The Chair

The instrument of government will set out the titles or designation of senior officers. Although there are some variations, the three main officers are the vice-chancellor, the clerk or secretary and the chair of the governing body.

The chair of the governing body (the word ‘chairman’ is usually used in the instruments of governance) is responsible for leadership of the governing body and is ultimately responsible for ensuring that the governing body operates effectively and efficiently. The chair plays a key role in the business of the institution through working closely with the vice-chancellor or principal and the clerk or secretary, but should be take care not to be drawn too much into the day-to-day executive management of the institution. It is important that the chair is kept informed; a policy of ‘no surprises' will help to ensure a good working relationship.

A constructive working relationship between the chair and the chief executive is essential for the effective working of the governing body. The National Audit Office have emphasised the need for both sides to recognise that the two roles are formally distinct – they should be mutually supportive, but also incorporate checks and balances imposed by the different roles each has within the institution's constitution. Draft guidance from the ICSA emphasises the vital role played by the chair in delivering an effective board.

In church universities/colleges the appointment of the chair of the governing body may be different from other institutions depending on the individual instruments of governance, for example it may be a specific individual holding a key post (or a nominee) related to the providing body. There may also be no time limit to the appointment.

The CUC Guide further defines the role of the chair (page 20). A template for a role description of the chair and a note on the appointment and recruitment of a governing body chair can be found on the CUC web site.

Hefce has indicated in the Financial Memorandum that it will write to newly-appointed chairs of governing bodies in England drawing attention to their own and their governing body’s responsibilities under the FM.

The Vice-Chancellor

The instrument of government will set out the titles or designation of senior officers. Although there are some variations, the three main officers are the chair of the governing body, the clerk or secretary and the vice-chancellor or principal, also known in some institutions as rector, director or master.

The vice-chancellor or principal is the chief executive and ‘accountable officer’ and - subject to the responsibilities of the board of governors - has overall responsibility for the executive management of the institution. In practice, the charters and statutes of many 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.

Imperial College announced in April 2012 that it was to create new roles of president and rector, who would have overall responsibility for the management of the institution, and a provost, who would take charge of the College's core academic mission.

There is more clarity and detail in the articles of government of the post-1992 institutions, which generally set out the following responsibilities:

- Making proposals to the governors about the educational character and mission of the institution and carrying out the governors’ decisions.
- The organisation, direction and management of the institution.
- The appointment of staff and related aspects of staffing (but the governing body is the employing authority of the institution).
- The determination, after consultation with the academic board, of the institution’s academic activities.
• Preparing estimates of income and expenditure and the management of the institution’s finances.
• Student discipline.

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 or accountable officer under the terms of the institution’s financial memorandum with its funding council.

The Financial Memorandum between Hefce and its institutions in England sets out (on page 8) the responsibilities of the accountable officer (normally the vice-chancellor or principal).

The CUC Guide further defines the role of the vice-chancellor in relation to governance (page 21)

The Secretary

The instrument of government will set out the titles or designation of senior officers. Although there are some variations, the three main officers are the chair of the governing body, the vice-chancellor or principal and the secretary or clerk.

The clerk or secretary of the governing body has a key role to play in the operation and conduct of business of the governing body, and in ensuring that the appropriate procedures are followed. The key functions that the clerk undertakes include:

• Providing the secretariat services for the governing body, and advising it on all matters of procedure.
• Being the main source of professional guidance and advice about the responsibilities of the governing body, including legislation and the requirements of the funding bodies.
• Advising the governing body if he or she believes that any proposed action would exceed the governing body’s powers, or be contrary to legislation, or to the financial memorandum of the respective funding council.
• Providing legal advice or obtaining it for the governing body.

The clerk is appointed by the governing body, and must maintain an appropriate measure of independence in fulfilling the role. This is particularly important where the role is combined with a senior administrative or managerial function within the institution, in which case the institution and clerk must exercise great care in keeping the two roles separate. Failure to recognise this fundamental principle can cause significant problems. Irrespective of any other duties that the clerk may have within the institution, when dealing with governing body business he or she should act on the instructions of the governing body itself.

Issues relating to the role and independence of the clerk are raised in the Independent Review into the circumstances and issues associated with the clawback of significant funds by Sir David Melville, from London Metropolitan University in 2009.

The clerk is solely responsible to the governing body, and should therefore report directly to its chair. If there is a conflict of interest (actual or potential) between the clerk’s role within the institution, and his or her role as clerk to the governing body, it is the clerk’s responsibility to draw this to the attention of the governing body.

It is good practice for the clerk to work closely with both the chair of the governing body and the chief executive. This includes keeping the chief executive fully informed on any matter relating to governing body business (except the discussion within the remuneration committee relating to the chief executive’s employment). However, the clerk should advise the chair of the governing body of any matters where conflict, potential or real, may occur between the governing body and the chief executive.

