

Appendix B: Developments in Governance in Other Sectors: a Summary Literature Review¹

October 2009

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The assistance and advice of Dr David Llewellyn, Principal of Harper Adams University College is acknowledged in writing this Appendix

¹ This section is based on a revised and updated version of Schofield A, (2009), Appendix B in *What is an Effective and High Performing Governing Body in UK Higher Education?*, the Leadership Foundation for Higher Education at www.lfhe.ac.uk/governance

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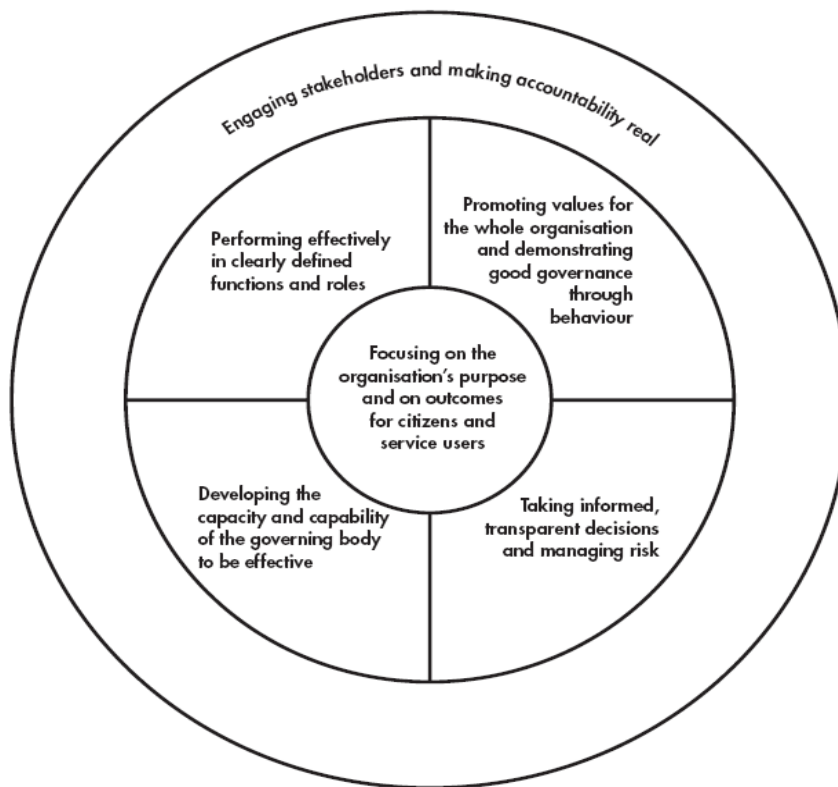
- 1 This Appendix reviews briefly developments in the understanding of effective governance in other sectors relevant to UK further education. The areas selected are:
 - Governance in parts of the UK public and voluntary sectors, noting similarities with and differences from further education governance.
 - Governance in the UK private sector, particularly looking at partnership and not-for-profit private organisations.
 - Governance in the UK higher education system.

Governance in Other Parts of the UK Public Sector

- 2 There tends to be different emphasis on the term 'governance' in different parts of the public sector, in some cases focusing on the general operation of governing boards, but in other areas (notably local government and health) addressing the relationship between public and private, elected and appointed, and related questions of efficiency and accountability. To take one example, governance in health and schools are particularly different from each other, with the NHS favouring an appointed model of membership (based on private sector boards), whilst the schools sector is highly representative with parents playing a large role in governance.
- 3 Despite such differences, there are several issues which contribute to the distinctiveness of governance in the public sector. First, are the constraints on institutional autonomy and the delivery of the services provided by institutions. The implication of this is relatively clear, in that most public governance takes place in the context of boards (whatever they may be called), which are accountable not just for the success of their own organisation, but also in varying ways for implementing government policy. However, much of the literature on board effectiveness (and the models which parts of the public sector have been urged to adopt) is predicated on a private sector approach, which - by definition - assumes freedom of action by boards, with all the associated emphasis on strategy, adding value, and so on. There is an obvious potential paradox here, and different sectors are seeking to address it in different ways, for example in the NHS through foundation hospital trusts.
- 4 The second difference is less obvious: most public services operate on a 'fitness for purpose' basis, with value for money being a crucial taxpayer consideration. Indeed there may be substantial debate about what services should be paid for from public funds (as in the case of the National Institute for Clinical Excellence formulating policy on drug availability). A major element in effective governance then becomes ensuring that service provision meets defined standards, whilst trying to achieve optimal value for money. However, institutional success in the private sector - and arguably other sectors such as higher education - does not assume a fitness for purpose approach, but rather one based on growth and achieving institutional success usually through striving for excellence or maximising shareholder value. This clearly poses a somewhat different set of governance challenges, and certainly different conceptions of governance effectiveness, which are much more likely to involve consideration of institutional performance as a whole in a competitive market place.

