there can be a sense of isolation from lay governors when raising questions that could imply criticism."

(STAFF GOVERNOR)

"If you want to influence events, then you have to let your fellow governors gain an understanding of your personality, and the way you operate within the university. Be in no doubt that they will be observing you, your behaviour and demeanour from the moment they meet you, in order to gauge what you say and the value of what you say. A staff governor should see this as an opportunity not a threat."

(STAFF GOVERNOR)

6.24   One way of obtaining the views of constituents and cementing links to the whole governing body is to hold regular meetings (say, twice a year) between constituents and a sample of governing body members probably including the head of institution. This enables the board to be informed about concerns on the ground but avoids any implication of inappropriate lobbying or pressure being applied. The clerk or secretary would be the usual person to facilitate such activities, and in running such an event it would be important to point out that the board should avoid getting involved directly in management issues.

6.25   *Personal credibility within a board:* a potentially important issue concerns interpersonal matters within a board, of which the most important for staff and student governors is probably their personal credibility with other members. Where this is strong the contributions of individual governors is likely to be influential; however where it is weak views may be dismissed or carry very little weight. The particular problem for student governors is that, unlike most other members of a board, they usually join a governing body with no previous personal credibility, whereas external members are increasingly recruited to boards on the basis of the special knowledge and skills that they can offer. Staff governors, although perhaps inexperienced on governance matters, usually have credibility by virtue of being employees and other attributes, for example their research or professional reputation.

6.26   It follows that personal credibility has to be earned by displaying the attributes that boards most value, and for student members time is short to be able to do this. This issue can be a serious one in undermining (often unintentionally) the confidence - and therefore the potential contributions - of student members.

"There is a difficulty as an internal governor in knowing when and how to challenge effectively. If you do it too often you lose impact and credibility, and you can easily be deflected if you are the only one making the point."

(STAFF GOVERNOR)

6.27   One issue that may sometimes - although hopefully rarely - occur, is external governors appearing to patronise or discount contributions made by staff or student governors. Care needs to be taken to avoid this and clerks and chairs need to keep watch over the conduct of business to ensure that all views are respected. In extreme cases it is not unknown for student members to be berated by external governors because of personal prejudices about general student behaviour, and chairs need to act firmly to prevent this happening.

Becoming more effective in governing body meetings

6.28   As a generalisation, many student (and some staff) governors lack experience of board meetings and procedures. It follows that they need to develop rapidly their knowledge and skills, not only of the issues being considered by boards (their content) but also of how governing bodies operate (their processes). Avoiding obviously inappropriate behaviour is likely to be an issue in only a small number of cases, but what is more widely needed is experience in writing committee papers, making presentations, influencing others, and so on.

6.29   Induction programmes (either run within HEIs, or those offered by some of the main trade unions, the National Union of Students, or the Leadership Foundation) can make a useful contribution, but ultimately each student governor has to take personal responsibility for developing his or her own ability.

Self-challenge questions

- How well does participation by staff and student governors work in your own governing body? Summarise the benefits and drawbacks to your board of participation by staff and student members.
- How well do the induction and support arrangements for new staff and student governors work in your HEI?
- Looking ahead, how do you see the role of staff and student governors changing in future?
- How much, if any, contact do governors have with students outside the boardroom, and should this be increased?

7 HOW EFFECTIVE ARE YOU AS A GOVERNOR?

7.1 This final chapter asks you to think about your experience as a governor in a number of ways in order to address the questions: how effective are you as a governor? How well prepared are you? What do you and your HEI need to do in order to enhance your effectiveness? Depending upon your circumstances it might be more suitable for you to reflect on this chapter after having been a governor for about 12 months.

"If governance is so important why does almost no one in the university know who is on the council or has ever met them?"

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

7.2 These questions do not assume that you are not already making a valuable contribution to your board and any committees it may have: just the opposite, as several reports have indicated that HE is generally well governed[27]. However, HE governance is not standing still and board members need to be prepared to meet the increasingly demanding challenges of tomorrow. It follows that good governing bodies encourage their members to consider how effective they are, and also support them in undertaking training and development. Indeed, the CUC Code of Practice on Governance[28] explicitly encourages boards to do this, and members to participate.

