Diversity of Governance

Higher education is extremely diverse, and although most of the issues facing governing bodies are generically similar the arrangements for dealing with them often vary quite considerably. The main differences derive from:

- The legal and constitutional basis of institutions varies. The terms 'pre-1992' and 'post-1992' institutions are often used to characterise the governance differences caused by the 1992 Further and Higher Education Act, but within these groups there may be small differences which distinguish the details of governance in one institution from those in another. For example, a small number of post-1992 institutions are companies limited by guarantee, and as a result have different governance arrangements. A few others are so-called 'church colleges' because they have an association with particular religious faiths, and this may be reflected in their governance arrangements.

- Although most of the functions of governing bodies are common to all institutions, there are some differences. For example, most post-1992 boards have an explicit responsibility for 'determining educational character and mission' that is not the case in the pre-1992s. Institutional size may also affect governance with governors being drawn into more activities in small colleges than in most large universities.

- Devolution has meant that the regulatory and funding requirements of the various funding bodies for England, Wales, Scotland and Northern Ireland are starting to differ more. For example, the financial memorandum with institutions is now significantly different in Scotland and England. A consequence of this is that when governing body members read HEFCE papers they cannot assume that what applies in England also applies elsewhere in the UK. Recent reviews of governance in Wales (Independent Review of HE Governance in Wales) and Scotland (Review of Higher Education in Scotland) may lead to further diversity.

- There are different traditions and culture influencing the way governance has been conducted within institutions which affect such factors as the size and nature of board membership, relations with the Executive, and links between the governing body and the senate or academic board.

- There are significant differences in institutional size and mission, and this tends to influence governance to the extent that in small colleges or more specialist institutions there may be less developed professional administrative services, with the consequence that governors may sometimes become more involved in directly advising management than in larger institutions. It is likely that private providers of higher education will adopt different governance structures.

- Even the terminology used to describe key bodies varies quite widely across the UK. For example, 'board of governors' is the term used in most (but not all) post-1992 institutions, 'council' in most (but not all) pre-1992s and a few post-1992s, and 'court' is the usual term in Scotland (which, however, means different things in England!). There are similar differences in the titles and roles of key committees (although audit and nominations committees are generally standard).

Institutions are increasingly adopting new governance arrangements, a development facilitated by a more flexible attitude from the privy Council.

Governance Structures

The approach to governance adopted by most higher education institutions is:

- A corporate governance structure of a governing body, supported by a number of committees, including audit, remuneration and nominations committees as recommended in the CUC Guide, and usually a planning and resources or other form of strategic planning group.

- A senate or academic board, responsible for the academic work of the institution, often with faculty or school boards reporting to it.
A management structure led by the vice-chancellor or principal, a key component of which may be a senior management team or leadership group. This ‘traditional’ approach can give rise to problems:

- It may be felt that senior managers are inclined to seek decisions from committees rather than taking decisions and accepting responsibility for them;
- The speed of decision-making may not match the pace of developments which can lead, openly or otherwise, to a greater concentration of power in the senior management team (often not a formal part of the structure of governance).

In addition, the ‘traditional’ approach may not make full use of governors’ skills and enthusiasm. Some universities are introducing alternative structures to try to address some of these issues.

In an article in ‘Perspectives’ (AUA journal) in July 2011, Professor Roger Brown suggests a new two tier structure of university governance.

### HE Governance in other countries

Institutional governance is generally much more developed in those higher education systems where universities have a large amount of autonomy. Notwithstanding some interesting innovations that are starting to take place in Europe, in practice, this means that the most obvious comparators with UK higher education governance are found in Australia and the USA.

In Australia a national framework for governance in higher education (the National Governance Protocols) was introduced in June 2004 and all institutions now comply with its provisions.

In the USA, tighter legal regulation on private sector boards was introduced in the Sarbanes-Oxley Act, and US universities are now taking steps to meet the spirit of Sarbanes-Oxley provisions. The US Association of Governing Boards of Universities and Colleges has published a statement on board accountability, which contains guidelines on fiscal, academic and other responsibilities, and a set of self-assessment questions for board activity including ways in which Sarbanes-Oxley provision is being met.

A number of reports, summarised in the Higher, suggest that governing bodies in the USA are becoming increasingly active, in particular in relation to institutional performance, which has resulted in clashes with university managers and academic staff.

### Private Sector Reports

Numerous reports on governance - aimed particularly at the private sector - have been produced in recent years, most importantly the Combined Code of Governance, first issued in 1998 following a series of corporate collapses and financial scandals in the 1980s. The Code has been reviewed by the Financial Reporting Council (FRC), alongside the Walker Review (A review of corporate governance in UK banks and other financial industry entities) and in May 2010 the FRC published the new UK Corporate Governance Code, effectively replacing the Combined Code.

The FRC is consulting on possible revisions to the Code, which would apply to financial years beginning after 1 October 2012.

The Financial Reporting Council, the London Stock Exchange, and the accountancy profession established the Committee on the Financial Aspects of Corporate Governance in May 1991 (chaired by Sir Adrian Cadbury). A key part of its report was a recommended Code of Best Practice with which the boards of all Stock Exchange listed companies registered in the UK should comply. The Committee hoped that other companies would also adopt the code. The Cadbury Report (Cadbury Sir Adrian, Report of the Committee on the Financial Aspects of Corporate Governance), was followed by others on related aspects of governance: the Greenbury Report (1995) (Greenbury Sir Richard, Directors’ Remuneration), and the Hampel Report (1998) (Hampel Sir Ronnie, Committee on
Corporate Governance: Final Report). The various recommendations contained in these were drawn together by the Financial Reporting Council and published as the Combined Code in 1998.


