The HR/Employment Committee

Some governing bodies have established HR or staffing committees to support them. This, however, is by no means universal and, indeed, many such committees are being disbanded to streamline governance structures. The membership of HR committees varies. In post-1992 institutions staff and students are forbidden to be members because of a perceived conflict of interest. In pre-1992 institutions staff membership is common, reflecting the tradition of academic self-governance. Whilst such representation on an HR committee can be helpful in bringing a broader perspective to the discussion, there are more effective means of consulting staff and there will be times when the subject matter may challenge the objectivity of staff members (for example, if workforce reductions are planned).

The positive contributions that an HR committee can make include:

- The opportunity for more detailed oversight of HR strategy and policy than is possible for the governing body
- A broader perspective on proposed changes, with independent governors often ensuring that account is taken of the interests of staff other than academics
- Scrutinising HR related risks and opportunities and looking at HR KPIs
- Encouraging the executive and the HR director to take more innovative approaches to HR practice
- Symbolically demonstrating the importance of HR to the institution

There are some potential disadvantages, although some can be overcome by good committee practice (effective chairing, careful selection of members, and so on), but others are generic:

- Duplication of effort, if the governing body repeats the work of the HR committee
- Delays in policies taking effect, if decisions first have to be ratified by the committee
- Committee discussions being dominated by members who hold strong opinions but lack appropriate knowledge and expertise, to the detriment of effective decision making
- The committee failing to take a strategic role and becoming little more than a forum for discussing minor staffing issues and general grievances

Provided that governors are prepared to challenge the executive and the HR director there can be effective governance without having a committee.

The HR Strategy

One of the governing body's main responsibilities is to ensure that the people aspects of the institution are being well managed, taking account of present and future needs within an affordable framework. This means that a suitable HR strategy should exist, which is consistent with the overall mission and values. It should also underpin other relevant strategies such as those for learning and teaching.

Generally the HR strategy would be expected to include:

- An opening section that identifies the business strategy - this ensures that what follows supports and integrates with institutional strategy
- An analysis of the operating context - including the strengths and weaknesses of the institution, the threats and opportunities it faces, an assessment of how well placed it is to respond to those threats and opportunities in terms of the competencies of its people and the political, economic, social and technological context in which it operates, key aspects of other sub-strategies, and staffing profile data
- Identification of the key issues that need to be addressed by the HR strategy which directly affect the achievement of the institution's goals. This section should also address the resources necessary to implement the strategy
Usually appended to a strategy should be a detailed plan (assigning responsibility for the delivery of actions to named individuals, with timescales for completion, and KPIs) and an equality impact assessment.

People management capacity and performance should be regularly reviewed, and should inform future HR Strategy. The funding councils have different requirements in relation to HR strategies.

**People and Performance Management**

Performance management is a high profile topic in higher education at present, but there are different interpretations of the term:

- Some use the term when thinking of performance-related pay
- For others the term is a euphemism for tackling under performance

In fact, effective **management of performance** (which encompasses reward for high performance, mechanisms to address under performance and a systematic approach both to staff development and succession management) can be a powerful tool in achieving an innovative, flexible and adaptable workforce.

Most performance management processes involve four stages:

- Planning and defining expectations
- Implementation and action
- Monitoring performance
- Reviewing performance

Generally, performance related pay is not common in higher education, other than in certain senior posts, but the notion of contribution pay, arising from the Framework Agreement, has highlighted the need for effective measures of performance to ensure transparency and fairness.

The **‘managing for performance’** approach goes beyond the application of the techniques of performance management. It generally seeks to create an environment in which staff are encouraged to succeed, based on the following principles:

- It relies on consensus and cooperation rather than control or coercion
- It creates a shared understanding of what is required to improve performance and how this will be achieved amongst all staff
- It encourages self-management of individual performance
- It requires a management style that is open and encourages two-way communication between managers and staff, with continuous feedback

‘Managing for performance’, therefore, is an active process relying on dialogue between managers and staff about what needs to be achieved and how, as well as the measures of performance that will be used.

Increasingly universities and colleges are using **workload models** and time allocation calculations in allocating resources and measuring performance. A report, Review of Time Allocation Methods, reviews the processes used.

