Statement of primary responsibilities

The CUC Guide for Governors recommends that all governing bodies should adopt a **statement of primary responsibilities**. This serves several potentially useful purposes, and outlines what is expected of the board and its members, their responsibilities, and serves as a framework in the unlikely event of a dispute with a governor. In some institutions governors are asked to sign such a statement on appointment. The CUC Guide recommends that this statement be published widely, including on the internet and in the annual report. Members of governing bodies of church universities/colleges are likely to have additional responsibilities relating to their institution’s providing body.

Accountability

One of the unusual aspects of higher education governance is that accountability is not always clear. For example, private sector boards are accountable to shareholders and NHS trust boards to the government. In part, this is because of the unique position of higher education institutions in receiving public funding but not formally being part of the public sector.

The CUC Guide (p17) opens with the words that ‘HEIs are legally independent corporate institutions…’, hence the governing body has ‘ultimate responsibility for all the affairs of the institution’. In this capacity it can sue and be sued, and is only accountable to the law of the land.

However, in practice accountability is more complex and has at least four other elements:

- Almost all institutions are dependent on public funds allocated primarily - although not exclusively - by the four UK funding bodies. Institutions and their governing bodies are therefore **accountable to those funding bodies** for the use of the funds allocated, and in particular for meeting the terms of a **financial memorandum**.
- Almost all institutions have charitable status, and are accountable to their charity regulator for complying with legal and regulatory requirements. The arrangements for regulation vary between England and the devolved administrations.
- Much of the core work of institutions in the area of teaching and research is regulated, and they need to comply with the **quality assurance mechanisms of academic regulatory bodies**.
- The highly collegiate nature of higher education has created a culture (particularly in pre-1992 universities) of **academic autonomy**, with staff expecting substantial participation in decision making and institutional life. In such universities, some governors may feel that there is a sense of implicit accountability to the staff and students of the institution itself. This form of accountability is similar to that found in cooperative or partnership organisations, where an organisation may exist explicitly to meet the needs of its members and employees.

When these four factors are put together, it is little wonder that accountability may not be explicit in all circumstances. For governance this raises a number of interesting challenges. A joint statement from the Hefce and the Board of Governors of London Metropolitan University illustrates some of the accountability issues for governors following a major institutional crisis.

Schedules of delegation

Increasingly universities and colleges are recognising the importance of being explicit about who has the power to take what decisions, and thereby to help ensure both transparency and accountability in decision making. One way to do this is to have a **schedule of delegation**, and this is now generally accepted as good practice in governance. The clerk or secretary will generally be heavily involved in the production of such a schedule, and in most institutions is responsible for it.

The schedule is a list of all the main decisions that need to be made, which individual or committee is responsible for each decision, and what the limits on action are. It takes effort to produce but, by identifying where key decisions are most effectively
taken, the governing body can ensure that both committees and individuals are clear about the full extent of their responsibilities. Some items that would fall into a schedule of delegation appear in the financial regulations, but the concept is much broader than this.

Typically, the schedule will also include decisions about: budgets; who can sign contracts to what level; where admissions decisions are made; who can open a bank account in the institution’s name; who makes appointments and sets salaries; tendering procedures; how investment/divestment decisions are made; who grants licences for intellectual property etc.

The schedule needs to be reviewed regularly to ensure it reflects what really happens. As part of such a schedule, each committee must have formally approved terms of reference. These should set out: its purpose; the specific decisions it must make or advice it must give and to whom; what powers are delegated to it by the governing body; what powers it can delegate to its subcommittees, where applicable; where and how often its work will be reported; the membership of the committee, specified by category; and the quorum. Accountability for the implementation of committee decisions may also need to be specified.

Cycles of business

The timetable of governing body and committee meetings should be drawn up in such a way as to accommodate the key elements of the annual cycle of decision making and monitoring. In particular, a governing body should determine the nature and frequency of its requirements for management and financial information. This is helpful in:

- Ensuring that during the year governors have an appropriate overview of matters relevant to their responsibilities;
- Regulating and rationalising the overall demands made on senior management for information;
- Reducing the number of ad hoc requests for data; and
- Facilitating the forward planning of agendas.

The forward planning of meetings of the governing body is essential in order to:

- Ensure that the sequence of meetings will allow the board to take key decisions at the appropriate time to Support the institution’s strategic development and meet its statutory responsibilities;
- Allow the senior management to plan the preparation of papers for consideration by the governors; and
- Give members of the governing body adequate notice of when meetings will be held.