5 Notwithstanding such tensions, the last few years have seen substantial innovation in governance in many parts of the public sector. Perhaps the most important overall contextual development has been the Good Governance Standard for Public Services², produced for the Independent Commission on Good Governance in Public Services, made up of OPM, CIPFA and the Joseph Rowntree Foundation (see Figure 1). This builds on the Nolan principles for governance and is useful in attempting to obtain an agreed cross-sector foundation for examining governance. Whilst some of the 'standards' are relatively self-evident, two are worth highlighting in terms of their application to education: focusing on outcomes for citizens and service users, and promoting values and demonstrating good governance through behaviour. Both tend to be relatively ignored areas in much of the governance literature, but raise fundamental issues about the responsibilities of governing bodies beyond accountability to funders, and legal and regulatory compliance.

Figure 1: Good Governance Standards



² *The Independent Commission on Good Governance, (2005), op cit*

a) ***The National Health Service***

- 6 Until 1990 governance in the National Health Service (NHS) was undertaken by various health authorities, whose membership included some elected members and medical staff. Following the 1990 NHS and Community Care Act, local authorities and medical staff were removed from boards, which now comprises of five executive and five non-executive members. (This is in contrast to police authorities and some national public bodies that have a 'supervisory body' made up entirely of non-executives.) In 1990 health care within the NHS was divided into a number of quasi-autonomous entities or 'trusts', and these changes were accompanied by the adoption of a more explicit management approach, whereby trust management is carried out by a board of executive and non-executive directors headed by a chief executive.
- 7 A feature of the literature on the governance implications of the move from health authorities to NHS boards is whether a more 'private sector' approach is appropriate. For example, Clatsworthy et al³ conclude that this is not the case, and that private sector models cannot be applied in the public sector without adaptation. They suggest that, assuming financial probity is established, more focus should be placed on the delivery of health care in accordance with the wishes of the population through greater empowerment of local communities. A similar argument is made by Ashburner, who notes that governance structures in the NHS have been criticised for being modelled on the private sector and neglecting public accountability. She suggests that "while small changes of emphasis are evident, there has been no effort to introduce local, democratic decision making in the formal sense".⁴
- 8 The subsequent establishment of foundation trusts by the Health and Social Care (Community Health and Standards) Act 2003 represents a further change in governance in the NHS, and may provide an opportunity to address some of the concerns raised about lack of public engagement on NHS boards. Foundation trusts can be established in law as new legally independent public benefit corporations, with a primary purpose of providing NHS services to patients. The trusts are not under the jurisdiction of the Secretary of State for Health or a strategic health authority and represent a substantial easing of regulatory control. The governance structure of foundation trusts has three main components:
- A membership community, made up of local people, patients and staff.
 - A board of governors, which will include governors elected from the membership community as well as people appointed from primary care trusts and local authorities.
 - A board of directors, made up of non-executive directors appointed by the governors, and executive directors appointed by the non-executive directors.

³ Clatsworthy M A, Mellett H J, and Peel M J,(2000)'Corporate Governance Under New Public Management: An Exemplification, Corporate Governance

⁴ Ashburner L.,(2005),op cit

Members of foundation trusts can elect governors to represent them, can stand for election as a governor, put themselves forward as the chair or a non-executive director of the trust, and have the right to be consulted on the foundation trust's future plans.

- 9 The expected benefits of this approach are a greater sense of ownership and engagement of patients, resulting in an improvement in the quality and responsiveness of services. The foundation trust concept of 'membership' has potential similarities with further education, where membership could refer to staff and students, who already have some powers with regard to electing governors. Whilst some of the powers afforded to foundation trust membership would not be transferable, principles about the right to be consulted over future plans for the institution might be.
- 10 Governance structures beneath board level generally reflect a clear separation between 'corporate governance' and 'clinical governance', which is both a legacy of the historic role of the medical profession, and also a recognition of the unique nature of health service provision. It has no equivalent elsewhere in public sector governance, although there is, of course, a parallel with the position concerning academic governance within further education colleges and the professional responsibility of teaching staff.
- 11 An NHS Foundation Trust Code of Governance has been developed, which builds on the FRC Combined Code of Corporate Governance, and key elements include a requirement for at least 50 per cent of board members to be non-executive, an emphasis on the importance of good quality information, and the need for active performance evaluation of the board. Unlike those in further education, members of NHS boards are remunerated. Further details of the work of trust boards can be found at the website of Monitor, the independent regulator of foundation trusts⁵.
- 12 An initial review of foundation trusts by the Healthcare Commission in July 2005 found a number of positive aspects of foundation trust governance including: the concept of membership had meant that individual trusts had drawn in between 1,000 and 16,000 members of the public and patients; leadership, accountability and responsibilities were clearer at board level; and there was greater attention to financial risks, strategic issues and working in partnership. However, the review also found a number of negative outcomes including: substantial variability in practice between trusts; limited action to involve underrepresented groups; unclear governor roles in many cases; an overlap in functions between the board of governors and public and patient forums; and generally low engagement of staff.
- 13 It is too early for much research to have been undertaken on the longer term effectiveness of the new governance structures in the NHS, and - as noted above - most of the analysis to date has concerned membership issues, public and patient engagement, and addressing well recognised problems such as inconsistent management information, and related areas. However, some interesting issues are starting to emerge, for example, an initial study by Lewis⁶ of the experience of