7.3 Accordingly, this chapter contains three short parts:
- The first on how prepared you are to be an effective board member, including the knowledge and skills you possess.
- The second on the culture of the HEI of which you are a governor and the influence that it has on the way that the governing body is run.
- The last on the actual contributions you make to the governing body and its committees in helping them meet their roles and responsibilities.
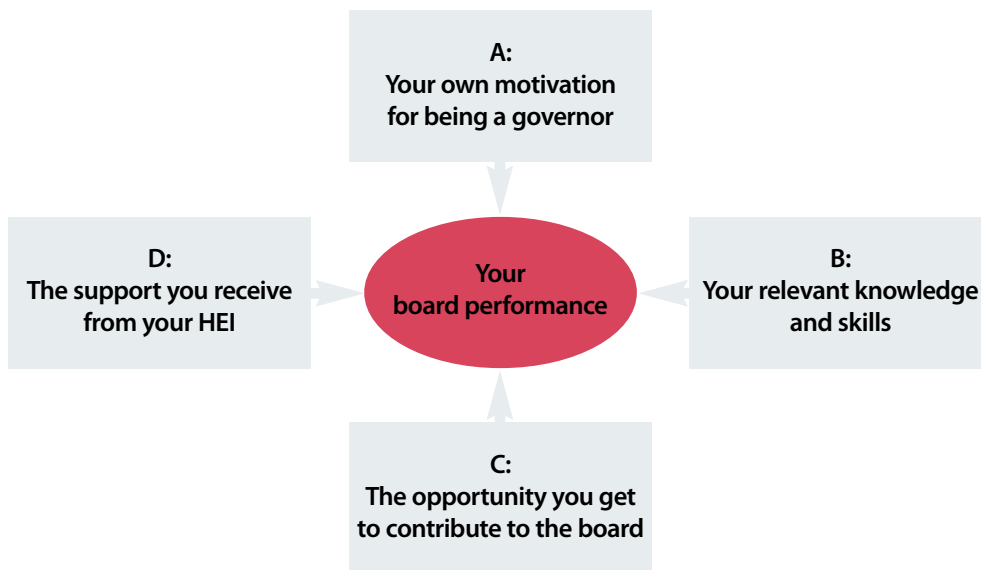
Your personal effectiveness as a governor

7.4 We've all been in meetings where no matter how hard we tried we were completely ineffective in making our case, in persuading others, or even in getting on the same wavelength as others at the meeting. Conversely, we all have good days when things go well and others compliment us on a case well made. The same thing happens in most boards and governing bodies with some members being more effective - and therefore probably more influential - than others. However, since a good board cannot afford to contain members who are consistently ineffective or who feel that they are not used properly, an increasing number of governing bodies are starting to develop mechanisms for reviewing the performance of governors.

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[27] See, for example, Schofield A, (2009), What is an Effective and High Performing Governing Body in UK HE?, LFHE and CUC, www.lfhe.ac.uk/en/audiences/governance/ publications/index.cfm
[28] CUC Guide for Members of Higher Education Governing Bodies, 2009 at www.hefce.ac.uk/pubs/year/2009/200914

7.5 In general, there are likely to be four main factors which influence the effectiveness of your performance as a governor, as outlined in the following diagram:

These four issues are briefly explained in turn, and some optional questions are provided about each one.

7.6 *A: Your own motivation for being a governor.* This is likely to have an obvious effect on how you approach your role and therefore how effective you are. For example, when faced with a conflict over priorities with other activities or clashes of dates, then your motivation is likely to be a decisive factor in how you behave and which commitment you honour. Your motivation is therefore likely to be a crucial factor as you answer the following very basic questions which underpin your effectiveness as a governor:

- Is my attendance record at meetings what is expected?
- Is my timekeeping at meetings appropriate?
- Have I accepted appropriate invitations to take on other relevant roles (eg committee membership)?
- Overall, have I complied with the formal requirements of a governor set out in any statement of duties that I may have received when I became a governor?

Being able to answer these questions positively does not make you an effective governor, but if you have answered them negatively then it is likely that you are being ineffective in the role.

7.7 Some other questions about your reasons for becoming a governor that you might like to consider include:

- If you joined in response to a personal request or advertisement has your experience as a governor lived up to expectations and if not, why not?
- Have you found that an interest in HE or wishing to make a contribution to public service is consistent with the need for governors to take tough and often difficult decisions?
- If you were nominated by an external body is your motivation consistent with the workload involved?