Governance not management

The role of the governing body is to govern and not to manage the institution. This is the job of the chief executive officer (usually the vice-chancellor or principal) and others appointed by a board for this purpose. However, there may be exceptional circumstances where the line between management and governance becomes blurred, for example:

- In some institutions it is quite normal for there to be overlapping membership and joint committees between the governing body and the academic board or senate.
- In others nominated governors with particular skills or knowledge may have an oversight role for particular areas of management.
- Because of the expertise of individual governors there may be occasions when the head of the institution chooses to seek specialist advice about a sensitive decision.
- In small institutions governors may find themselves particularly involved in operational matters because of the lack of specialist support staff.

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. In general, boards should be very cautious about setting up their own committees (e.g. marketing) which are more properly the province of the executive.
Timetable of meetings

An annual timetable of meetings for the governing body and its committees should be formally approved by the governing body well in advance of each academic year, and once agreed should not be changed without good reason and adequate notice. Thought should be given to the location of the meetings as it may be beneficial to hold meetings on different sites so that members become familiar with the institution’s facilities.

For those institutions which adopt the four meetings pattern, an early autumn meeting is usual and enables a board to monitor that student recruitment is on track, and therefore that a key income source meets projections. The early autumn meeting is also a good opportunity to review the previous academic year (for example, receiving from the academic board or senate an annual report on academic issues), and in addition to look forward to the year ahead and identify key issues.

At a late autumn or early winter meeting (often in December) the previous year’s annual accounts can be approved (on the advice of the external auditors and the board’s finance and audit committees). These accounts will now include a corporate governance statement confirming that proper account has been taken of risk and related matters during the previous financial year. The timing of this meeting also allows the annual report from a board’s audit committee to be approved and sent to the relevant funding body.

A spring meeting enables an institution’s annual report for the previous year to be approved, as well as an annual revenue and capital budget for the forthcoming financial year commencing on 1 August. It also enables progress in the delivery of an institution’s strategic plan to be reviewed, and the following year’s annual strategic statement and future financial projections to be approved before being sent to the funding body.

Finally, a summer meeting is an opportune time for a board to review the academic year ahead, as well as receiving and considering reports from the AGMs of any associated companies which have been established.

Those boards which meet more frequently find that this four meeting cycle does not allow for adequate time for discussion of strategy and other key issues, and therefore arrange for additional meetings including 'away-days'.

Conduct of business

The governing instruments of a university or college typically include provisions for calling meetings and possibly the notice to be given and how far in advance the agenda and papers should be received. The difficulty of meeting this timetable, particularly if all papers are to be circulated with the agenda, should not be underestimated. There will be pressures to delay circulation because papers are not ready, or because current events lead to suggestions for changes at a late stage, however, the circulation of late papers should be resisted wherever possible, particularly if they are substantive or complex documents or if they contain any controversial items. Papers typically are received by the governing body at least one week in advance of a meeting.

All governing bodies benefit from clear procedures that determine how meetings are conducted, which will usually include at least the following points.

- The circumstances in which the chair is authorised to act on behalf of the governing body between meetings.
- When special meetings can be convened.
- The arrangements for members asking for items to be included on the agenda.
- The involvement of non-governors at meetings, for example the attendance of observers.
- Criteria for establishing an acceptable attendance record of members.
- Any rules concerning the way discussions are conducted, and decision-making.
- How urgent business should be defined and can be incorporated into an agenda.
- Rules about the quorum.
The minutes of a meeting are the formal record of proceedings, and hence their accuracy is essential to the proper conduct of governance. As well as being the governing body's formal record, the minutes (apart from specific confidential items) are normally available to staff and students and, as such, are an important means of communication in the institution. There are no circumstances in which the governing body should take a decision without it being minuted.

Informing Governors

Getting information in an appropriate way is a major issue for most governors, and involves both information on specific issues being discussed at board or council meetings, and also contextual information about the institution which helps to shape a governor's understanding of the environment in which decisions will be implemented.

Information for Decision-Making and for Meetings

It is important to consider how much do governors need to know, and how does the institution get the right balance between drowning a governor in information and starving him or her? Giving too little information is obviously undesirable, but too much can lead to governors micro-managing and also runs the risk of swamping them in detail so that they do not focus on the major strategic issues.

Mechanisms used to present appropriate board papers include:

- Short board papers concentrating on the analysis of strategic options rather than pages of data.
- Simplifying documentation through the use of colour coding, one page summaries or cover sheets..
- The use of balanced scorecards or traffic light systems to identify key data.
- The use of confidential intra-net web sites, which enables those who wish to read more detailed or specific documents to do so.

