

Equality and Diversity within Governance and the role of the Clerk in embedding and promoting E&D within the work of Governance Committees

1 Introduction

Following the introduction of the Single Equality Act 2010, College governing bodies can be held directly responsible for the actions of their employees and agents of the institution. The onus is on the governing body and thus the clerk to governors to evidence that 'all reasonable steps' were taken to prevent discrimination, harassment or victimisation.

The act prevents service users and employees from discrimination and harassment based on 9 'protected characteristics':

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

In addition to the 9 legally defined characteristics, there are a number of groups of vulnerable individuals which it is highlighted as good practice to consider during decision making. These include:

- Socio-economic
- Ex-offenders
- Gypsy, Roma and Traveller learners
- Learners for whom English is an additional language

The view echoed throughout the sector is that the introduction of the act is reflected in the removal by Ofsted of Equality and Diversity as a limiting grade at inspection. The act should ensure that equality and diversity is given due consideration as part of all college activities, services and becomes part of its culture.

Evidence of this due consideration should be demonstrable throughout governance activity. Clerks can support this by ensuring that all papers and agenda items receive appropriate E & D scrutiny either by the committee itself or by the clerk during preparation for the meeting. Due consideration should be clearly evidenced in any judgments or decisions reached.

2. Executive Summary

Scope and Objectives

A focus group held at Warwickshire College, on 27th March 2014 and chaired by Joyce Black, Current serving chair of governors, Regent College, Leicester and Head of life skills, NIACE, also in attendance Paul Murphy, Landex Research Officer and 3 serving Clerks to the Corporation Governors, with significant experience in posts with clerk responsibilities both in local government and Further Education. The focus group conducted a professional discussion structured around the 'Landex audit' questions to draw out current good practice and consider the clerk's role in relation to equality and diversity within governance.

Findings and Recommendations

The focus group recognised the Equality Act 2010 as formalising several areas of good practice that colleges can use to embed equality and diversity into governing body practices and activities.

The relevant parts of the Clerks role included:

- Accessibility was recognised as critical to successful governance activities: in particular in the preparation of meetings, papers and their distribution, in responding to requests for information from governing bodies, and in clerks' availability to provide information to a broad range of stakeholders.
- Monitoring governance activities to ensure there is an accurate record of governance activity to aid planning and upskilling relevant to the role e.g. legislative knowledge and ability to interpret data.
- Keeping accurate records of the business interests, skills and knowledge of each member, to aid search committees and by benchmarking against external data to ensure appropriate membership.
- Supporting students to participate in governance, including advising the student election process and ensuring learners have a voice at governor meetings by ensuring attendance at meetings is actively supported.
- Providing management and support to enable governing bodies to continually develop and succession plan strategically to ensure they attract and maintain sufficiently diverse representation and an appropriate balance of skills, experience and knowledge.

2.1 Clerk's role in servicing Board meetings

It is important for clerks to consider the language used in board papers. All language should be interpretable by lay people and all acronyms and abbreviations explained to promote the continuing improvement of board members' knowledge.

The production of coherent well-ordered board papers, circulated in a timely manner, are critical in supporting committees in an advisory capacity, and allowing committees and the board to consider issues appropriately and in sufficient depth to make clear and evidenced decisions.

The clerks' understanding of the contents of papers is crucial to the role of supporting the chair and utilising any training specific to new legislation.

The focus group discussed the role that equality and diversity has on the production and issuing of papers and arrangements for governance meetings including:

The significance of security when issuing papers.

- Several online sources were discussed, clerks agreed on the importance of checking the online security of the method or service their institution adopts for the dissemination of papers.

Limitations of using only electronic distribution.

