

Conference Note

Bridging the capability - expectation gap

This Advance HE - Higher Education Policy Institute (HEPI) joint seminar was an opportunity for higher education to look at the year ahead and the issues that governors may have to grapple with. The seminar took place on Monday 17 September 2018.

This note records the highlights from the discussions.

Backdrop

At the recent Advance HE - Higher Education Policy Institute (HEPI) seminar, a panel discussed how governance is likely to be affected by the actions of the Office for Students (OfS).

The opening event of this year's Governance Development Programme explored how the new system of regulating English higher education providers might impact governance. Was the newly emerging policy framework really that different? And, if so, in what ways? Comparisons between the role and responsibilities of the new (OfS) and the old (HEFCE) sector bodies suggested significant change.

Risk based regulation

The OfS is a 'risk-based regulator', whose role is to champion the student (the consumer). Compared to HEFCE its responsibilities are narrower, with a parallel body, United Kingdom Research and Innovation (UKRI), taking over HEFCE's responsibilities for research and knowledge transfer.

What are the implications of these changes for governing bodies? Most

importantly the OfS has placed additional responsibilities on the governing body. By increasing the governing body's responsibilities OfS is at risk of moving the boundary between management and governance.

With a changing and less predictable operating environment, governing bodies need to be confident that they are competent in the 'new space'. The governing body is now being asked to be a scrutiny body, expected to seek assurance not just about matters of corporate governance (estates, finance, etc.), but also academic governance. This clearly has implications for the skills needed on a governing body. Equally, the highly fluid nature of the policy context suggests governing bodies need to regularly re-examine the key skills they require in order to be as effective as possible.

With increasing demands being placed on governors, there was a concern about how did an institution persuade individuals to take-on a growing burden of responsibility and join the governing body? There was a preference to avoid remunerating non-executive members of a governing body, reflecting the charitable

status of 'public' institutions and a focus on public benefit. Rather consideration should be given to whether there were alternative forms of recognition that an institution might be able to deploy to attract new governors. Equally, when selecting new governors it was suggested that the nominations committee should ask each potential governor 'what is in it for you?'. Responses were often highly revealing.

It was also suggested that when considering the effectiveness of the governing bodies, questions might need to be asked about the size of the elected membership in some institutions. An associated question was the processes whereby elected members were appointed. These are normally conducted without reference to the institution's nominations committee. This could lead to difficulties.

How might OfS as a regulator evolve? The experience of other sectors suggests that the initial behaviour of a new regulator is not necessarily a good guide to how it will behave in the longer term. Examples could be cited where a regulator initially appeared benign, but over-time had become more inquisitive, and ultimately imposed sanctions or penalties on those deemed to have transgressed its regulations. In this regard it was important to remember that OfS is a very new organisation, and currently finding its way.

While HEFCE had engaged in dialogue with individual institutions and the sector, OfS has not to date adopted the same approach. An example is OfS's approach to access plans. The indications are that

OfS is likely to be more prescriptive as to the outcomes it expects providers to secure. An open question was, 'under what circumstances might an institution or the sector be prepared to stand-up to the regulator?'

The title of the seminar suggests an 'expectations gap'. But on whose side – provider or regulator? A key rationale for creating the new system of regulation was to address concerns about some (private) providers who were outside the previous system. The removal of the 'basic' category of registration, means the OfS is in practice focussing largely on 'public' institutions.

The early engagement of providers with the OfS offered clues on how it saw itself and might act in future. In its communications with individual institutions, the language employed by OfS has been both formal and legalistic. Although it is early days, the nature of OfS's communications with institutions raised concerns.

The OfS has emphasised that the provider's governing body is responsible for ensuring all of the ongoing conditions of registration are satisfied. This could be read as ignoring the competence of Senate/Academic Boards, and as a consequence there was a concern that a governing body might over-reach themselves. In practice, governing bodies might be better advised in challenging Senate/Academic Boards to ask questions about their own effectiveness in fulfilling their responsibilities. Based on a self-assessment, was the Senate/Academic Board confident that it could provide the assurances required by the governing

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body in regard to academic quality and standards? Certainly, some with experience of Senate/Academic Boards felt there was a risk it was too large a body and insufficiently focused to be effective. This suggested that in some cases a review of Senate/Academic Board would be beneficial. More generally, if institutions did not ensure their governing structures and processes were ‘fit-for-purpose’, there is a risk that the regulator might step-in and prescribe what it requires.

It is easy to forget how much has changed in the last twelve months; as well as anticipating the extent of the change, which might occur in the coming year. OfS does not become fully functional until 1 August 2019, and further changes to how providers are regulated are likely to emerge across this period. Ahead of such changes, governing bodies need to assure themselves that their governance structures and process are ‘fit-for-purpose’, and that they are in a strong position to respond to any additional demands placed on them by the regulator.