The CUC Guide further defines the role of the clerk or secretary in relation to governance (page 21). A template for a role description of the clerk can be found on the CUC web site.
There are many parallels between the role of the clerk and that of a company secretary (indeed, some clerks are also company secretaries). A report on the role of the company secretary, prepared for a parliamentary committee, finds a mismatch in perceptions of the role between the secretaries themselves and board members.

Working with the executive

It is crucial for the governing body and its committees to have sound working relationships with the institution's executive and senior managers, particularly the vice-chancellor or principal. Successful relationships usually centre on trust, openness and mutual respect: and governance is much more difficult without these. The most crucial relationship is between the chair of the board and the vice-chancellor or principal as this sets the tone for the overall relationship between the board and other officers, but governors should also expect to develop an effective working relationship with other senior managers, particularly the clerk or secretary and the director of finance.

A number of issues relating to the relationship between the executive and the board, and in particular the nature and effectiveness of the board's challenge to a dominant vice-chancellor, are raised by Sir David Melville in his 'Independent Review into the circumstances and issues associated with the clawback of significant funds' at London Metropolitan University in December 2009.

A further factor influencing relationships between the governors and the executive is institutional size. Small colleges 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 providing such services, which can then make the role of independent and critical scrutiny difficult to carry out.

In thinking about the effectiveness of existing relationships between the board and the executive a number of important distinctions need to be made:

The formal position of senior officers - This varies between institutions. Typically, in pre-1992 universities the vice-chancellor and a small number of senior academic officers are members of the council; other than this group, senior officers or managers, such as pro vice-chancellors and directors of professional services will usually be 'in attendance' at meetings. They are not members, but attend to present papers and give advice. Governors may find this confusing as in many institutions these senior officers will sit among the governing body members. In post-1992 institutions the instrument of government gives the vice-chancellor or principal the choice of opting out of governing body membership, but almost all choose to be full members. Again, in many institutions members of the senior executive team will be 'in attendance' at governing body meetings. To add to the confusion, in at least one post-1992 institution all members of the senior management team are full members of the board.

Good interpersonal relationships - 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 vice-chancellor or principal and the chair) need to value each other's opinions and how they are given. This relationship will vary depending on a number of factors – the personalities of those involved and the culture of the institution are particularly important. It is, however, important that the relationship is not too close, if the governors are to have the right amount of independence.

Being the 'critical friend' - This well used phrase hides numerous issues and potential tensions. Mutual credibility is crucial in this relationship, and if either party lacks confidence in the other it is likely to fail. A helpful and supportive critique is essential, whereas destructive personal criticism is not and may simply lead to defensiveness and secrecy. In addition, all parties need to observe the distinction between management and governance which may be difficult when discussing key issues. 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 higher education governance failures in recent years have occurred when executive heads went unchecked by their governing bodies.

**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. So far as the executive is concerned, does it really want an active and fully involved board, and so far as the governing body is concerned do they really want to maximise board effectiveness and expend the effort required on what is - after all - a voluntary activity?

**Types of members**

In most universities and colleges governing body membership consists of independent external or 'lay' members and internal members. There should be a majority of external members. The exact categories of membership will be defined in the institution’s governing instruments. Some boards continue to have members drawn from local authorities and other stakeholders, although this is becoming less common.

Typically, staff members will either be ex officio (i.e. they are there because of the position they hold within the institution, such as pro vice-chancellors or deans), or they are drawn from specific constituencies. Practice varies, but there are two typical constituencies:

- Members of the academic board/senate, who in many institutions will occupy a number of governing body places. They will usually be elected by the academic board/ senate.
- Membership based on staff groupings including part or all of academic, administrative and ancillary staff. In most institutions these members are elected. However, there is a small, but growing number of institutions where the nominations committee makes a recommendation based on names coming forward on either an elective or nominated basis.

**Staff governors** can be an invaluable source of institutional information, reinforce collegiality, and ensure that the governing body has to take account of the realities of organisational life. On the other hand there may be real or potential conflicts of interest, and some staff governors can find it difficult to act as ‘critical friend’ to the executive when they are being managed by them. In some institutions elected governors are closely associated with trade union or staff association membership, although in the past guidance has been given by some of the main trade unions that officials should not be governing body members.

**Students** are the other category of internal governor. In most cases, the president of the student union will be a member of the governing body ex officio but, if there is more than one student member, the other(s) will usually be elected.

In addition to staff members, in most institutions members of the senior executive team will be 'in attendance' at governing body meetings in order to present papers and give professional advice.

**Eligibility for Appointment**

Most institutions will have provisions relating to the appointment of governors in their statutory documents (usually the charter and statutes; memorandum and articles of government or ordinances or regulations).

These are likely to be similar to the requirements of the **Companies Act 2006**, relating to the appointment of company directors. The restrictions on the appointment of directors are that they must not have been disqualified from acting as a director; they must not be an undischarged bankrupt and must not be under the age of 16.

There are also legal restrictions on who may be a charity trustee, deriving from the **Charities Act 1993**. This prohibits the following from serving as a charity trustee:

- Anyone who has an unspent conviction for an offence involving deception or dishonesty;
• Anyone who is an un-discharged bankrupt;
• Anyone who has been removed from a charity trusteeship by a court or the Charity Commission.