The Combined Code defines a board's main role in the private sector as being "to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed", and it is interesting to consider the implications of this term for higher education.

Guidance on Board Effectiveness, published by the FRC in March 2011, replaces the Higgs Guidance and covers the role of the Chairman, the Senior Independent Director, other Directors and there is a new section on the role of the Company Secretary in relation to effective governance.

The Walker Report (A review of corporate governance in UK banks and other financial industry entities), published in November 2009, contains a number of recommendations about governance in banks and financial institutions, which may have more general applicability.

The European Confederation of Directors' Associations and the Institute of Directors have published Corporate Governance Guidance and Principles for Unlisted Companies in the UK

Private Higher Education

There has been a significant growth in private higher education, both in the UK and worldwide in recent years. These private providers generally admit students who are not qualified for admission to publicly-funded universities and colleges and those for whom there are no places. Some are selective. They generally have a strong focus on teaching. Six of the UK’s private providers – the College of Law, BPP, Ashridge Business School, Regent's College (from September 2012), the University of Buckingham, and the ifs School of Finance – now have degree-awarding powers, and the BPP College of Professional Studies secured the right in July 2010 to use the title BPP University College, the first private provider to secure this status for 34 years.

A number of major international for profit companies, such as Laureate, Kaplan and Pearson (whose awards are to be validated by Royal Holloway, University of London), are entering the world of British higher education.

It was announced on 17 April 2012 that the College of Law (a charity with a Royal Charter, having degree-awarding powers) had been sold to a private equity firm, one of the first purchases of an HEI since the Coalition Government began encouraging private investment in the sector. In November 2012 the College was granted university title and will be known as the University of Law.

The Coalition Government has indicated that it is likely that private HE will continue to expand. The outcomes of the Browne Review and the cuts in public funding for higher education mean that governors will increasingly have to take into account the private sector both in their deliberations on fee-setting and strategy in general.

A number of higher education institutions are reported to be setting up private subsidiaries, which are charging lower fees and may not be subject to the 'normal' regulatory regime. For example, Coventry University College is charging fees of £4,800 for 2012-13.

It has been reported (Autumn 2012) that the Government is intending to grant 'for profit' higher education providers some VAT advantages to put them on 'the same
footing’ as universities. Some ‘for profit’ providers though have already acted on this problem by establishing not for profit subsidiaries.

A comprehensive report on private higher education, commissioned by Universities UK, The Growth of Private and for-Profit Higher Education Providers in the UK, provides an overview of the various types of private institutions and sets out a number of important policy questions. In a first feature the Times Higher Education focuses particularly on the challenges for the regulatory system of the potential further development of private higher education. The risks involved in collaborating with private providers are exemplified in the closure of a private institution in 2010 leaving many students on programmes validated by the University of Portsmouth facing financial losses as well as the loss of their courses. A second THE article addresses various aspects of private provision, in particular regulatory and financial issues.

A major US Senate report, led by Senator Tom Harkin, has raised a number of issues concerning regulation, student retention and quality assurance which are relevant to the debate on the development of private provision in the UK.

Professor Roger Brown has prepared a report for the Higher Education Policy Institute (HEPI), drawing on experience in the USA, not only in relation to privately provided higher education, but also more broadly on issues in the USA which might be of interest in relation to current developments in the UK. Another report, ‘Private Providers in UK Higher Education: Some Policy Options’ by Professor Robin Middlehurst and John Fielden, reviews some of the implications of the growth in private higher education, in particular relating to the regulatory environment. Some of the themes in this report, in particular partnerships between publicly funded and private providers, are developed in an article in Perspectives the journal of the AUA in April 2011. The UCU has published a report, Public Service or Portfolio Investment? How Private Equity Firms are taking over Post-Secondary Education, which argues for specific regulation to cover for-profit providers.

Higher education in further education colleges

Almost 10% of undergraduate higher education students (some 100,000 students) are taught in Colleges of Further Education (Further Education Corporations or FECs).

Some of this provision is directly funded, i.e. the further education college receives funding directly from the funding council for the students concerned. Over 120 colleges in England receive funding from Hefce for their higher education work. Some, though, is indirectly funded through higher education institutions, under franchise agreements. 170 colleges offer franchised programmes. In such arrangements the higher education institution receives funding from the funding council and then contracts with the FEC to provide teaching and support. Governors need to be aware that in such schemes the HEI remains responsible to the funding council and the QAA for the quality of the provision. In England Hefce consent is needed, under the terms of the Financial Memorandum when any of its grant is passed on to another body - a ‘connected institution’ for teaching or research.

A major research report, Understanding Higher Education in Further Education Colleges, commissioned by the government, provides detailed data on a range of aspects of this important topic.

A short briefing guide ‘Higher Education in Further Education Colleges’, although designed for governors in FE colleges may be of interest to governors whose higher education institutions have a substantial amount of HE in FE.

The Hefce is seeking a more strategic approach to higher education in FECs, and requested FECs to develop higher education strategies in 2010. Hefce has further information about higher education in FECs and has published a report on the important role of FECs in widening participation in England.

Three colleges, Newcastle College, West Lancashire College and New College, Durham were granted foundation degree awarding powers in the summer of 2011, and it is understood that other applications are being considered.
The October 2009 edition of ‘Higher Education Quarterly’ (Volume 63, No 4) contains several articles on the College Contribution to English Higher Education.

A substantial amount of data on higher and further education in Scotland's colleges has been published by the Scottish Funding Council.

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