

## 2. Governance and management

### Introduction and aim

This briefing note begins by considering what governance is. It introduces the different constitutional forms of higher education providers, before considering the boundary between governance and management. It flags the risk of agency, before noting that there has been a tendency for the demands placed on governing bodies and governors to increase.

### Topics covered

1. What is governance?
2. Regulatory requirements
3. Factors influencing governance
4. Labelling institutions
5. Public institutions
6. Alternative providers
7. Sovereign bodies
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13. What is management?
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### 1. What is governance?

Governance is defined 'as the constitutional forms and processes through which universities govern their affairs'<sup>1</sup>. Governance is concerned with<sup>2</sup>:

- Ensuring accountability, control and scrutiny;
- Approving future direction, institutional strategy and mission;
- Measuring and monitoring institutional performance;
- Appointing and ensuring the effectiveness of the head of the institution and the senior management team<sup>3</sup>.

### 2. Regulatory requirements

All institutions are required to meet multiple legal and regulatory requirements. They must operate according to their governing instruments, and if they are a charity or exempt charity they must satisfy the obligations placed on them as a charity. Institutions constituted as companies need to comply with company law.

Institutions receiving public funding will need to meet the mandatory conditions set by the national regulator/funding body. The conditions to be satisfied are likely to include adopting one or more codes of governance<sup>4</sup>.

Governors need to be mindful of what regulations their institution is required to comply with, and seek management's assurance that these requirements have been satisfied.

### 3. Factors influencing governance

Institutional heritage, missions, constitutional forms, different codes of governance and the personal styles of Chairs of governing bodies and heads of institutions all influence how governance operates in any one higher education provider. While there are common threads to governance across all institutions, the local context has an important bearing on the institution's governance. Indeed, it has been suggested that diversity of governance styles and practice has increased, and may increase again in the future<sup>5</sup>.



## 4. Labelling institutions

The UK higher education sector is far from homogeneous. A substantial part of the sector comprises not-for-profit providers operating for public benefit<sup>6</sup>. Institutions falling within this group are sometimes referred to as 'public institutions'. Institutions falling outside this group are referred to as alternative providers (AP).

Institutions in either group operate with a variety of governance models. Intra-group differences between institutions within the same group are often as significant as the differences between institutions in the two groups. For public institutions one way of differentiating providers is by mission group<sup>7</sup>.

## 5. Public institutions

Historically public institutions, which are autonomous and independent legal entities, have received the majority of their funding for teaching and research directly from government via funding distributed by public funding bodies. Institutions falling into this category are referred to as 'public institutions'. In England a significant proportion of public funding has been replaced by private funding, largely in the form of student tuition fees<sup>8</sup>.

## 6. Alternative providers

Alternative providers (APs) are higher education providers who do not receive recurrent funding from a funding council or other public bodies and who are not further education (FE) colleges. Eligible students enrolling on designated courses at APs can access loans and grants from the Student Loans Company (SLC)<sup>9</sup>.

Since 2014 [Independent Higher Education](#) has carried out an annual survey of independent providers. The [2017 survey](#) of 111 providers found that the sector had not changed substantially since 2014. with 'providers remaining far smaller than their publicly funded counterparts...'

APs encompasses both 'for-profit' and 'not-for-profit' institutions, operating with a broad range of legal forms and governance models.

## 7. Sovereign body

For 'public' sector institutions the sovereign body is normally known as the governing body and often titled the 'Council' (or Court)<sup>10</sup>. In addition to approving the institution's strategic direction and monitoring its implementation, historically, governing bodies have been largely concerned with matters of corporate governance, including finance and estates.

## 8. Academic governance

Matters relating to teaching and research (academic governance) are the responsibility of the senate (or academic boards). The senate is chaired by the head of institution. Reporting into senate will be faculty/school boards and/or departments.

Further discussion of academic governance can be found in briefing note 4.

## 9. Committees

Most governing bodies meet between four and six times a year. Careful planning and management is required to ensure all of the responsibilities of the governing body are adequately covered in the time available. To help this process, most governing bodies operate with a number of committees. These operate under the delegated authority of the governing body.

In some institutions joint committees of the governing body and senate have been established. These can play a significant role in ensuring the overlap between corporate and academic governance is managed effectively.

## 10. Committee work

The work of the committees allows detailed consideration of specific areas of the governing body's duties to be undertaken. Each committee will examine the matters within its remit and report back to the governing body, making recommendations for the governing body to endorse as appropriate.