In addition, no-one under the age of 18 may be a trustee of a charitable trust. Once appointed as a governor most institutions have provisions concerning the termination of the appointment. These will normally cover the circumstances above, and may also enable the governing body to terminate the appointment in the event of significant non-attendance; mental or physical infirmity; or bankruptcy.

Many institutions now have **codes of conduct for governors** which cover these matters as part of the expectations of governors.

**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.

**Why have Staff and Student Governors**

Staff and students have always had some part in the governance of most universities and colleges - 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 collegiality continuing to be the basis for governance is much more contested, but the traditions still run strong in many - although not all - institutions.

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. Indeed, many would argue that students as users or ‘customers’ can contribute immediate experiences and views.
• That such membership enables effective **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 **effective communication** within the institution as a whole, which may reduce tension.
• Some institutions have found that in times of a governance crisis staff and student members may be more willing to **hold the executive to account** than independent members. For example, in an article in 2004 Mike Shattock concluded that "all the evidence we have is that governing bodies have been less effective checks on 'dynamic management' than the academic community....we need to re-emphasise the importance of partnership in governance and the value of the academic contribution" (Shattock M, The Lambert Code and Best Practice, Higher Education Quarterly, Vol 58, No 4, October 2004).
For these reasons the CUC Guide concludes that: 'the representation of staff and students on the governing body is important in all institutions' (paragraph 2.57), reinforcing the student representation Concordat agreed with the NUS in the 1970s.

However, there may also be some drawbacks. These include:

- 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 candidates who are popular with their constituencies rather than competent board members.
- That in some institutions the nomination and election processes have become politicised.
- That 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.
- That the trend towards moving away from a collegial model of governance to one that emphasises performance - including smaller boards - inevitably raises questions about the role of staff and student governors.

In Scotland, the sparqs initiative supported by the Scottish Funding Council has undertaken some interesting work to provide support and training for student governors.

The Welsh Government wishes to see a stronger student voice in the running of higher education and Hefcw is seeking case studies of how students contribute to governance.

Appointment and Election

The numbers of staff and student members of governing bodies vary quite widely, although they are always in a minority. In pre-1992 universities numbers have in some cases been as high as approximately 40% of total board membership, but this is reducing and in institutions with small boards there may only be one student member and one or two staff members.

The method and length of appointment vary; some common approaches are:

- Student members: tend to serve for a one year period of office following elections usually organised by the student union. The President of the Student Union is almost always (but not automatically) a member of the governing body.
- Academic staff members: tend to serve for three/four years following elections usually organised by the governing body secretariat.
- Administrative and support staff members: tend to serve for three/four years following elections usually organised by the secretariat. Not all institutions have members drawn from this group.
- Academic staff members drawn from the senate or academic board: tend to serve for three/four years following elections from the membership.
- In those institutions using elections some, probably the majority, use the 'first past the post' system, while others have transferable voting arrangements, with a growing number using on line procedures.

In some institutions nominations committees are involved in the nomination and appointment of staff members (drawing a parallel with external members). One such university is Durham, where staff members are appointed to the council following an application and interview process. In another institution members of the senior management team are full governing members, taking the places previously occupied by elected academic staff members.

A small survey in mid 2012 indicated that about 25% of institutions are now using an appointment process with some others considering a change from the elective system.

In some - not all - institutions there are concerns about aspects of the appointment process, 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 institutions are increasingly recruiting independent governors on the basis of their specific experience (e.g. finance) this may not be the case for internal governors, thus increasing the knowledge gap about governance between them and independent members.

Some of these weaknesses can be addressed through an active induction programme, good handover arrangements by previous internal governors, and on-going support, but the one year period of office for student governors requires a steep learning curve.

**The Limits to the Governor Role**

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 universities) and articles of government (post-1992s) regarding the membership of certain committees. Practice within institutions varies depending upon the structure, but student and staff governors are not usually members of finance, audit, and employment committees (although there are cases where they are), and never members of remuneration committees.

Reports from committees 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 expected to withdraw. Notwithstanding overall collective responsibility, clearly staff and student governors cannot reasonably be held responsible for decisions to which they have not been party.

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. Indeed it is often the case that many of the key decisions taken by governing bodies are relatively invisible to the institution as a whole.

Nevertheless, in many boards there will be opportunities particularly for student governors to contribute. It is often the case that the President of the Union will be expected to make a report to each meeting, or annually, and there may also be specific sessions at ‘away-days' designed to improve staff and student participation.

Staff and student governors may feel frustrated about this inability to influence events and the associated feeling of powerlessness. This is particularly the case when crises of governance have occurred in a small number of institutions, and the problems involved have often been much more apparent internally than to independent governors. The moves to encourage greater measurement of institutional performance by boards, and also to review their own effectiveness, have occurred, in part, because of such cases.

*Find more information and resources on this topic on our website at:* [www.lfhe.ac.uk/en/governance/people/roles](http://www.lfhe.ac.uk/en/governance/people/roles)