Values and Ethics in Governance

The Nolan Report on standards in public life highlighted the importance of values and ethics in governance, and identified the need for selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. Most institutions have adopted these principles for the following reasons:

- The need for institutions as major bodies receiving public funding to demonstrate best practice in governance.
- In an increasingly ‘marketised’ higher education system it is probably inevitable that governing bodies will become more involved in educational issues than in the past (e.g. ensuring a satisfactory student experience). In doing so it will be important for boards to understand core academic values, and have committed themselves to protecting them.
- In encouraging students to pursue an open and enquiring approach to learning, governing bodies have to provide leadership in modelling that behaviour in the conduct of their own affairs.

Many institutions set out their expectations of governing body members in a code of conduct, which might cover roles, responsibilities, values and dealing with potential conflicts of interest. In some other countries the issue is also regarded as important, for example in the USA amongst trustees on boards of universities there is often considerable discussion of the need for boards of trustees (governors) to uphold the values of the university, particularly in the light of pressures on public universities from individual state legislatures or the financial pressures from major donors.

Notions of Academic Governance

Generally in higher education there are three different understandings of the term academic governance:

- **Academic governance is about responsibility for key academic issues such as determining the curriculum, course approval, and ensuring standards.** This is the narrowest definition and reflects practice in many post-1992 institutions and some pre-1992 universities. It focuses attention on the issues at the heart of the academic enterprise, that generally the governing body does not (and should not) become involved with. Of course, some institutions which adopt this approach may consult their senates /academic boards on major academic policy matters, but this should not be confused with responsibility, which in post-1992 institutions is clearly with the governing body, which has responsibility for determining educational character and mission.

- **Academic governance is about all substantial aspects of governance which directly relate to the academic life of the institution.** This is the broadest understanding. It is most often found in those universities where there is a strong sense of academic collegiality, and where the culture of academic participation in decision making remains strong. In such institutions the senate /academic board is likely to be involved in a wide range of decision making. The interaction between the governing body and the senate /academic board is important, and the role of the governing body in relation to academic matters may be limited.

- **Academic governance is about what senate/academic board and their committees do.** This understanding reflects practice in many institutions where the actual roles of the senate /academic board have changed, even though their formal responsibilities, as defined in their governing instruments have not. As a result there is a range of practice even in quite similar institutions. It also means that in some institutions there may be significant differences of understanding about the roles of key academic committees.

Propriety and Transparency

Governing bodies must ensure *propriety and transparency* in the governance of their institution. As bodies which receive public funding, institutions must act within the powers set out in relevant legislation and their actions can be challenged in the courts through the process of judicial review. The public nature of the governing body’s role, its financial accountability through the relevant funding bodies to a devolved
administration and/or ultimately to Parliament, its stewardship of substantial public funds, and not least the
good name of the institution and the interests of its students, all demand very high standards of conduct in
exercising its functions.

Ensuring a high standard of conduct is a collective responsibility of all governors and the senior officers.
However, the clerk or secretary has a particular responsibility for advising governors on such matters, including
advising them that they can only act within their defined powers.

Although rare, it does occasionally happen that the conduct of governors is unsatisfactory. Most commonly,
they simply fail to attend sufficient meetings, but other matters of concern include not declaring interests, not
acting in the best interests of the institution, or bringing it into disrepute. In some cases governing instruments
may list the grounds for reviewing the conduct of board members, and action may also be taken under
the statement of primary responsibilities. Many institutions ask governors to subscribe to a code of
conduct when they join the board/council/court.

Conflicts of Interest
A key tenet of public service and of the Nolan principles is that governors should act with integrity and
transparency and, above all, must serve the interests of the institution and not their own. Governors and senior
staff should make a written declaration of interests, which should be kept up to date. Governing bodies
should also have a process for dealing with declared interests. If governors face a conflict of interest, they
should inform the clerk and follow advice.

Institutions maintain a Register of Interests of all members of the governing body and senior staff, which
should be publicly available. Many institutions do this through the Registrar or Secretary's Office, but an
increasing number now publish the register on line. Governors must also guard against conflicts of interest that
arise outside formal meetings. The areas of greatest vulnerability are those involving the invitation and
consideration of tenders and awarding contracts. It is important that clear procedures (drawn up in
consultation with its external auditors and approved by the governing body) are included in the institution's
financial regulations.

The question may arise 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
institution concerned. Examples include:

- Trade union or student union members who are governors and who may wish to support a national
  policy
- Members nominated from professional bodies, local authorities or other similar groups who may feel
  impelled to support the views of their nominating body
- Governors nominated from a particular faith group in those colleges of higher education supported by
  one of the churches

This has been an issue for some governing bodies, but there now appears to be widespread recognition of the
dominance of corporate responsibility. In this context the CUC recommends that: '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 by others, except when acting under approved
arrangements as a proxy for another member of the governing body' (paragraph 2.24), and 'the governing
body should exercise its responsibilities in a corporate manner: that is to say, decisions should be taken
collectively by all of the members acting as a body' (paragraph 2.9). In addition, many institutions adopt the
idea of 'reserved business' whereby defined matters requiring confidentiality (usually
including some staffing issues) are discussed at the end of a meeting without students
(and sometimes staff) present. Staff and student governors may also face
further potential conflicts of interest.
Potential Conflicts of Interest

All governors may at times face potential conflicts of interest. Whereas independent governors are explicitly recruited to bring independence to a board (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
- Being a student member when sensitive issues concerning the student union are being discussed
- Being members of academic committees or other bodies whose recommendations are being considered by the board
- Being the representative of a trade union or external body which has a particular view about an issue being considered by the board

As is evident, 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!

Although staff and students are sometimes called representatives, 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 overrides any representational role that they may be perceived to have. Unfortunately, this distinction sometimes gets blurred not only by those concerned, but also for other governing body members, 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 simply to confuse matters.

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 should raise the matter with the chair of the board. In a few cases serious problems with governance in institutions have occurred because this principle has been breached.

Whistle-blowing

Public interest disclosure (or whistle-blowing) is an important process and arises from the recommendations of the Nolan Committee and the Public Interest Disclosure Act 1998. Institutions should have a clear policy or procedure in place, as this is often a difficult and sensitive process for all those concerned, and it is important that there is a robust and transparent framework in place. The CUC offers more detailed guidance for governing bodies on how whistle-blowing issues should be addressed in their Guide (Annex A3).

Confidentiality and Freedom of Information

It is important for governors to understand the status (i.e. open, confidential or secret) of governing body papers, minutes and discussions. This will normally be set out in governing instruments or covered during induction. If not governors should consult the Clerk.

Some matters may be classified as confidential or secret, if they are commercially sensitive, or if they relate to named staff or students. Some business may be classified as Reserved, with staff and students expected to withdraw while it is discussed. Other than in such circumstances, it is common practice for governors’ business to be open to scrutiny. Governing bodies may establish criteria in discussion with their legal advisers about how decisions on confidentiality are made. Following a recommendation in the Second Report of the Committee on Standards in Public Life, that institutions should publish key information
including material on governance, in their annual reports, many institutions place reference and other
documents on their web sites.

The Freedom of Information Act 2000 and Data Protection Act 1998 (and, for institutions in Scotland, the
different provisions of the Freedom of Information (Scotland) Act 2002) will also help to define what should be
confidential. In many cases, the presumption should be that governing body information will be regarded as
open unless a specific exemption can be applied. Ultimately, an individual can complain to the Information
Commissioner where it is believed that information has been unreasonably withheld.

Find more information and resources on this topic on our website at:
www.ifhe.ac.uk/en/governance/ethics-and-values/personal