**Equality and Diversity**

Governing bodies have a number of responsibilities for ensuring that institutions adopt effective policies and practices concerning equality and diversity. This includes ensuring that equality impact assessment of all policies, procedures and practices is conducted for gender, race and disability.
The governing body's legal responsibilities in this area are to ensure compliance with both its general and specific duties as set out in the legislation. Two points are worth bearing in mind:

- There is no limit to the damages employment tribunals can award if a claim of unlawful discrimination succeeds
- Where UK legislation does not support European directives, public bodies may be vulnerable to challenge

Ensuring diversity goes beyond legal compliance, recognising that people have different needs that must be addressed in different ways. Governors also need to be aware of the possible risks associated with issues such as their institution’s age profile and pay differentials. The Hefce report Staff Employed at Hefce-funded HEIs provides useful data on these topics.

The lead body for equality and diversity in higher education is the Equality Challenge Unit (ECU), which produces a wealth of guidance. The funding councils have statutory obligations to oversee compliance with equality and diversity legislation in their respective jurisdictions. Nationally, the Equality and Human Rights Commission has the remit to promote equality for all in society and to combat discrimination affecting specific groups. It covers England, Scotland and Wales, but in Northern Ireland the remit is undertaken by the Equality Commission for Northern Ireland.

The CUC Guide states that ‘the governing body should ensure that non discriminatory systems are in place to provide equality and diversity of opportunity for staff and students’, and in relation to institutions in England ‘that action plans are progressed throughout the institution’, and that ‘the governing body has a duty to take such steps as are reasonably practicable to ensure freedom of speech within the law for students and members of staff of the institution and for visiting speakers’.

The Equality Act 2010 replaced much of the previous legislation and strengthens the law in this area. A concise overview can be found in issue 25 of the LF’s In Practice. The ECU has also published information on the key changes. A special edition (Vol. 16 No.1, 2012) of ‘Perspectives’, the journal of the Association of University Administrators (AUA), explores the likely impact of the Equality Act 2010 on the higher education sector.

A briefing paper (Governors’ briefing on equality and diversity) by the Leadership Foundation and the Equality Challenge Unit provides an update on recent changes in legislation and reviews governors’ responsibilities in relation to equality and diversity.

There is a range of materials on the Equalities section of the Home Office web site and guidance has also been published by the Charity Commission. Guidance has been published on age discrimination legislation, which took effect on 1 October 2012.

The Equality and Human Rights Commission has announced (April 2012) that it will not now publish statutory codes of practice on the public sector equality duty for higher education. The draft codes will remain as non-statutory guidance.

**Appointing and Remunerating Senior Staff**

**Appointing the head of the institution** is probably one of the most important tasks that most governing bodies will have to undertake. Most governing bodies establish a search or recommending committee, often with one or more external advisers. It is also common for institutions to retain the services of executive search agencies or ‘head-hunters’ to assist in this process. The final decision, though, is one for the whole governing body. The governing body may also have a role in the appointment of other senior staff and will normally appoint its clerk or secretary to that role.
The responsibility of the governing body does not end with the appointment of a new institutional head, and there is a need to provide ongoing support, particularly in the early stages of appointment. The role of the head of the institution (like that of the CEO of any large organisation) can be a very lonely one, and a relationship based on mutual trust with governors (particularly the chair of the governing body) is essential.

The governing body must establish a **remuneration committee** usually to deal with:

- Determining the remuneration and conditions of service of the senior team
- Reviewing the performance of the head of institution (and often other senior team members) and determining annual salary awards
- Approving the severance payments of the head of the institution and usually of other senior staff

The degree of authority (if any) delegated to remuneration committees varies, but it is important for the governing body as a whole to have a strong oversight of the committee’s work, ideally within the context of a remuneration policy.

Many remuneration committees and governing bodies find reviewing senior staff performance and related pay issues difficult. A key issue is the extent to which institutional and individual performance can be separated, but this should be attempted for two reasons:

- It can happen that the head of institution performs well but that institutional performance does not meet expectations
- It allows above average pay increases for the head of the institution to be justified more easily

**Senior staff severance** can be controversial, and there is always a temptation for institutions to pay more than they have to in terminating a contract. The CUC Guide states: 'if considering severance arrangements for senior staff, the remuneration committee must represent the public interest and avoid any inappropriate use of public funds. The committee should be careful not to agree to a severance package which staff, students and the public might deem excessive. Contracts of employment for senior staff should specify notice periods of not more than 12 months and should not provide for pension enhancements'.

Remuneration committees in higher education could be affected by concerns about executive pay in the business world, an emotive topic at present. The Government has announced major changes to the arrangements for director remuneration in the business world. It is anticipated that these changes will come into force in October 2013. In due course they could lead to pressures for change in higher education institutions.