## 11. Constitutional instruments

The institution's constitutional instruments will specify the duties and powers of the governing body and its governors. As higher education institutions have been established at different points in time and for a variety of reasons, there is no single constitutional form covering all providers.

An institution's constitutional forms can have a significant bearing on the governing body, including the composition of its membership and its powers. Governors should familiarise themselves with the institution's constitutional instruments and understand the duties placed on their governing body.



## 12. Constitutional forms

The following typology highlights the different constitutional forms<sup>11</sup>:

- Oxbridge governance model: Oxford and Cambridge (civil corporations).
- Scottish governance model: Aberdeen, Edinburgh, Glasgow, St. Andrews<sup>12</sup>.
- Civic university model: c.50 institutions established by charter (chartered corporations) and statutes, and often referred to as 'pre-92' institutions.
- Higher education corporations (HECs): c. 45 independent corporations created by the Further and Higher Education Act 1992 and frequently termed 'post-92' institutions. Publicly funded further education colleges – many of whom offer higher education courses – are also constituted under the same legislation.

McGettigan<sup>13</sup> extends the above by adding:

- institutions constituted as companies and subject to company law:
  - some 25 institutions are companies limited by guarantee.
  - a smaller number of institutions operating as companies limited by share.
- a number (three) of smaller institutions who are trusts.

## 13. What is management?

Once the governing body has agreed the institution's strategic plan and associated strategies, together with usually a linked set of key performance indicators (KPIs), it is for the head of the institution and the senior management team (the executive) to implement the agreed strategy. The executive is also responsible for the day-to-day management of the institution.

## 14. Boundaries

Governors should take care to avoid becoming involved in the day-to-day running of the institution. They should monitor the institution's performance against agreed outcomes and hold the executive to account for any areas of under-performance and weaknesses in complying with the regulatory requirements placed on the institution.

## 15. Knowledge of the sector

Greater volatility and complexity in the operating environment for higher education has tended to increase the centralisation of decision-making and the numbers of professional managers employed by institutions. Lacking the necessary knowledge and expertise to challenge policy decisions, there is a risk that governing bodies become over-reliant on the recommendations of the executive when making key strategic decisions<sup>14</sup>. To help mitigate the risk, the composition of governing bodies increasingly includes lay governors who have worked in higher education<sup>15</sup>.

## 16. The risk of agency

The position of the executive raises potential concerns as in whose interests is power exercised? For private sector companies a well-known risk is the so-called 'agency' problem. This is the potential for the interests of management (the 'agent') and the shareholders (the 'owners') to diverge. The risk is that the agent without effective direction and control, will act in their own self-interest and not in the interests of the organisation or its owners. The risk applies in higher education, where it is suggested that heads of institutions, 'in the absence of clear owners, have fewer limits to their powers than their equivalents in other sectors'<sup>16</sup>.

## 17. Accountability

While the executive is accountable to the governing body, to whom are governors accountable? Or, 'who guards the guards'?<sup>17</sup> Accountability to government and its agents is important for 'public' institutions in receipt of public funding for teaching (and research). Where tuition fees have replaced public grant funding for teaching (ie. in England), accountability to students has led to the establishment of the OfS. 'The OfS's primary aim is to ensure that English higher education is delivering positive outcomes for students – past, present, and future.'<sup>18</sup>

## 18. Demands on governors

The demands placed on governors have grown. A less certain or stable policy environment, the application of practice from the private sector (driven by high-profile cases of corporate failure) and instances of poor governance by individual higher education institutions, have all played a part in increasing demands on governing bodies. In particular, the scale and scope of activities now undertaken by public institutions has increased.



## 19. Looking to the future

Across all jurisdictions, further change in the policy environments is anticipated. Looking at the different devolved nations of the United Kingdom there is an increasingly likelihood of higher education policies diverging.

In England the replacement of the sector's funding council by the OfS has brought speculation about how the regulator will act in the future. In parallel, speculation about future public policy offers an additional source of uncertainty.

In a climate of considerable uncertainty, governing bodies should make sure that governance in their institution is 'fit-for-purpose', remain vigilant about possible policy changes and be prepared to act swiftly when appropriate. The current environment is not one where governing bodies can afford to be complacent.