⁵ www.monitor-nhsft.gov.uk

⁶ Lewis R, (2005), *Governing Foundation Trusts: A new era for public accountability*, London: King's Fund

foundation trust status in Homerton Hospital noted that foundation trusts faced the problem of what it called the 'professionalisation of the lay view' as the effectiveness of governors is heavily determined by their knowledge of the wider NHS. This knowledge is increased by greater contact with the trust and its management, but with the consequent dangers that this can lead to governors becoming too close to management thinking and values. The author concludes that "paradoxically, perhaps, the more effective a governor, the less that governor can be considered lay" - a challenge that certainly faces lay members on governing bodies in FE colleges.

b) Local Government

- 14 Local government has adopted a distinctive form of governance, with decision makers (councillors) being directly accountable to local electorates. Although potentially ensuring a high level of transparency, this may disguise organisational or service failures because of the party political environment. Key aspects of governance highlighted elsewhere in this report such as trust, open communication, and so on, may also suffer in such an environment.
- 15 Faced with dissatisfaction about the state of local government, the Local Government White Paper 2000 made significant proposals to alter local authority governance structures by requiring councils to: move from their traditional committee based system of decision making to an executive model, possibly with a directly elected mayor (subject to approval by referendum), and with a cabinet of ruling party group members to create a consequent separation of councillor functions between executive and representative, with backbench members fulfilling an overview and scrutiny role. These changes have brought about a greater concentration of power, while emphasis on cabinet models and US-style executive mayors has been concerned with creating more effective, clearly defined leadership, rather than stronger democratic accountability and public engagement.
- 16 In order to provide support to local authorities in enhancing governance, the Chartered Institute of Public Finance and Accountancy (CIPFA)⁷ and the Society of Local Authority Chief Executives and Senior Managers (SOLACE)⁸ have produced the Delivering Good Governance in Local Government Framework⁹, which identifies good practice for developing and maintaining a local code of governance, and ensuring governance is transparent and accessible. The Framework identifies six core principles:
- Focusing on the purpose of the authority and on outcomes for the community, and creating and implementing a vision for the local area.
 - Members and officers working together to achieve a common purpose with clearly defined functions and roles.
 - Promoting the values of the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour.
 - Taking informed and transparent decisions, which are subject to effective scrutiny and managing risk.

⁷ See www.cipfa.org.uk

⁸ See www.solace.org.uk

⁹ www.cipfa.org.uk/panels/corporate_governance/index.cfm

- Developing the capacity and capability of members and officers to be effective.
 - Engaging with local people and other stakeholders to ensure robust public accountability.
- 17 The Framework suggests that local authorities use these principles to guide their own governance structures and test existing structures against them, that they develop an up to date local code of governance, and that they prepare a governance statement to report publicly on the extent to which they comply with their own code on an annual basis, including the way they have monitored the effectiveness of their governance arrangements in the year, and any planned changes for the coming period¹⁰. A study by the Audit Commission¹¹ on the implementation of the six principles of the Framework has subsequently found acceptable levels of performance in a majority of councils on most of the six, the exception being risk management and internal control.

c) The Voluntary Sector

- 18 The vast range of voluntary organisations makes generalisations about their governance difficult (for details of the range of voluntary and community organisation - NVOs - see the NCVO website¹²). NVOs are now viewed by Government (both local and national) as key providers of public services, with associated pressure to enhance governance. As in other sectors, the National Council for Voluntary Organisations Governance Hub has created a voluntary code for the voluntary and community sectors. It suggests maximum terms of office for governors, principles for delegation to committees and regular training and development opportunities for governors. Unlike other codes, it does not make recommendations about the proportion of non-executive directors on boards.
- 19 Substantial guidance on governance is produced by the NVCO¹³, including a substantial 'Good Trustee Guide', which defines a number of key responsibilities: setting and maintaining mission and values; developing strategy; establishing and monitoring policies; ensuring compliance; ensuring accountability; maintaining fiscal oversight; respecting the role of staff/volunteers; maintaining effective board performance; promoting the organisation; setting up employment procedures; and selecting and supporting the chief executive. Whilst typical of board responsibilities, promoting the organisation is an interesting addition, and relates to the ambassadorial role that many trustees have.
- 20 In a useful study commissioned by the NVCO Governance Hub, Parker¹⁴ reviewed governance performance in the voluntary sector, and the findings appear to have substantial resonance for governance in further education. In particular:

¹⁰ www.cipfa.org.uk/panels/corporate_governance/good_gov_briefing.cfm

¹¹ Audit Commission, (2003), *Corporate Governance: Improvement and Trust in Local Public Services*, Audit Commission