**Consulting and Negotiating with Staff**

Governing bodies’ HR responsibilities include ensuring that pay and conditions of employment are properly determined and implemented. Institutions have legal duties to inform staff about certain financial and employment matters. Most institutions, in fact, have long-standing agreements with trades unions and have arrangements in place to consult widely and keep staff informed, in addition to formal consultative mechanisms.

There are two national bodies involved in collective bargaining in higher education – the Universities and Colleges Employers Association (UCEA) and the Joint Negotiating Committee for Higher Education Staff (JNCHES).

**The Framework Agreement**

Recent years have seen substantial discontent about pay and conditions. In general, pay levels in higher education in the period up to 2000 had fallen behind private and public sector comparators, and the pay structures were no longer fit for purpose. This was the background to the **Framework Agreement** for the Modernisation of Higher Education Pay Structures which was concluded between UCEA and the trades unions...
representing HE staff in 2003-04. The Agreement's main provision was that, by 1 August 2006, institutions would introduce new pay structures for all staff covered by existing national pay agreements, which would support the achievement of equal pay for equal value and which would be:

- Based on a national 51 point single salary spine
- Underpinned by job evaluation
- Developed in partnership with local trades unions

Pensions

Universities and colleges participate in a number of pension arrangements, and in addition, many pre-1992 universities maintain local schemes for their own support staff - in these instances, lay members of the university’s council may be trustees of the local pension fund. Pension provision is an important element in the total reward package and there has been a growing recognition that staff find the final salary pension schemes in higher education attractive. However, the costs of providing them have increased significantly, and there have already been rule changes to some (including increasing the retirement age of new entrants, reducing pension benefits on premature retirement and changes in the funding of early retirement costs) in order to ensure their long-term viability.

Discipline, Dismissal and Grievances

Governors need to be sure that their institution is complying with the regulatory framework for these areas, and in some pre 1992 universities, council members may be directly involved in handling individual cases.

ACAS Code of Practice on Discipline and Grievance

With the abolition of the statutory dismissal and grievance procedures in April 2008, employers will no longer be automatically liable in a claim for unfair dismissal because they have failed to follow minimum procedures. However, unreasonable failure by the employer to follow the ACAS Code of Practice on Discipline and Grievance may result in an employment tribunal adjusting any award of compensation by up to 25%.

Public Interest Disclosure (Whistleblowing)

The main piece of legislation in this area is the Public Interest Disclosure Act 1998. Under this, it is automatically unfair to dismiss an employee for making a disclosure in good faith, and there is no limit on the compensation that a tribunal may award.

The Model Statute

In the majority of the pre-1992 universities, the dismissal of academic staff and disciplinary and grievance matters affecting these staff, are governed by the Model Statute. This complex internal legislation was imposed by the Education Reform Act 1988, and was designed to ensure that all universities were in a position to dismiss academic staff by reason of redundancy as well as for misconduct or incapacity. The Model Statute provisions are cumbersome and ambiguous and are not fully consistent with employment law. Interest is growing in simplifying statutes and some HEIs have amended the Model Statute to ensure consistency with employment law.

The Role of Independent Governors in Grievance and Discipline

Under the Model Statute for the pre-1992 universities, independent governors are called upon to be members of redundancy committees, grievance committees, tribunals to consider dismissals on the grounds of medical incapacity, and appeals committees, whereas in post-1992 institutions, the involvement of independent governors is usually at the appeals stage.
Health and Safety

The CUC Guide states that: “the governing body carries ultimate responsibility for the health and safety of employees, students and other individuals while they are on the institution's premises and in other places where they may be affected by its operations...” In practice, management responsibility for health and safety is usually delegated to a lead health and safety professional, but the governing body's duties include:

- Ensuring that the institution has a **written statement of policy** on health and safety and that the policy is brought to the attention of staff.
- Putting in place arrangements for the implementation of the policy, including the allocation of **management responsibility** for health and safety and the provision of advice and relevant training.
- Ensuring that there are mechanisms for **consultation with staff** about health and safety policy and arrangements, including the appointment of safety representatives by recognised trades unions.
- Setting health and safety standards and **monitoring** the institution's activities to ensure that the standards are met.

Beyond the legislative framework covering health & safety at work, all universities and colleges have a common law obligation as employers to protect their employees – **the duty of care**. Employers also have a legal duty to consult their staff on health & safety.

The well-being of employees is assuming greater significance. The Government’s response to Dame Carol Black’s review of the health of the nation indicates that employers will be expected to be much more proactive in this area than hitherto. Hefce and the SFC are funding a 2 year programme aiming to improve performance in the sector through improving well-being.

**Find more information and resources on this topic on our website at:**