Governors' briefing notes

25. The factors that influence whether governance is effective?

Introduction and aim

This Note discusses the factors that influence whether governance is effective.

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01. What is good governance?

Good governance is not only about the institution meeting its legal and regulatory requirements and the relevant higher education (HE) code of governance. Compliance is important, but the ability of governors to probe strategy and policies and exercise sound judgement is critical. Governors need to be capable of supporting or challenging proposals presented by the executive to the governing body. Once a decision has been agreed, the role of governors is to scrutinise implementation. Good governance is the exercise of oversight and accountability, and a reluctance to accept poor performance. Management, by contrast, is about planning, organising and day-to-day operations.

02. The Higher Education system of governance

Governors are one part of a higher education institution's (HEI) system of governance. The other elements are the executive, the senate/academic board and school/faculty/departmental boards. Each element provides a locus of authority within the system.[1] Good governance requires the component parts to discharge their respective roles efficiently and effectively, work in harmony in pursuit of commonly agreed objectives and continually monitor progress in achieving or readjusting the objectives. The boundaries between the different elements of the system may change over time.

03. The role of the executive

The executive team comprises the head of the institution and the HEI's most senior managers. The executive is tasked with proposing strategies and policies to the governing body for decision. Following examination, the governing body will decide whether it wishes to approve a proposal placed before it. If approved, the executive is responsible for the successful implementation of what has been agreed.

04. Executive leadership

Leadership by the executive is a major determinant of the success of the institution. 'The most important factor in ensuring long-term corporate success, whether for banks and other financial institutions (BOFIs) or a non-financial business, is a highly effective executive team'.[2] In the absence of an effective executive team, there is likely to be a difficulty. 'Even a good, well-skilled board cannot make up for ineffective chief executives and senior teams.'[3]

05. Appointing the executive team

The governing body plays a critical role in appointing the executive team. 'The most important task of any board is to put in place the right executive leadership for the business.'[4] If poor appointments are made, the governing body may at a future date face a decision as to whether it should remove a member of the executive team.

06. Academic governance

While the governing body is responsible for 'taking all final decisions on matters of fundamental concern within it remit', the senate/academic board is responsible for the institution's academic governance. School/faculty/department boards report to the senate/academic board, and are responsible for academic governance at a 'local' level.

07. Academic assurance

An emerging requirement is the expectation that the senate/academic board provide an explicit assurance to the governing body that the institution's academic governance is effective.[5] As part of the Annual Provider Review (APR), governing bodies of English HEIs in receipt of public funding are required to provide an annual assurance to HEFCE as to the 'continuous improvement of the student academic experience and student outcomes' and 'the reliability of degree standards'.[6] Governing bodies need to agree what information they require from the senate/academic board in order to be confident about the institution's academic governance, and in turn provide the required assurance to HEFCE.

08. The governing body

As the senate/academic board, supported by school/faculty/department boards, leads on academic governance, governing bodies have historically concentrated on matters of corporate governance. These include agreeing the institution's strategic plan; setting the annual budget; appointing members of the executive; and ensuring the institution is compliant with legal and regulatory requirements. However, if governance is to be effective, academic and corporate governance must be aligned.

09. The independence of governors

The composition of a governing body has a profound bearing on effectiveness. Independent governors occupy the majority of places on a governing body. For a governor to be independent they cannot be employed by the institution, and should not have close ties. Personal or business relationships can affect independence and any such connections should be carefully considered when assessing independence. Personal or business relationships should be declared to the clerk/secretary.

10. Generic ability and skills

A fundamental principle is that governors should be selected on merit, exercise intelligence and good judgement and make decisions in the best interests of the institution.

They should also have a strong commitment to the institution and its purpose. In addition to their general calibre and interest in the sector, individuals are normally selected on the basis of the specific knowledge and expertise they bring to the governing body.

11. Achieving a 'balanced' membership

An effective governing body needs to exercise oversight across all key areas of the HEI's work. In appointing governors, governing bodies need to be mindful that although an educational entity, to remain viable in the long-term the institution must be operated as a sustainable business. A deep understanding of the sector ('domain' knowledge), as well as business or 'technical' skills should be present amongst the members of the governing body. Technical skills, such as auditing, are also required for the audit committee. Individuals with a professional background in specific curriculum areas, or are locally resident and offer connections to local businesses or the community, may also be appointed. Achieving a balanced governing body, capable of dealing with all the areas where decisions may need to be made, needs care. No amount of governor training is likely to compensate for a lack of appropriate skills and expertise.[7]

12. Refreshing the membership

The sector's operating environment is dynamic. The skills needed by the governing body will evolve over time. A long-serving governor reaching the end of their final term of membership, provides an opportunity to consider whether their successor should have a similar, or a different, set of skills. Succession planning, including the membership of the governing body's committees, should be an important aspect of the work of the Nominations Committee (NC).