SUGGESTED TASK

Think about what was your own motivation for becoming a governor and how it influences your effectiveness as a board member

"Quite a number of members of my governing body make no contribution at all in meetings. I sometimes wonder why they attend."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

- If your motivation was personal development for yourself then you may be benefiting from membership, but is the governing body getting the expertise and commitment it might expect?

7.8   *B: Your relevant knowledge and skills.*   Every governor brings their own knowledge and skills to a board and external members are now generally recruited using a skills matrix to identify the explicit expertise that they can provide. However, for new appointees who are still coming to terms with their roles, governing body meetings can be nerve-racking occasions. Indeed, in the worst cases the whole credibility of their membership can be undone by ill-informed contributions.

7.9   In general, the more knowledgeable a governor and the greater their range of skills then the more effective they are likely to be, and the greater their contribution to the overall effectiveness of a board. However, not possessing such skills from previous experience need not be a hindrance as they can be acquired when members are motivated to do so, and when institutions are prepared to provide support.

7.10   There are particular challenges associated with encouraging greater diversity of board membership and moving away from a possible dominance by retired male governors. Many HEIs are attempting to recruit more diverse boards, with varying degrees of success.

7.11   Of course, to the new governor appearances may be misleading and although experienced board members may seem to know the inner world of the HEI concerned, this can sometimes be an illusion. The quotation in the side box is an example of comments frequently made by governors: that sometimes all kinds of false assumptions are made about the knowledge that governors possess. Moreover, it is unrealistic to expect all governors to know everything about the many complex issues their governing body faces, so some specialisation is necessary. It follows that admitting to a lack of knowledge in some areas is not necessarily a sign of weakness.

7.12   Conversely, there are areas where all governors should have at least a basic level of knowledge and where any lack of experience may be difficult to acknowledge. For example, in relation to financial knowledge one writer about non-profit boards[29] suggests that a topic that "boards do not discuss openly" is that "on virtually every board of every non-profit throughout the world there are board members who do not understand how to read a balance sheet, a profit and loss statement, or any of the other financial data boards typically review and vote on."

"I am very clear. I do not want to skim a thin layer of the whole institution, but focus on a smaller part where I can add value."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

7.13   *C: The opportunity you get to contribute to the governing body.*   Even if you are confident in your existing knowledge and skills, this doesn't mean that you will automatically be effective as a governor. This depends on numerous factors, not least the opportunities that you are given. Evidence collected for the 2004 report on Good Practice in Governance for the CUC[30] suggests that a frequent concern of governors is that although HEIs recognise the need to use specific sets of governor skills (eg finance, audit or human resources), other less tangible skills (eg entrepreneurship) may be unused leading to considerable frustration.

29 Gottlieb H, The Dirty Little Secret of Non-Profit Boards, at http://www.help4nonprofits.com/NP_Bd_DirtyLittleSecrets_Art.htm
30 A Final Report to CUC on Good Practice in Six Areas of the Governance of HEIs, see www2.bcu.ac.uk/cuc/publications

7.14   Accordingly, some key issues to reflect on include:

- Are your own skills and knowledge being used appropriately by the governing body?
- If not, what skills and knowledge are not being used, and why do you think this is the case?
- In using such skills and knowledge, have you managed to comply with one of the basic tenets of governance that boards should not get involved in management issues?
- Have you declared any special interests, whether commercial or not?
- Have any commitments made to you at the time of your appointment to the board been kept?

7.15   *D: The support you receive from your HEI.* Most - not all - HEIs have at least basic systems in place to induct new governors, and provide the core information they need. Other HEIs go further by providing mentoring systems partnering new governors with more experienced ones, and offering substantial briefing for governors. While we don't want to encourage you to be unnecessarily critical of your governing body, an important question is: has the support that you have received from your board and HEI been satisfactory and, if not, what else would have been useful?

The culture of your HEI and its effect on governance

7.16   Despite their similarities HEIs are also very diverse. Not only do their missions vary (for example, some are much more research intensive than others) but history, tradition and culture are also very different. These factors can have a powerful influence on institutional life, and therefore on governance.