¹² see www.ncvo-vol.org.uk

¹³ see www.ncvo-vol.org.uk/governanceandleadership/?id=9164

¹⁴ Parker M, (2006), *Measuring Governance Performance, Governance Hub*, at www.ncvo-vol.org.uk/publications/publication.asp?id=9250

- The main drivers for enhancing board performance were: leadership from the board chair and senior members; commitment from management; a strategy for improvement; a 'learning culture' which enabled development to take place and governance reviews to be implemented; and effective communication. With these drivers in place, governance improvement is complex but possible, but needs sustained activity.
- The main barriers to enhancing governance were: a lack of commitment; a lack of skills and knowledge; resistance to change; the time available to trustees; and (for small VCOs) resources.
- A 'one size fits all' approach to enhancing governance does not work, but organisations typically need to adopt an approach suitable for them.
- Boards do have leverage to improve their organisation's overall performance through a focus on board performance.
- However, the concept of organisational performance and the contribution of governance to it remains contested, and perceptions differ between the multiple agencies and stakeholders involved.
- The potential for enhancing governance is likely to be diminished in those VCOs, which experience difficulties in recruiting new trustees.

All these findings will be familiar to further education corporations whose lay members are also unpaid volunteers giving their own time to their institution.

- 21 The study goes on to explore earlier work in the voluntary sector by Holland¹⁵, who after a three year review of 24 VCOs concluded that effective boards can be characterised by six dimensions of competence: contextual (understanding of mission and values); educational (board development, information, and support); interpersonal (board dynamics); analytical; political (relationships with key constituencies); and strategic.

Developments in the Private Sector

- 22 It is not an understatement to observe that the recent failures of governance in the banking and finance sectors may have a profound impact on the operation of private sector governance, and at the very least will lead to reviews of current practice and amendments to the existing regulatory codes. The 'Walker Report'¹⁶ of corporate governance in banks is likely to be the first of many reviews which, in the long term, may have implications for governance in all sectors.
- 23 Nonetheless understanding developments in governance in the private sector is important for further education for several reasons. Not only have private sector developments driven governance changes throughout the public sector, but also greater accountability and transparency have been seen as critical in terms of engendering trust amongst shareholders and the public, an aim which - in the financial sector at least - has clearly been set back substantially. Moreover, many independent

¹⁵ Holland T P and Jackson D K, (1998), *Strengthening Board Performance: Findings and Lessons from Demonstration Projects, Nonprofit Management and Leadership*, 9:2, 121-134

¹⁶ Walker D, (2009), *A review of Corporate Governance in UK Banks and Other Financial Industry Entities*, HM Treasury see www.hm-treasury.gov.uk/walker_review_information.htm

members of FE corporations will have experience of private sector governance, and may see benefits in moving in that direction, or may encourage their institution to adopt new governance practices as they begin to emerge.

- 24 The first attempt in the UK to clarify the duties and responsibilities of company boards (Cadbury, 1992) emphasised the supervisory role of non-executive directors. A key part of its report was a recommended code of practice with which the boards of all Stock Exchange listed companies registered in the UK should comply. The Cadbury Report was followed by others on related aspects of governance; in particular the Greenbury Report (1995) and the Hampel Report (1998). The various recommendations contained in these were drawn together by the Financial Reporting Council (FRC) and published as the Combined Code in 1998. This Code was updated in 2003¹⁷ taking account of: the Turnbull report on internal controls (1999); the Myners review of institutional investment (2001); the Higgs review of the role and effectiveness of non-executive directors (2003); the Tyson review of the recruitment and development of non-executive directors (2003); and the Smith review of audit committees (2003). The revised Combined Code operates on the 'comply or explain' principle (subsequently adopted in a number of public sector codes of governance).
- 25 As might be expected there is a substantial literature on company board effectiveness, much of it only partly relevant to higher education. Some of this research is usefully brought together in two publications by the Institute of Directors (IoD): a 1995 research study conducted in collaboration with Henley Management College on achieving board effectiveness¹⁸, and a review of the characteristics needed to create 'an effective director'. So far as the first study is concerned (based on data from focus groups, two surveys of board directors, and submissions from approximately 1000 directors) a model for an effective board was developed based on four broad areas: organising and running the board; personal competencies and knowledge; achieving board tasks; and indicators of good practice. However, the model did not explore the explicit link between board effectiveness and company performance.
- 26 More recently, Bain¹⁹ (himself Chairman of the IoD) has identified some of the key collective and personal attributes that effective boards require. Based on a critique of the quality of much private sector governance, he calls for much greater attention to be paid to re-establishing trust and integrity in governance and management, a charge amply justified in the light of subsequent scandals. Perhaps most relevant to higher education governance is Bain's discussion of the IoD's 'Standards for the Board', which defines the following personal attributes (each in turn sub-divided into different categories): strategic perception; decision making; analysis and the use of information; communication; interaction with others; and the achievement of results. Clearly these attributes will manifest themselves in very different ways in the relatively large governing bodies typical of the not-for-profit sector compared with small private sector boards with executive membership, but - selectively used - they remain a potentially useful list of attributes for FE colleges to consider when recruiting board members.