It is good practice to review regularly whether governors are getting the information that they need to do their job in the format that best suits them. Some institutions are exploring the use of electronic communication of agendas and papers, and a number have introduced ipads or sharepoint, replacing the circulation of paper copies.

General and Background Information

Many institutions try to encourage governors to get to know the institution so that they are more informed about the culture and context in which decisions are taken. Pre-meeting briefings, presentations on current topics, and the use of intra-net sites are all ways in which this is being done. Some institutions also engage governors by giving members a portfolio or a specific part of the institution with which to link. This 'twinning' simply means that each member focuses on one aspect of the institution's business or community, and develops a level of expertise in that so that he or she can speak on it with more authority. It is an attractive idea and can be effective, but it is also has potential problems, and engagement with a particular business area can lead to confusion between the boundary between governance and management, with the temptation for some members in specialist roles to stray too far towards management. Similarly where governors are twinned with a particular part of the institution, there is a danger that staff might seek to use their 'twin' as a spokesperson and not all governors may recognise or resist this.

The role of the clerk or secretary in providing independent advice to the governing body is another important issue, and boards rely heavily on him or her. Such a role is not without its tensions, as in HE they also tend to carry important executive responsibilities. Examples of good practice in providing information to governors are contained in Chapter 5 of 'Good Practice in Six Areas of the Governance of Higher Education Institutions' published by the CUC in 2004 (though this is now a little out of date), and some of the difficulties that can arise if information is not of high quality, clear and comprehensive are illustrated in the report by Lord Woolf on the links between the LSE and Libya.
Decision-making

In general, few governing body decisions are taken by a **formal vote**. It is more likely that decisions are reached by **consensus** following a full debate. Unless there are occasions requiring a formal vote stipulated in governing instruments, the chair would normally ask the board for agreement to the proposal in question and only call for a vote either if there is a clear expression of dissent or if it is a matter of particular significance.

A member of the governing body may, however, request a vote on a particular issue. It is for the governing body to decide the circumstances in which a **secret ballot** should be held or in which the names of those voting for or against a proposal should be recorded. Aspects of voting procedure not dealt with in the governing instruments are often covered by **standing orders**. Whether or not a recorded vote has taken place, a dissenting governor should have the right to have his or her disagreement recorded in the minutes.

Governing instruments normally require that no resolution of the governors can be rescinded or varied at a subsequent meeting unless its reconsideration appears on the agenda. A decision cannot therefore be overturned simply as part of discussions of matters arising from the previous minutes. Not only must the subject appear as a substantive item on the agenda, but also a proposal to vary or rescind a previous decision must be indicated. It may be appropriate for the governing body’s standing orders to specify the procedures through which governors may propose such reconsideration.

Most institutions have procedures to deal with urgent business that might require a decision between governing body meetings. The governing body may **delegate authority to the Chair** to act on its behalf, either generally or within specific parameters; in some cases there may be a small **executive group or Chair’s committee** with the authority to act between governing body meetings; and it is also possible to take decisions by **correspondence** or e-mail. In all such cases the matters dealt with should be reported to the next meeting of the governing body and duly minuted.

Communication

The arrangements for the **publication of agendas**, minutes and non-confidential papers are set out in the governing instruments of most institutions. Increasingly there is an expectation that papers and agendas should be available on web sites, and this may form part of an institution’s publication scheme under the Freedom of Information Act. The outcomes of governing body meetings may also be briefly summarised for staff and students.

Some institutions are also exploring the use of electronic methods for the circulation of papers and are ending the use of hard copies. Click here for more information about the status of papers and confidentiality.

In practice, what can be treated as confidential has now been significantly changed by 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). In many cases, the presumption should be that the information must be released unless a specific exemption can be applied. It follows that although some matters may be regarded as 'confidential', the intention should be that, as far as possible, governors’ business is open to scrutiny.

What can go wrong

Almost all higher education governance is at least satisfactory, and some is very good. However, there will inevitably be some cases when things go wrong. In 'Managing Good Governance in Higher Education' (Buckingham, Society for Research into Higher Education & Open University Press, 2006), Mike Shattock sets out a number of case studies of **governance breakdowns** and the lessons that can be learned. Some of the critical features he identifies that can lead to **dysfunctional governance** include:

- A dominant head of institution, sometimes supported by the governing body or a subset of governors.
- Ambiguity in governance and management structures.
• An unwillingness of university administrators to speak up about poor decision making that can harm the interests of the institution.
• Poor internal audit processes, and a lack of regard for the role of the audit committee in monitoring institutional assurance processes.
• A lack of understanding by the governing body or the executive of the managerial capacity of the institution to deliver change, or unwillingness to invest appropriate resources to bring about change.
• Disregard for academic matters, or the exclusion of an academic ‘voice’ in important decision-making by the governing body.
• The failure of due process, such as the implementation of decisions or exceeding powers.