7.17   There is no easy way of identifying the impact of institutional culture on governance, but it is nonetheless very real and may influence such factors as:

- The perceived role of the governing body.
- Relationships between the governing body and the executive.
- The style of governance and management, for example the amount of collegiality.
- The institutional approach to risk and entrepreneurship.
- Differences in educational character.

7.18   Institutional size is another important factor in influencing the nature and style of governance. Small HEIs typically have fewer specialist staff to provide support to the governing body and there is a danger that individual governors will become too involved in operational activities thus blurring the distinction between governance and management.

Your contribution to the business of the governing body

7.19   Notwithstanding whether the best use is made of your skills and expertise, the overall test of your effectiveness is how you help the board undertake its responsibilities. The following set of questions may help you to think about your own effectiveness and contributions[31].

"After eight years as a council member I now have more questions about the role of governors than ever - I see it as an evolving role in a changing environment."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

"I am uneasy about the apparent assumption that experience elsewhere will necessarily improve the governance of universities. Outsiders coming to governing bodies must beware of arrogance, and be prepared to work their way up the learning curve."

(GOVERNOR WITH DIPLOMATIC SERVICE EXPERIENCE)

SUGGESTED TASK

Think about how you would characterise the culture of your HEI; what effect do you think it has on governance?

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31 The questions were originally adapted from a self-evaluation survey produced by Glasgow Caledonian University, and are reproduced with permission

HOW EFFECTIVE DO YOU THINK YOU HAVE BEEN IN CONTRIBUTING TO YOUR OWN GOVERNING BODY TO ADD TO ITS EFFECTIVENESS?

Rate your answer to each question on the following four point scale:

1 = You are very dissatisfied
2 = You are slightly dissatisfied
3 = You are slightly satisfied
4 = You are very satisfied

When completed, think through the implications of your answers and raise any relevant issues with the clerk or the chair of the board as appropriate.

AS A MEMBER OF THE GOVERNING BODY (GB) RATE HOW SATISFIED YOU ARE THAT YOU:	1	2	3	4
Fully understand your responsibilities as a governor?				
Clearly understand all the responsibilities of the GB?				
Have read and understood all relevant regulatory documents?				
Understand and can interpret the mission of the HEI?				
Support the mission of the HEI?				
Have good working relationships with GB members and the Executive?				
Effectively advise and support the Vice-chancellor (as CEO) when appropriate?				
Are knowledgeable about the HEI's activities and services?				
Follow trends and important developments in HE?				
Understand the HEI's financial statements?				
Act knowledgeably and prudently when considering investments?				
Focus attention on key strategic issues and not the short term?				
Respect the confidentiality of GB and other committee meetings?				
Suggest appropriate agenda items for future GB meetings?				
Are heard and considered when giving your opinions at the GB?				
Willingly volunteer to use your skills to further the HEI's mission?				
Enhance the HEI's public image by speaking about it to others?				
Avoid inappropriate communication with staff or students?				
Avoid conflicts of interest that might compromise the GB or HEI?				
Avoid asking for preferential treatment in any matters?				
Add one more question particularly relevant to you...?				

Overall governing body effectiveness

7.20   In the last few years a substantial amount of work has been undertaken on the issue of how overall governing body effectiveness can be assessed[32]. The issue is too complex to summarise here, but new governors will obviously be interested in the overall effectiveness of their own board. One part of assessing such effectiveness is through occasional board effectiveness reviews, which all HEIs now undertake at least every five years, but some more regularly. In England and Wales the funding councils recommend that there should be an external element in such reviews in order to ensure an independent perspective.

Conclusions

7.21   Because of the importance of effective governance, an increasing number of HEIs are now starting to introduce annual review meetings of governors, usually - but not necessarily - undertaken by the chair of the board. In any case, it is generally good practice for new governors to have such a meeting at the end of their first year of office. Many of the questions raised in this chapter are likely to feature in such discussions, and should provide a basis for future action for both individual governors and the board as a whole to improve its effectiveness.

7.22   Even if your own board does not adopt a system of governor review, then considering some of the issues raised above may well have identified important issues for you and your board. If so, the next step might be to arrange a meeting with the clerk or secretary of your governing body or the chair (whichever is most appropriate) to discuss the issues arising. If you don't want to do this on an individual basis, then you might suggest that a short meeting of new governors is convened (with the clerk or chair present) to discuss the issues more collaboratively.

