Summary of Higher Education Governance

The governance of higher education is relatively diverse, and reflects the fact that all higher education institutions are legally autonomous bodies. They are therefore substantially different in legal status from most public sector bodies. Almost all institutions have boards of governors (Oxford and Cambridge are exceptions). The names of such boards vary and this can cause confusion, with the main terms being: governing body, board of governors, council, or court in Scotland (but this means a different thing elsewhere in the UK). The governing body should be unambiguously and collectively responsible for the oversight of all the institution's activities.

Since the 1980s there has been increasing external interest in higher education governance, in particular in the Second Report of the Committee on Standards in Public Life chaired by Lord Nolan, of 1996, the Report of the Dearing Committee of 1997 and in 2003 the Treasury established the Lambert Review of University-Business Collaboration whose remit included some aspects of corporate governance. The Lambert Report largely exonerated institutions from criticism and referred to a number of examples of good practice in governance. It did, however, call for the introduction of an overriding governance code for the sector, to mirror the Combined Code for the business sector, and this has now been developed by CUC and adopted by most universities and colleges.

Academic Governance

In most institutions a distinction exists between corporate governance which is primarily concerned with an institution's legal and financial standing, and academic governance which involves the integrity of its core activities of teaching and research. While governing bodies have unambiguous responsibility for all aspects of governance, only in post-1992 institutions do they have an explicit responsibility for determining educational character and mission and most boards delegate their responsibilities for academic governance to other bodies. Generally, in higher education, there are at least three different 'understandings' of the term academic governance.

This lack of clarity about what academic governance means compounds a frequent concern of many external governors that they may have little information about the main outputs of the institution: teaching and research. However, this is now changing in most institutions, and the formal responsibilities of the governing body for oversight in this area are increasingly being implemented in practice. There are at least three reasons for such a change:

- The statement in the Governance Code of Practice in the 2009 CUC Guide that the governing body is 'unambiguously and collectively responsible for overseeing the institution's activities'
- The formal requirement in the articles of post-1992 institutions that the governing body has responsibility for 'determining the educational character' of the institution
- In England the requirements in the Hefce Financial Memorandum that the governing body must ensure that the welfare of students is secured and that it must also ensure that there is an effective framework, overseen by the academic board or senate, to maintain academic standards

Against this background it is now difficult for any institution to argue that its governing body should have no role at all in academic matters. A particular issue here is the relationship between the governing body and the senate/academic board. There may be sensitivities here, with some academic staff feeling that any move towards a greater involvement by the governing body in academic matters may be a potential threat to the participative systems of decision making that operated in the past.

In practice, relationships between these two bodies vary widely in different institutions. In some there may be almost no interaction at all, and the only form of contact may be the submission of the minutes of the senate/academic board to the governing body (their minutes may not go the other way), coupled with some joint membership - most notably the vice-chancellor/principal. In other cases there may be substantial joint working, and this is increasingly the case through mechanisms such as: joint committees, joint away-days, and so on. For most institutions, a partnership...
approach to academic governance is likely to be most productive, which emphasises the separate responsibilities of the bodies concerned but also the need for close collaboration if effective academic governance is to be achieved.

These kinds of issues are leading a number of institutions to devise new forms of dealing with academic matters, which bridge the traditional academic and non-academic responsibilities of the governing body and senate/academic board. Although joint committees are the most widespread way of doing this, there are other approaches - for example, one university has introduced an education strategy committee as a sub-committee of its governing body (with academic staff members), and intends this to be the focus for the development and monitoring of its education strategy. Such innovations are likely to become more common in the future.

Governance in other sectors

The following factors justify an interest in looking at good practice in governance in other relevant sectors and considering its application to higher education:

- Although higher education boards are very different in some aspects from private sector boards (for example the absence of responsibilities to shareholders), there are numerous similarities, and in some areas (for example board responsibilities for commercial activities) the parallels are very strong.
- Similarly there are interesting parallels between higher education governance structures and some of those in partnerships, of which John Lewis is an interesting illustration. For example, the collegial nature of aspects of higher education governance is very similar in many respects to that in some partnership and cooperative models.
- There are also some strong similarities to (and differences from) the NHS, in particular in relation to academic or clinical governance issues. Certainly, university governing bodies are often ill at ease in discharging their responsibility for the 'core business' of teaching and research, when in practice they may have little understanding of what this involves in practice.
- The overall agenda of the government to modernise the public sector and its governance that universities share with other parts of the public sector, and how this relates to its multiple user or customer interface only one part of which is usually directly located within the public sector domain.

A major report A Review of Governance and Strategic Leadership in English Further Education was published in November 2009. Appendix C has good practice suggestions which may be of interest to governors in higher education. Many reports on governance in the private sector have influenced higher education.

Whilst one aspect of the drive towards codification has been the development and updating of Combined Code documentation, another has been a partial move away from the voluntary or discretionary principle. The Combined Code operates on a 'comply or explain' principle, meaning that where a company cannot comply with the Code then it should explain why. This is a step on from the voluntary principle which had hitherto characterised the use of governance codes, but is clearly a step short of outright compulsion. The CUC Code of Practice (page 13 in the CUC Guide) operates in the same way.

Amongst other current influences are two from outside the UK: the European Union review of company law, and the USA Sarbanes–Oxley Act concerned with the need for the closer regulation of auditing following a number of commercial failures.

In an article in Perspectives (AUA journal) in July 2010, Raphaela Henze asks whether, in relation to governance, universities can learn from the private sector. Although much of the research is from Germany, her conclusion that failures in the financial sector occurred where a high proportion of members of supervisory boards had little financial experience or expertise raises interesting questions for higher education.

In addition a useful text on governance in the private sector is Neville Bain’s book on The Effective Director available from the Institute of Directors.

Find more information and resources on this topic on our website at: www.lfhe.ac.uk/en/governance/what-governors-do