## 20. Conclusions

Governing bodies and the executive team must always respect the boundary between governance and management, and ensure while governors do not attempt to become involved with the day-to-day management, the executive makes sure the governing body is fully informed and able to discharge its duties and responsibilities.

## 21. Questions to review

- Q For what purpose does the institution exist?
- Q Under what constitutional form does the governing body operate?
- Q Are governors clear as to the duties placed on the governing body?
- Q Is there a clear understanding of line between the duties of governors and those of managers?
- Q Does the governing body hold the executive to account?
- Q Has the governing body discussed how the demands placed on governors are changing?

## End notes and further reading

- <sup>1</sup> Shattock M (2006), *Managing good governance in higher education*, Maidenhead: Open University Press, p.1.
- <sup>2</sup> Schofield A (2013), *Getting to Grips with Being a New Governor*, London: Leadership Foundation for Higher Education, p.1.
- <sup>3</sup> Typically in chartered institutions when appointing a new head of institution, the governing body is expected to consult with senate, and there is frequently a joint committee of the council and the senate established to oversee the appointment process.
- <sup>4</sup> Two governance codes for higher education have been developed: (1) the [Higher Education Code of Governance](#) developed by the Committee of University Chairs (CUC); and (2) [The Scottish Code of Good Higher Education Governance](#). In addition, CUC has published [The Higher Education Senior Staff Remuneration Code](#).
- <sup>5</sup> Shattock M (2013), University Governance, Leadership and Management in a Decade of Diversification and Uncertainty, *Higher Education Quarterly*, Vol. 67(3), p.16.
- <sup>6</sup> In England and Wales to be eligible for charitable status the organisation must operate for public benefit (the public benefit requirement). I.e. the provision must be operated for a sufficient section of the *public* and result in *benefits* which are not solely based on personal views. The advancement of education in institutions with charitable status must include a public benefit statement in their Annual Report and Financial Statements.
- <sup>7</sup> While mission groups may be a useful way to cluster institutions, there is often considerable overlap between the different groups. Mission groups typically include [Russell](#) (research intensive); pre-92 who are not Russell; post-92; and small and specialist institutions. Further sub-divisions of the groups are also possible.



- <sup>8</sup> 'A relatively high share of the funding of tertiary educational institutions in the United Kingdom comes from the private sector. After transfers between the public and private sectors, private sources account for 71% of the total funding of tertiary educational institutions in the United Kingdom, of which about two-thirds are related to household expenditure. Tuitions fees in England (UK) are higher than in all OECD countries except the United States.' [OECD Education at a Glance, Country Note, 2018](#), p.4.
- <sup>9</sup> Higher Education Statistical Agency (HESA): [Higher Education Student Statistics: Alternative Providers, 2016/17 - Summary](#) HESA estimated that in 2016-17 there were 58,735 students who were studying with APs, the majority of whom were undertaking an undergraduate programme.
- <sup>10</sup> In practice a range of titles is used including, 'Court' in Scotland, as well as 'Board of Governors' and 'Executive Board'. The term Council is used throughout this briefing note to cover all of the titles in use.
- <sup>11</sup> Shattock M (2006) *Op. Cit.*
- <sup>12</sup> Further details on the constitutional forms of Scottish institutions can be found in von Prondzynski F (2012), *Report of the Review of HE Governance Scotland*, p.5.
- <sup>13</sup> McGettigan A (2013), *The Great University Gamble*, London: Pluto Press, pp.126-128.
- <sup>14</sup> See Shattock M (2013), p.12
- <sup>15</sup> There is an interesting supplementary question of what proportion of the membership of a governing body should have knowledge of the sector in order to make a difference? In the case of the gender balance of Boards, the 30% Club is so-named as the reasoning is that below this percentage the female 'voice' is insufficient to make a difference. Specifically, it is unreasonable to think that one governor with higher education expertise, has sufficient knowledge and expertise, to cover all aspects of higher education. In this respect there is an argument for thinking about the higher education expertise needed in a similar manner to how business skills are approached. In other words, what areas of higher education expertise are required and how might this translated in in terms of recruiting individuals with different areas of knowledge of higher education?
- <sup>16</sup> McGettigan A (2013), *Op. Cit.*, p.151.
- <sup>17</sup> Gillies M (2012), *University governance: questions for a new era*, London: Higher Education Policy Institute.
- <sup>18</sup> Office for Students, [Securing Student Success: Regulatory framework for higher education in England](#), February 2018. OfS 2018.10., p.1., para. 2.