¹⁷ The Code can be found at www.frc.org.uk/documents/pdf/combinedcode.pdf

¹⁸ Institute of Directors, (1995), *Good Practice for Directors - Standards for the Board*, London

¹⁹ Bain N, (2008), *The Effective Director*, Institute of Directors, London

27 In an attempt to pursue the link between an effective board and a high performing organisation, the Association of British Insurers (ABI) commissioned an interesting research study in 2007²⁰. This noted that little empirical evidence existed to relate governance to company performance, not least because of the methodological problems involved. However, using the International Voting Information Service (IVIS), the ABI study found "robust links between the quality of a company's governance system and its long term operating and stock market performance". IVIS is a system used by the ABI to provide basic information to potential institutional investors on all UK listed companies in relation to their level of compliance with the FRC Combined Code. Although using compliance with the Combined Code as an indicator of effective governance in action is a highly questionable methodology, it does at least provide a consistent indicator of one aspect of effectiveness, and it could be argued that those companies that comply in full with the Code (and therefore who score most highly in the IVIS approach) are at least demonstrating an active interest in governance with some associated commitment to implementing good practice.

28 Using this methodology, the ABI study concluded amongst other things that between the period December 2002 and November 2007:

- Over a five year period companies demonstrating good governance delivered "higher average share price returns after controlling for underlying volatility".
- Companies that receive a so-called 'red top' (indicating the highest level of concern about governance) "are less profitable and generate less value over time for shareholders than other companies".
- However "whilst good governance improves profitability and value creation, these are long run relationships that take several years to crystallise. We find lags of two and three years in the relationship between poor governance and inferior performance. This focusing on short term links between organisational governance and performance may be misguided".

In making these findings, the study considers the issue of causality, and concludes that "it is governance that has an impact on performance rather than the other way round". The research was, of course, conducted before the banking crisis.

29 Although such studies are of interest to further education governance, more relevant practice in the private sector may - perhaps - be found amongst partnership or co-operative organisations, whether for-profit or not. Internationally, organisations based on such structures are very much alive and well. They range in size from large for-profit co-operatives to very small community based initiatives, and include major companies in the USA and Europe²¹. The governance of such organisations is directly relevant to further education, because in most cases a key element of governance is how members or partners should be involved, and how to balance participation with efficient board decision making - an issue which has a very strong parallel with that of the role of staff and student participation in FE college governance.

²⁰ *Selvaggi M and Upton J, (2008), Governance and Performance in Corporate Britain, ABI Research Paper 7, Association of British Insurers*

²¹ *For a list of the largest cooperatives see the Global 300 list at www.global300.coop*

30 Typically partnership or co-operative governance structures have to wrestle with at least four issues which directly raise the issue of participation:

- The role of the supreme governance body, how it relates to management, how members are selected, and how it can remain in touch with what is going on. The more complex and/or international the organisation is, the more challenging the task and the more costly governance becomes, for example in having regular meetings to exercise the necessary oversight functions. In most cases this body is responsible for what might be characterised as the 'standard' functions of governance: agreeing and monitoring overall strategy, ensuring financial health (including agreeing annual budgets), reviewing the performance of those to whom management responsibilities have been delegated, etc. Depending upon local factors and institutional size there are variations on such issues as responsibility for appointing key managers, and the management of risk. For almost all co-operatives and partnership organisations, ensuring that core values are maintained is also typically a key activity.
- The size of the supreme governance body in order to give members or partners confidence that their voice will be heard, and what its composition should be. Many international co-operatives or partnerships specify membership by geographical area (region or country), and also by organisational structure - for example with a representative from each subsidiary or company (the large Basque cooperative Mondragon), or group of shops (John Lewis), or banks (Rabobank). Partnerships and co-operatives of this type typically have a much larger number of members in their governing bodies than other types of organisation.
- In cases where the supreme body delegates some functions to a smaller group, there are issues about what size this should be and how its members should be chosen. Typically, where the governing body is too large to be an effective decision making and managerial entity, a smaller executive committee exists. A common way of appointing the members of the senior committee is by election of members of the larger board (in some cases at annual general meetings), although frequently many members may be ex officio, due to their management role or position as honorary officer or committee chair.
- Whether some form of advisory body is needed to represent the interests of special categories of member or stakeholder and, if so, what kind of role it should have. For example, CfBT (see below) issues shares of £1 each to about 50 educational experts, who meet at an AGM to elect the trustees and chairs of committees, but between meetings are available to the company as professional advisers. In John Lewis (see below) a Business Strategy Group drafts the business plan for the Partnership Board and discusses major commercial initiatives. It is made up of executive directors and is purely advisory to the Board.