13. Governors must give sufficient time

Governors need to commit sufficient time to the role. This includes preparing for, and attending, meetings of the governing body and any committees of which they are a member. Prior to their appointment as a governor, the time required should be understood and accepted. Poor attendance should not be tolerated.

14. Selecting new members

The NC is responsible for considering applications from prospective governors, and making recommendations to the full governing body as to their appointment. Prospective governors may be sought by external advertising, placing an open call on the institution's website or approaching known

individuals. Regardless of the method used, care should be exercised to ensure individuals are independent, committed to institution's values and beliefs, prepared to see the role as a high priority and have the necessary ability, skills and expertise.

15. Diversity of membership

Evidence from corporate failures in the private sector suggests that if directors are drawn from similar backgrounds there is risk of 'group' think. i.e. a tendency for directors to think in similar ways, which can lead to the executive not being challenged. Where governors are selected from a narrow sub-set of the population (e.g. a specific social, ethnic, age or gender group), with similar values and beliefs, the risk of group think can apply to HEIs. Diversity should be part of the selection process for new governors.

16. What are governors expected to do?

Governors are expected to both scrutinise (challenge) and support the executive. Achieving the right balance between challenge and support is not easy. Excessive challenge can lead to the executive feeling they have to persistently defend their position; while a lack of challenge may lead to complacency. The chair should lead by example, but governors need to find the right point along the spectrum of unquestioning support and excessive challenge.[8] It is important that this is understood by both the governors and the executive.

17. Individual contributions

The different backgrounds and personalities typically found on a governing body, will mean individual governors are likely to make different contributions. Governors with business or technical skills may offer guidance on matters such as, say, external funding or legal matters. Those with knowledge of the sector may contribute strongly to discussions about the academic development of the institution and its performance. However, regardless of their specialisms, all governors should be capable of examining all aspects of the institution's work and making informed judgements.

18. The culture of the boardroom

The culture of the boardroom is critical, if there is to be a genuine open two-way communication between the executive and governors. If the culture encourages openness and debate, challenge is more likely to be accepted as a normal part of board dynamics (i.e. accepted conversations). Equally, the manner of any challenge can affect how it is

viewed. If the challenge is constructive, offering suggestions as to how the matter might be advanced, this is more likely to be accepted, as opposed to if governors simply offer a dissenting view. The mark of good of successful board member is 'the ability to ask really good questions in a constructive manner.[9]

19. The governing body as a social organisation

Governing bodies are social organisations. New governors closely observe the operation of the governing body and how established governors behave. This allows the cultural values of the governing body to be transmitted to new members. In time, new governors become an established member of the 'group' and inevitably develop closer relations with the executive. The social dynamics of governing board can make it more difficult for governors to retain their independence and continue to offer appropriate challenge to the executive. In this regard, it has been suggested that 'true independence is also a state of mind.'[10] All governors should remind themselves of the need to retain their independence and objectivity.

20. The chair

The chair of the governing body plays an important role in ensuring governance is effective. The chair is responsible for leading the governing body and chairs its meetings. The chair plays major role in determining whether the meetings of the governing body are conducted in an atmosphere, which encourages openness and debate. The chair also provides a role model for the other governors. The time required to fulfil the duties is often significant, and the post-holder needs to make the role a high priority.

21. Agendas and papers

Chairs work with the head of institution and clerk/secretary to ensure there are a sufficient number of meetings of the governing body; governors receive adequate and timely information to inform their decisions; and there is sufficient time to discuss key matters. Papers provided to governors should not be overly long, include and highlight key information and avoid offering an over-optimistic assessment of the institution's position or strengths. If the chair or governors believe they are not receiving sufficient information to make an informed decision, they should be clear about what additional information they require to make a decision. Governing body agendas should provide sufficient time to discuss key matters, and avoid putting important items at the end of the meeting, and risk limiting discussion. The governing body must be involved in taking all key decisions affecting the institution's future.[11]

