

Higher Education Provider Trustee Remuneration

Background

In conjunction with the Committee of University Chairs (CUC), Advance HE offers a programme of Round Table events. The events provide an opportunity for a small number of participants (typically governors, governance professionals and senior managers) to discuss topical or emerging issues relating to the governance of higher education providers (HEPs).

At each event, participants share and exchange views under the strict application of the Chatham House rule. None of the discussion is attributed to either an individual or provider. To facilitate the wider dissemination and discussion of some of the matters explored, a note sharing some of the issues raised is released after the event.

Introduction

A lively Round Table explored the topic of remunerating trustees. Information was shared on how many governing bodies remunerate their Governors, the typical levels of remuneration and legal and constitutional considerations. Reasons for moving away from the voluntary model of governance were discussed, together with practical matters relating to implementing a different approach.

As the demands placed on Governors have grown, many of whom are also trustees of a charity, increased attention is being given to whether to remunerate trustees. Although the number of HEPs remunerating Governors is currently small, more are known to be actively looking at the question of whether to remunerate their trustees. The Round Table therefore focused on whether HEPs should consider moving away from the voluntary model of governance, and pay trustees.

Are views changing?

As a backdrop to Governor remuneration, the language contained in the 2009 and 2016 (revised June 2018) editions of Higher Education Code of Governance issued by the CUC was compared. The comparison was suggestive of the general direction of travel.

The 2009 edition of the Code suggests payment of lay members should only be considered in 'exceptional circumstances':

'Although a number of sectors now remunerate their non-executive directors for their services, in the HE sector

normal practice is to pay only such incidental travelling and subsistence expenses or other allowances to lay members as the governing body may determine. In exceptional circumstances, however, it may be deemed appropriate to remunerate a lay officer. Before any decision to remunerate is taken, the governing body should consider...' (2009, p.16)

By comparison, for the 2016 edition the reference to 'exceptional circumstances' has been removed:

'current normal practice is not to remunerate external members and to pay only travelling and other incidental expenses. However, if the governing body decides it is appropriate to remunerate it will need to consider...' (2018, Element 7.7)

How common is the remuneration of trustees?

It is estimated that in the region of 10 'public' HEPs remunerate at least some members of their governing bodies, with in addition some alternative providers also remunerating their Governors or Directors.

Where remuneration has been introduced by public higher education institutions it is normally paid to the Chair of the Council and, in some instances, to the Chairs of the committees of the governing body.¹



What levels of payment are made?

Levels of remuneration are modest. A Chair is typically receiving between £15k and £25k, and Committee Chairs perhaps £7.5k per annum. On occasions the beneficiaries may decline to accept payment, requesting, for example, an equivalent sum is invested in the provider's endowment fund.

Who decides on the policy to remunerate?

The governing body has to decide whether it wishes to adopt a policy of remunerating members. In deciding whether to adopt a policy the governing body is expected to focus on the role, as opposed to the post holder, and be confident that in establishing such a policy it is in the best interests of the charity.

Legal and constitutional requirements

When considering whether to introduce a policy of remunerating Governors, careful consideration should be given to the legal and constitutional requirements. In England and Wales these include gaining permission to introduce the policy from the Charity Commission (CC).

Permission of the CC is required as trusteeship is normally expected to be a voluntary activity. The remuneration of trustees leads to the charity's funds being applied for private benefit as opposed to public benefit. The Commission has issued guidance on [Trustee Expenses and Payments \(CC11\)](#).

The Commission's guidance states:

'...payment for trusteeship means that a trustee receives payment from a charity for carrying out his or her normal trustee duties. In some cases, payment will be made on a continuous basis whenever these duties are carried out; or it may take the form of a periodic or annual allowance; or it may be made on an occasional basis, intended to reflect only a certain aspect of the trustee role, or to enable a trustee to attend a specific meeting or event.'

Crucially, there is no general power in charity law for trustee boards to make such payments, and normally they cannot do so unless their governing document specifically allows it, or unless they have authority from the commission or the court. (There are only very limited exceptions to this – occasionally where charities may be regulated primarily by legislation other than the Charities Acts.)

Without such authority, any such trustee payment is a breach of trust (see section 4.2) – even if the charity benefits from the transaction. As this might mean the trustee board or the individual trustee who has been paid being made liable to repay all or part of the payment, trustee boards without a suitable power should seek authority before any payment is made. Unauthorised payments may be evidence of misconduct or mismanagement.' (CC11, p.20)

What is the rationale for paying Governors?

There are a number of reasons for deciding to remunerate Governors. These may include recruitment and retention, although in practice this does not appear to be the primary driver for many providers. Nevertheless there is some suggestion that the prospect of receiving a payment would increase the number interested in securing the role of Chair, and perhaps bring forward a more diverse field of applicants when advertising to fill a position externally. More widely it is believed that remuneration tends to alter the expectations placed on the individual and their perceptions as to anticipated level of commitment required to carry out their responsibilities.

Making the payments

There are different models of practice. In some cases the beneficiary is paid monthly, in other cases subject an annual assessment of their performance being deemed to be satisfactory at the end of the year. The individual who is expected to receive payment should not participate in the decision of the governing body to approve the payment, and should leave any meeting where the matter is discussed.



Should all Governors be paid?

It was noted that all members of the boards of housing associations are paid, and that over time membership of such boards has moved from being constituted by voluntary members who were not paid, to a position where normally all board members are paid.² The practice found in relation to the boards of housing associations suggested all trustees of HEPs should be paid.

Turning to higher education it was noted that the focus of attention has been on paying lay members of the governing body. However, recently the question of paying a student governor had risen in a small and specialist institution, which does not have any sabbatical Students' Union officers. The provider's programmes have high contact hours and attendance at board meetings is difficult for students as they seek to balance the demands of their studies and paid work. The provider is as a consequence considering whether students should receive some form of allowance for attending board meetings.

The possible payment of staff who are members of a governing body raises a number of interested issues. Would payment, for example, encourage a greater number and more diverse members of staff to seek appointment to a governing body?

Concluding remarks and possible future work

The remuneration of trustees of HEPs remains a fertile area for discussion and debate. The debate centres both on the principles for making a payment, but also on how the policy should be implemented. With these points in mind, there is scope for further exploration to better understand the impact of remuneration on those governing bodies where such a policy has been introduced. This might also include discussions with the HEPs in Scotland following the implementation of the Higher Education (Scotland) Act, 2016. The Act requires HEPs to pay, 'at the request of the senior lay member (Chair of governing body), reasonable remuneration and allowances for undertaking the role of senior lay member.'³ It was agreed that it would be of interest to hear more about how such a policy has been applied in practice.

End notes and further reading

- ¹ Discussion of some of the legal considerations relating to the payment of charity trustees in higher education can be found in Farrington D and Palfreyman D (2012), *The Law of Higher Education*, 2nd Edit., Oxford University Press, pp.188-189.
- ² Discussion of the governance journey of housing associations and changes to the membership of their boards can be found in David Mullins, Chapter 11 The Evolution of Corporate Governance Structures and Relationships in English Housing Associations, in Cornforth C and Brown W A (2013), *Nonprofit Governance*, Routledge.
- ³ [Explanatory Notes, Higher Education Governance \(Scotland\) Act 2016 \(asp 15\)](#), p.1.