31 In the UK perhaps the most interesting example of governance in action within a partnership structure is the household name of the John Lewis Partnership, which has a governance structure with parallels to aspects of post-16 education. It employs 69,000 staff (called partners) in the UK, was founded as a partnership, and in the competitive world of retailing has an unusual corporate governance structure reflecting its values giving every partner a voice in the business they co-own. These

values also include "high standards of corporate governance [which] are at the heart of the Partnership: our structure gives our management the freedom to be entrepreneurial and competitive in the way they run the business for long-term success, while giving the company's owners, the partners, the rights and responsibilities of ownership through active involvement in the business"²².

- 32 The most senior body in this structure is the Partnership Council which represents all partners, and has 87 members most of whom are elected by partners. Each main retail outlet has its own branch council where partners participate. There is also a Partnership Board responsible for the management of commercial activity, and members include the chairman, five directors appointed by the chairman, five directors elected by the Partnership Council, and two non-executive directors. The main role of the Partnership Council is "to hold management to account - it has the power to discuss any matter whatsoever...The Council has the ultimate responsibility of dismissing the Chairman if he fails to fulfil his responsibilities...The Chairman appears before the Council twice a year to report and answer questions on his running of the Partnership. Other key directors report once a year"²³.
- 33 There are two other key bodies. First, John Lewis and Waitrose have divisional councils, with at least one elected councillor to represent each branch. Elections to the councils take place every two years, with partners voting in constituencies that are decided by three trustees of the John Lewis constitution. Councillors are elected to represent partner opinion, but not to act as delegates of their constituents. Their responsibility is to exercise their judgement for the best interests of the Partnership as a whole, not to promote sectional interests. Freedom of speech is guaranteed. Second, each John Lewis selling branch has a branch forum (the members of which are selected by their fellow partners to represent them), and each Waitrose selling branch has a partner voice forum (the local avenue for partner opinion and the means by which partners can provide feedback, question management on branch matters, raise their own issues and be consulted). Similar arrangements apply for the head offices and other services.
- 34 This structure is set out at some length because of the correlation between a highly successful business and explicitly participative governance. Observations on why this structure is successful probably include: a concentration on 'core business', high quality products and services; the absence of shareholders seeking to maximise share value; strong institutional loyalty amongst partners (partly because of progressive employment policies); and an absence of diversity in organisational structure.
- 35 This very brief summary makes the basic point that any simplistic notion of private sector boards is best avoided and that within that sector there are very different examples of practice to suit different circumstances and values; and second, that (notwithstanding the ABI study), there are at least some organisations that can claim a clear linkage between their effectiveness in commercial terms and their governance structures.

²² Extract from www.johnlewispartnership.co.uk/aboutus. See partnership council

²³ Extract from www.johnlewispartnership.co.uk see partnership council

Developments in Higher Education Governance

- 36 The governance of higher education (HE) is interesting to further education (FE) in a number of ways, because of: the amount of HE increasingly taught in FE; the multiplicity of partnerships between FE providers and HE; the provision in some higher education institutions (HEIs) of FE and the associated issues of quality assurance; and the aspiration of some members of FE corporations to emulate aspects of higher education governance through achieving greater autonomy.
- 37 The growth of higher education in the UK has led to complex governance arrangements, which makes any simple summary difficult. (A fuller account of the development of governance in UK HEIs can be found in the comprehensive account of Shattock²⁴). Although multiple issues are involved in this complexity, perhaps the most important are:
- *Autonomy*. HEIs are autonomous, and although receiving substantial public funding they are not accountable to government in the same way as FE. Along with this, there is a strong tradition of self-governance in many HEIs, partly reflecting the origins of universities as communities of self-governing scholars.
 - *Diversity*. The higher education sector is very diverse (in size, mission, institutional complexity etc). Therefore in relation to governance, beyond what might be seen as standard compliance with regulatory and good governance requirements, good practice might vary widely.
 - *Legal Status*. Legal forms of governance in HEIs vary, but all are charities. Legally, governance is defined in pre-1992 universities by charters and statutes, and in post-1992 HEIs by instruments and articles of association (a few post-1992 HEIs are also companies limited by guarantee).
 - *Devolution*. Higher education is now devolved within the UK, and although to date changes in governance arrangements have been largely technical, greater diversity is likely in the future.
- 38 Historically, for almost all UK universities²⁵, governance has traditionally been based on a model which distinguished 'academic' governance from 'corporate' governance. The former has typically been carried out through a senate or academic board consisting primarily of staff, thus ensuring that collegiality was generally maintained and that decisions on academic issues were taken by academic staff. On the other hand, corporate governance has usually been conducted by the governing body (or council - the terms vary), which has had explicit responsibility for all issues concerning resources and ensuring that the institution complies with its legal and regulatory duties.