22. The chair and the head of institution

The relationship between the chair and head of the institution is at the core of an HEI's leadership and governance. The governing body appoints both post-holders: one is responsible for governance and other for management. The roles are distinct and the chair should not be drawn into the day-to-day management of the institution. An effective relationship is more likely when there is mutual understanding and respect and the differences in the roles and responsibilities are understood by both parties. The chair should not be uncritically close to the head of the institution. There should be regular communication between the two individuals. As a general rule, it is better to avoid 'surprises' being presented by either party to the other. A good working relationship between the two individuals is critical. The chair may, however, need to raise issues of concern or sensitivity. If the relationship is characterised by persistent tension or disagreement, one or both individuals may ultimately need to step aside.[12]

23. Appraisals

The chair will normally conduct the annual appraisal of the head of the institution, making recommendations to the Remuneration Committee as appropriate. The chair should also periodically meet with each governor to discuss how their contribution to work of the governing body might be improved, or if specific additional training might be beneficial. On occasions the chair may need to raise specific issues with individual governors, for example, if there is poor record of attendance at meetings or to discuss the possible renewal of the governor's term.

24. Appointment of the chair

Normally, a chair will serve for a number of years. Appointment processes will vary, but there should be a detailed role description and agreed process. In many instances, the governing body will also appoint a vice-chair, to deputise for the chair in their absence. To allow the appointment of a replacement chair to be managed in an efficient and timely manner, anticipating when the existing chair may relinquish their position is vital. To facilitate a smooth transition, ideally the appointment of a chair-designate should be made to allow for a period of overlap between the out-going and in-coming chair.

25. Clerk/secretary

The clerk/secretary is appointed by the governing body and plays a critical role in its operation and effectiveness. Although they may be an employee of the HEI, their allegiance as clerk/secretary is first and foremost to the governing body. As well as ensuring the necessary paperwork (e.g. agendas, papers) are issued in a timely and efficient way, they may be required to offer discrete advice to the chair or head of institution. The independence of the clerk/secretary, may also encourage independent governors to share matters of concern in confidence. If a clerk/secretary believes a proposed course of action by the chair or head of institution is inappropriate, they must be capable of saying so. In addition to having the 'technical' knowledge and skills to fulfil the role, the clerk/secretary must have the courage and personal standing to be able to 'stand-up' to the chair or head of institution, if required.

26. Effectiveness reviews

Governing bodies are expected to periodically review their own effectiveness. Reviews are increasingly conducted with the help of an independent external facilitator. Once a review is complete, the governing body should review any recommendations and agree what action should be taken.

27. Concluding remarks

Good governance requires all elements of an HEI's system of governance (governing body, executive, senate/academic board, school/faculty/department board) to be fulfil their responsibilities efficiency and effectively, to work together and pursue common objectives. As a key part of the system of governance, the governing body is a major factor as to whether institutional governance is effective.

Questions to review

- Is the executive team capable of delivering the agreed plans for the institution?

- Does the governing body have an appropriate balance of skills and expertise?

- Is there a succession plan for the membership of the governing body and its committees?

- Are governors clear as to their role, and the need to balance support and challenge?

- Is the chair effective in discharging their responsibilities?

- Does the culture of the governing body meetings encourage openness and debate?

- Does the governing body receive the information it needs to make key decisions?

- When did the governing body last undertake an effectiveness review?

End notes and further reading

1 Bowen W G and Tobin E M (2015), *Locus of authority: the evolution of faculty roles in the governance of higher education.* Princeton University Press, p.ix.

2 *Walker D (2009), A review of the corporate governance of banks and other financial institution: final recommendations. p.35.*

3 Kelly C (2014), *Failing in management and governance: report on the independent review into the event leading to the Co-operative Bank's capital shortfall.* p.121.

4 Kelly C (2014), *Ibid.,* p.123.

5 Both the CUC *Higher Education Code of Governance (2014)* and *Scottish Code of Governance (2013)* emphasis the role of governing bodies in taking all major decisions. However, only the CUC Code includes discussion of academic governance.

6 *Assurance statements from governing bodies as part of the new operating model for quality assessment*, Higher Education Council for England, Circular letter 25/2016.

7 Kelly C (2014), *Op.Cit.,* p.116, para. 13.16.

8 For discussion of this aspect of governance, see Walker D (2009), *Op.Cit.*, pp.52-55.

9 Hall J quoted in Plimmer G, 'Tips from three leading headhunters, *Financial Times* 24 November 2016.

10 Gramm J (2015), *Dear Chairman: boardroom battles and the rise of shareholder activism,* Harper Collins, p.141.

11 CUC (2014), *Op.Cit.*, p.11.

12 Walker D (2009)*, Op.Cit.,* p.57.