There have been media reports in 2009 (including an article in The Independent) speculating about a number of instances (such as at City University, the University of East London, Leeds Metropolitan University and Royal Holloway, University of London) where vice-chancellors have left their posts early, possibly as a result of disputes with their governing bodies, or a loss of confidence by governors. These cases emphasise the importance of the key relationship between the head of institution and the governing body.

A number of important issues for governors are raised by Sir David Melville in his ‘Independent Review into the circumstances and issues associated with the clawback of significant funds’ from London Metropolitan University in 2009. The Board of Governors of the University and the Hefce have published a joint statement of the actions being taken to restore governance and management arrangements.

Governance crises are one thing, but there are more common problems which may need to be addressed. For example, inadequate participation or a lack of preparation by members, difficulties in fully engaging the governing body in key areas - most commonly in the development and measurement of institutional strategy, and in ensuring that board members act corporately with a shared and collective view rather than seeing themselves as individuals.

Recruiting Governors

An effective governing body cannot be achieved without effective members, and with the move to smaller boards in many institutions there is now much greater attention on recruiting governors.

Appointments and membership issues are usually dealt with by a nominations committee. This may be required by an institution’s governing instruments; it is certainly recommended by the CUC. The role of the nominations committee is to find and recommend new members to the governing body and, in some cases, to recommend allocating members to committees. The CUC recommends that the committee should include in its membership the chair of the governing body, at least 3 other external members, the head of the institution and at least one senior member of the academic staff.

Many governing bodies and their nominations committees now use systematic and transparent processes to recruit members, including a ‘skills matrix’ to identify the general and specific competencies and skills needed to be an effective board member. For more on this, see the Office of the Commissioner for Public Appointments.

Institutions adopt recruitment techniques appropriate to their local situation, but common methods include:

• Newspaper advertising (local or national depending upon institutional need);
• Advertising in specialist professional publications;
• Advertising in specialist community publications, for example those read by specific community groups;
• Through the register of public appointments;
• Through links with partner organisations (e.g. companies seconding experienced managers to a governing body);
• The use of the institutional web site, with links to other relevant web sites;
• Using alumni;
Responsibilities of Governors

- Through existing governing body members, staff and students;
- Through ‘open’ evenings and similar events; and
- By using recruitment consultants.

The National Council for Voluntary Organisations has produced resources to assist small charities in recruiting trustees and there is also Charity Commission guidance on the recruitment of trustees.

Periods of office

Governors are normally appointed for a fixed term as specified by governing instruments, usually three or four years.

Reappointment for one more term is permissible but not usually automatic, and the nominations committee should make a conscious recommendation about continuation in each case.

Reappointment for a third term is often discouraged and may even be forbidden. (The CUC Guide advises (paragraph 2.55) that continuous service beyond two terms of four years or three terms of three years is not desirable.) The exception is where a member has served for a few years, and then takes up office as chair of a committee or the chair of the governing body. In this case, an extension to the end of the natural run for the new role, if permissible under governing instruments, is obviously appropriate. Retiring members may wish to continue to support the institution and can be invited to adopt an ambassadorial role without being governors.

The rules for elected members will probably also specify how many times in succession they can stand, and sometimes there is a provision for a fallow period before re-election.

Key personal responsibilities

It is a fundamental principle of governance that all members of governing bodies - irrespective of the basis of their appointment or election - have a shared corporate responsibility.

The CUC have produced an outline role description for governing body members, the introduction to which highlights three main responsibilities:

- Members are expected to play an appropriate part in ensuring that the necessary business of the governing body is carried on efficiently, effectively, and in a manner appropriate for the proper conduct of public business. They are expected to make rational and constructive contributions to debate and to make their knowledge and expertise available to the governing body as opportunity arises.
- Members have a responsibility for ensuring that the governing body acts in accordance with the instruments of governance of the institution and with its internal rules and regulations, and should seek advice from the clerk or secretary in any case of uncertainty.
- Members are required to accept collective responsibility for the decisions reached by the governing body. Members elected, nominated or appointed by particular constituencies may not act as if delegated by the group they represent, and may not be bound in any way by mandates given to them by others.