²⁴ Shattock M, (2006), *Managing Good Governance in Higher Education*, Open University Press, McGraw Hill Education, Berkshire

²⁵ *The Universities of Oxford and Cambridge have different approaches to governance, see Shattock M (2006)ibid*

- 39 In practice, the boundaries between the academic and the corporate have frequently become blurred, particularly on issues concerning academic resources. The 1992 Education Act required all universities created after this date to give explicit responsibility to their governing bodies for "determining the educational character", and other changes introduced at the same time for these 'new' universities were smaller governing bodies (a maximum of 25) with a majority of external members, and a prohibition on internal staff and student members attending designated sub-committees (for example, those dealing with staffing policy where a conflict of interest might exist).
- 40 Due to the diversity of the sector, short generalisations about existing governance structure are difficult, but structures typically tend to consist of:
- A governing body (or council) consisting of between 16 and 25 members of whom a majority are external, recruited from whatever sources the institution wishes. This has overall "unambiguous responsibility"²⁶ for all institutional affairs, and the chair is always an external member. There is a sub-committee system (at a minimum remuneration, audit, and nominations, but sometimes extensive). All external members act in a voluntary capacity and are not paid.
 - An academic board or senate which has responsibilities (varying depending upon institutions) for the core institutional activities of teaching and research. All members are internal and are generally a combination of those holding defined positions (eg deans of faculty) and elected members. Once powerful, this body has declined in authority in many (not all) universities due to the pressures of marketisation, competition and a devolved internal resource allocation mechanism.
 - An executive (headed by the vice chancellor or principal as CEO and head of institution) is responsible for the management of the HEI. The vice chancellor or principal usually chairs the academic board/senate and is almost always a member of the governing body. In almost all cases other senior members of the executive (eg deputy vice chancellor, finance director, etc) are not members of the governing body.
 - A registrar/secretary/clerk (the terminology varies) supplying the company secretary role to the governing body.
- 41 As in the rest of the private and public sectors these traditional structures have undergone change and developments include: a move towards smaller governing bodies, with a reduction in the number of sub-committees and an increasing proportion in many HEIs of lay members; a greater attention to managing risk and ensuring financial health as HEIs move away from dependence on state funding; and greater attention on issues associated with "educational character". Proposals currently exist to remove some of the existing constraints to further innovation in governance by simplifying further the regulatory environment.
- 42 What is evident even from this very brief description is that whilst governing bodies of HEIs have a number of similarities with boards in other sectors (including FE), they are

²⁶ CUC, (2009), *Code of Governance, in Guide for Members of Governing Bodies of UK HEIs*, see www.shef.ac.uk/cuc

also unique in operation. Parallels with and differences from some other sectors include:

- Although higher education governing bodies are very different in some aspects from private sector boards (for example, the absence of responsibilities to shareholders), there are also numerous similarities, and in some areas (for example board responsibilities for commercial activities) the parallels are strong. In particular, Watson²⁷ has suggested that some HEIs demonstrate public-private hybrid models of governance found in companies such as BAE systems (a private company with a majority of public contracts).
- There are interesting similarities between university governance structures and some of those in partnerships, for example, the collegial nature of aspects of higher education governance is very similar in many respects to that in some partnership and cooperative models.
- There are also some similarities to (and differences from) the NHS, in particular in relation to academic or clinical governance issues and how these are dealt with. Certainly HEI governing bodies are often ill at ease in discharging their responsibility for the 'core business' of teaching and research, and they may have relatively little understanding of what this involves in practice.

It is this hybridity of different aspects of governance that - arguably - makes higher education unique, and is therefore challenging to define effectiveness and high performance.

- 43 In the past few years the HE sector has responded actively in enhancing governance, at least partly to counter an external perception that it lacked rigour. In particular, all stakeholder bodies agreed the content of a comprehensive 'Guide for Members of Higher Education Governing Bodies in the UK'²⁸ published by the Committee of University Chairs (CUC - the equivalent HE body to the FE Governors Council). The Guide also contains a voluntary Governance Code of Practice based on the central notion that the governing body has unambiguous responsibility for the institution and this has subsequently been adopted by all the key stakeholder bodies as the basis on which the adequacy of governance should be assessed. Institutional compliance with the Code is advised but not required, however, institutions choosing not to adopt elements of it must explain why not and what alternative approaches are used. This 'comply or explain' approach is, of course, now widely used in governance in the UK across all sectors, as a way of encouraging the adoption of good practice whilst providing some flexibility in what is appropriate for particular institutional settings.
- 44 The production of the CUC Code was - at least in part - a response to the Lambert Review²⁹ of university/business collaboration and governance issues commissioned by the Treasury. This report noted that many universities had strengthened their systems of governance, and that some "excellent examples" were in place. Nonetheless it noted the need for further changes, and proposed that there should be a greater

²⁷ Watson D, (2008), *Business or Business-like? Some Thoughts on Cultural Convergence*, in CIHE, *Leadership in an Age of Supercomplexity*, Council for Industry and Higher Education at www.cihe.org.com

²⁸ CUC, (2004), *op cit*

²⁹ Lambert R, (2003), *Lambert Review of Business-University Collaboration: Final Report*. HM Treasury. London, HMSO: 133

distinction between management and governance in higher education institutions, less reliance on committees for decision making, and a voluntary code to help improve the effectiveness of governance, based on the corporate sector's 'comply or explain' approach.