Self-challenge questions

*   Can you identify the main strengths and weaknesses in your own performance as a governor in the last year?
*   What major gaps are there in your own core knowledge and skills that need to be filled for you to be an effective governor?
*   What support, training or development might enhance your performance as a governor?
*   In what ways could your skills and experience be better used by the governing body?
*   If you had to take one action in the next year to enhance your performance as a governor what would it be?

"In general, I would welcome more feedback on my contribution from the principal and the chair of my institution."

(GOVERNOR WITH PRIVATE SECTOR EXPERIENCE)

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[32] In particular see two reports: Schofield A, (2009), What is an Effective and High Performing Governing Body in UK HE?, LFHE and CUC, and LFHE and CUC (2011), A Framework for Identifying Governing Body Effectiveness in Higher Education, both available at www.lfhe.ac.uk/governancepublications

ANNEX A: SOME KEY INFORMATION SOURCES

There are numerous easily available information sources for new governors, of which the following are the most important for general purposes.

1   The starting point for new governors should be the Guide for Members of HE Governing Bodies, last produced in 2009 by the Committee of University Chairs - CUC - (available at www.hefce.ac.uk/pubs/year/2009/200914).   The CUC also produces other guidance which promotes good practice in HE governance (see www2.bcu.ac.uk/cuc/publications).

2   The Leadership Foundation for Higher Education (LFHE) in co-operation with other bodies (including the CUC) has produced a substantial amount of information on HE governance, for full details see www.lfhe.ac.uk/ governance. Of most interest to new governors is a set of briefing materials for governors in the Getting to Grips series (of which this publication is an example) on: finance, audit, HR, estates and infrastructure, risk, research, academic standards and quality, internationalisation, and information communications technology. All are available in both hardcopy and electronic form at www.lfhe.ac.uk/g2g

3   All four of the main HE funding bodies produce extensive electronic information of interest to the governing bodies of the HEIs they fund. The relevant addresses are:
     •   The Higher Education Funding Council for England - Hefce at www.hefce.ac.uk
     •   The Scottish Funding Council - SFC at www.sfc.ac.uk.
     •   The Higher Education Funding Council for Wales - HEFCW at www.hefcw.ac.uk.
     •   The Department for Employment and Learning in Northern Ireland - DELNI at www.delni.gov.uk.

4   Many governors comment that HE is a highly specialist sector with its own jargon, multiple (and confusing) acronyms, and many organisations providing specific services. Therefore the LFHE website referred to above has specific sections which may be helpful to new governors.

5   For an overall review of HE governance see Schofield A, (2009), What is an Effective and High Performing Governing Body in UK HE?, LFHE and CUC, available at www.lfhe.ac.uk/governancepublications

The Leadership Foundation was launched in March 2004, to serve the diverse leadership development needs of the management of the UK's universities and higher education colleges, including governors. Dr Mark Pegg became the chief executive in January 2013, and the Board is led by Sir Andrew Cubie.

The Leadership Foundation supports and promotes the excellent leadership, governance and management development that exists within higher education, both in the UK and around the world. It also provides current and future leaders in higher education with services such as:

•   Open programmes, mentoring and coaching;

•   Customised programmes, consultancy, and benchmarking and needs analysis;

•   Networks and communities of learning through alumni activities, special interest groups and international links;

•   Applied research and development to support new learning initiatives and stimulate innovation;

•   Sharing and championing good practice in leadership, governance and management.

The Leadership Foundation has a small team of experienced leadership and organisational development professionals drawn from higher education, other parts of the public sector, and also from the private sector. And it works in partnership with the higher education sector and other partner organisations. For more information about the Leadership Foundation visit the website www.lfhe.ac.uk

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Allan Schofield runs the Higher Education Consultancy Group, and is a key associate of the Leadership Foundation for Higher Education. He is one of the most experienced consultants in the UK specialising in higher education management and governance, and during the past 25 years has worked in more than 80 universities and colleges. He has worked extensively with almost all the main UK national HE agencies on a wide range of policy and evaluation studies. In the last few years he has been heavily involved in many of the national activities to enhance the governance of higher education in the UK, and has been project director of several LFHE-CUC projects. In 2009 he also led a national review of governance in English further education. Internationally he has undertaken substantial work for the World Bank, the British Council, the Asian Development Bank, the Association of Commonwealth Universities, and other international organisations.

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