Many institutions include their expectations of governors in a code of conduct. Annex I of Part 1 of the Financial Memorandum with Hefce (in England) summarises the responsibilities of governing bodies.

Development and support

No matter how skilled and experienced governors are, it is unlikely they will make their best contribution without some training and development, and the CUC Guide recommends that institutions should have a specific budget for such activities. Independent members are likely to need support in understanding the application of governance to the specific context of higher education, and internal members may need support in developing their understanding of the main resource areas for which the governing body is responsible as well as in taking a more strategic view.
Many institutions run induction and development programmes and use external providers, for example the Leadership Foundation. Where this occurs governors are encouraged to report back useful outcomes of the sessions they attended, and clerks might adopt a standard process to maximise the impact of training on the governing body. In addition to formal training, some governing bodies have a mentoring system whereby more senior members provide help and support to new members.

All new members, including new staff and student members, should receive induction training which should cover at minimum: the governance structure and the role of governing body members; understanding the corporate strategy and plans; the history and culture of the institution; the financial strategy; the estate and infrastructure strategy; audit, risk, and the role of the governing body in performance review; the HR strategy and current HR issues; research and enterprise; understanding academic governance; development and external relations; and student affairs and understanding the educational character.

As additional briefing, many institutions have presentations before each governing body meeting on some aspect of the institution’s business. Visits to departments and informal lunches/dinners with staff can also be organised to brief the governing body.

The ICSA has published updated guidance on the induction of directors, which may be useful for those developing induction programmes in higher education.

Using governor expertise

A challenging issue for many institutions is to use the expertise of members (particularly independent ones) appropriately. This can be difficult, with the limits on the availability of members' time a frequent constraint. This is often not just a case of ensuring that a member undertakes a relevant function or serves on a suitable committee, but may go much deeper to the form of engagement that members have with the whole board. For example, a frequent comment from independent members is that many governing body meetings are largely formalised affairs often with little opportunity to discuss the 'big issues' facing the institution, and therefore that their experience may be largely wasted.

Using the expertise of members is probably one of the factors that distinguishes highly effective boards from others, and cannot be achieved overnight. A culture of openness needs to be established within a board, encouraged by skilled and sympathetic leadership by the chair. In this way, a board moves towards being more of a team, rather than a collection of individuals who just come together for an occasional meeting.

Personal challenges

Being a governor can be a rewarding experience but is not easy. In addition to being time consuming, it may - particularly in times of difficulty - be personally challenging. However, all governors choose to undertake the role, and if you are a governor the following short quiz is designed to enable you to reflect on what satisfaction you get out of it and how this might be increased:

- **Question 1**: What was your own motivation for becoming a governor, and how does it influence your effectiveness as a board member?
- **Question 2**: What major gaps do you think there are in your own core knowledge and skills that need to be filled for you to be a more effective member of your own governing body?
- **Question 3**: Are your own skills and knowledge being utilised to the full by your institution and its governing body?
- **Question 4**: Has the support that you have received from your institution been satisfactory, and if not what else would have been useful?
- **Question 5**: My main achievements as a governor in the last year have been:
Question 6: What do you find satisfying about being a governor, and how might this be increased?

Personal Credibility within a Board

Interpersonal relationships within a governing body are important, and for student and staff governors a crucial issue is their own personal credibility with other board members. Where personal credibility is strong the contributions of governors are 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 join a governing body with no personal credibility, whereas independent members - as noted elsewhere - 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 also have other attributes, for example their research or professional reputation.

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

One issue that may sometimes - although hopefully rarely - arise is the situation where independent governors appear 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 independent governors because of personal prejudices about general student behaviour (for example perceived excessive drinking), and chairs need to act firmly to prevent such behaviour.

Interacting with other Governors

Sometimes - perhaps often - there is almost no interaction between internal and independent governors between board meetings, but on occasions staff or student governors may feel they need to contact independent 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.

The most usual example of staff or student members seeking to contact independent governors is where 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.

Informal interaction is another matter, and institutions increasing adopt a number of ways to try and enhance communication between all board members. In order to avoid a 'them and us' approach some institutions ensure contact between independent and internal governors in various ways, for example, student union or departmental visits, joint attendance at events, 'away-days', mentoring, and so on. Such activities are usually organised through the clerk or secretary.

Find more information and resources on this topic on our website at: www.lfhe.ac.uk/en/governance/people/responsibilities