- 45 The work of the four UK higher education funding bodies also provides some assurance about the standards of institutional governance. All expect HEIs within their jurisdictions to meet defined standards in relation to governance, audit, risk, and associated issues, and although the results of the various review processes are not made public, there is enough confidence in current governance arrangements for all the funding bodies to be taking steps to reduce the accountability burden on institutions. For example, in introducing the idea of a 'single conversation', Hefce³⁰ is explicit that their aim "has been to reduce the burden of regulation on institutions by placing greater reliance on their own systems of management and governance", and whilst noting that governance needs to be enhanced still further, the existence of generally sound systems of governance has been a precondition for the adoption of the 'single conversation' approach. This move towards a reduction of the regulatory burden may be threatened by the consequences of recent governance problems at London Metropolitan University, whereby an institution already deemed to be 'at risk' under Hefce procedures failed to supply accurate student retention (and therefore financial) data, thus leading to a potential loss of confidence in one aspect of existing auditing arrangements.
- 46 Other efforts to enhance governance in the HE sector have been: the establishment of the Leadership Foundation for Higher Education with support from all four UK higher education funding bodies; various initiatives to enhance governor training and development (the Leadership Foundation runs a national governor development programme³¹); the expansion of guidance for governors and clerks; and associated developmental activities.
- 47 More recently, the Leadership Foundation for Higher Education³² and CUC commissioned the Office of Public Management³³ to survey the current state of governance in HEIs. The results are included in a major report on governing body effectiveness in higher education³⁴ and the findings confirmed the general health of much current higher education governance, which enabled OPM to conclude that the results broadly suggest that the quality of governance within the higher education sector compares favourably with that in local government and the health sectors (who have also used a version of the same survey), and strengthen the argument that the sector is internally perceived to be well governed. This is at least in part due to the generally robust administrative arrangements in place to support governing bodies, which are - arguably - more developed in higher education than other publicly funded

³⁰ Hefce, (2007), *Accountability for Higher Education Institutions*, Hefce 2007/11, at

www.hefce.ac.uk/pubs

³¹ See www.lfhe.ac.uk/governance

³² See www.lfhe.ac.uk

³³ See www.opm.co.uk

³⁴ Schofield A, (2009), *Appendix B in What is an Effective and High Performing Governing Body in UK Higher Education?*, the Leadership Foundation for Higher Education at www.lfhe.ac.uk/governance

sectors. Shattock³⁵ describes the growth of such approaches and the role played by the clerk/secretary to the governing body, and more recently Llewellyn³⁶ has undertaken a study confirming the importance to effective governance of the triadic relationship between the governing body chair, head of institution, and clerk/secretary to the governing body.

- 48 Based on this work, more activity is planned in 2009-10 by the Leadership Foundation for Higher Education and CUC, particularly in the areas of developing a framework to review the effectiveness of governing bodies and how their performance can be measured, work to support individual governor review (including 360° appraisal); 'top team' facilitation; and the production of further briefing materials. Some of these initiatives are likely to have implications for FE.
- 49 These developments in enhancing UK higher education have been matched by similar activities internationally, most notably in the USA, Australia, the Netherlands, and parts of Eastern Europe. A full account of these developments is not appropriate here³⁷, but at least one issue in the literature is relevant to FE. In a major study of governance in public sector universities in the USA (many of which cross UK boundaries between HE and FE), Kezar³⁸ has addressed the issue of board effectiveness in the specific context of the increasing politicisation of governance through the intervention of state legislatures. Indeed at its worst Kezar notes that "because of sunshine laws, public board meetings are largely ceremonial occasions in many states".
- 50 This means that any assessment of effective governance in such settings needs to take account of the crucial requirement of governing bodies to ensure effective external relationships, because of the distinctive element within US public education, which recognises that boards are not "independent decision making units" but part of broader local government arrangements. Here the study found that boards with large numbers of externally appointed or elected members (some with political affiliations) were likely to be different from those where appointment remained within the control of the institution. In the former, issues of consensus building, the use of data, the development of constructive relationships and the degree of influence on the issues that appeared on the governing body agenda were thought to be more difficult. In English FE, where most governing body appointments remain in the hands of the institution, the same sorts of problems might not be expected under current instruments and articles, but the move to greater local authority involvement has given rise to some concerns from governors and clerks during the consultation for this review, that a similar politicisation might occur in some FE colleges under the machinery of governance changes.

Contact Details:

³⁵ Shattock M, (2006), *op cit*

³⁶ Llewellyn D, (2009), *op cit*

³⁷ See Appendix B of Schofield A, (2009) for more details *op cit*

³⁸ Kezar A, (2006), *Rethinking Public Higher Education Governing Boards Performance, The Journal of Higher Education Vol 77 No 6*

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