- A number of governors either live in rural areas with limited internet access or express a strong preference toward paper based meeting papers. Clerks agreed it was important to ensure that governors were well briefed prior to commencing their role if the college has taken a particular line on the provision of hard copies. The location of governors should, it was felt, be considered on an individual basis with an adequate process in place for the clerk or their office to ensure that all members receive all papers in advance to allow adequate preparation for meetings.
- This issue should be addressed by the Instrument and Articles of Government of a College (Instrument 12(2)), ensuring the College can work efficiently and effectively with the governors it has recruited, accommodating a range of levels of technical competence and preference.
- The Law on this matter is covered by Schedule 4 of the Further & Higher Education Act 1992, amended by the Education Act 2011, where the requirement to circulate hard copies of the notice and agenda has been removed.
- Marginalisation should also be considered in terms of the Equality Act 2010 – would any particular form of delivery disadvantage any governor whose circumstances are covered by a protected characteristic – i.e. some sight-impaired governors might prefer electronic delivery to allow for altering the font size.

Monitoring Governance participation.

Clerks should monitor governor activity on an ongoing basis. The focus group agreed this should include:

- The attendance of all members at board and sub-committee meetings to ensure appropriate diversity of representation.
- An unintended consequence of non-attendance may result in a loss of breadth of skill and expertise – this can prove a barrier where specific governors have particular experience or expertise of protected characteristics, or local knowledge of communities represented by the college, which are critical when considering the impact of governance decisions.
- The sessions missed by governors and the impact this may have on the consideration given to any specific agenda items.

Logging attendance at meetings, and the types of training support received by governors to ensure that governors are equipped for the role. This should allow any gaps to be refreshed or built upon, in particular where significant changes in legislation occur that could impact on the roles and responsibilities of either governing bodies or individual governors.

2.2 Recruitment.

The focus group agreed a clerk should keep an active record of all members of the board. This should include all enquiries and applications to join the board, and provide a record of the make-up of individuals highlighting protected characteristics where provided. The aim being to ensure the board is representative of the communities that it serves.

It is considered good practice for clerks to analyse the information held on governors to aid succession planning and inform active recruitment from under-represented groups to ensure that an appropriate range of skills and experience are brought to the Board.

The focus group identified the following issues in profiling and succession planning:

- A natural caution around the appropriateness of targeted recruitment based on protected characteristics; the consensus was that this is best addressed through a number of methods including strategic relationship management with partner organisations who represent the colleges stakeholders; careful placement of marketing / advertising; keeping on record all enquiries not matching the criteria to help address any evidenced bias when an appropriate vacancy becomes available.
- The use of initial terms to allow the relationship to develop to a stage where both parties may make an accurate decision based on commitment and competencies required.
- A well maintained Governors' register of business interests should provide an evidence base for succession planning and recruitment. Aiding the search committee in identifying gaps in expertise, identifying any overlapping, and similar skills of existing board members.

A Clerks' main challenge in ensuring representation is the gathering and maintenance of accurate data identifying the communities the college actively serves and the make-up of these communities, in particular when residential students are involved due to the potential for significantly wider catchments.

It is recognised as good practice to benchmark college catchment areas to census data to develop actions for addressing the boards' diversity based on demographic and protected characteristics.

Concern was raised on the current freedoms to reduce the minimum numbers required for a functioning board i.e. a switch to a Carver model leading to a loss of rigour in the consideration at committee stage of issues such as equality and diversity.

2.3 Student Governors

The inclusion of at least 1 student governor, as required in the instruments and articles, was seen as a valuable and critical part of ensuring governance acts in the best interests of the college.

The focus group agreed good practice in supporting the student nomination process could include:

- Appropriate advertising for the role produced and widely available,
- Providing significant information on the role, both to ensure those who were up for nomination were suitably briefed and prepared to play an active and productive role in bringing the student voice.
- Clerks being available and accessible to meet students wishing to apply for the role at an early stage.
- Access to board meetings is a critical issue with different approaches including safe transport to and from board meetings held out of office hours, web links to enable participation by students on placement or away from college sites – where permitted by the Instrument and Articles of Government.

2.4 Leadership and Governance

Clerks should ensure the governing body maintains and assures cross college standards in all areas including equality and diversity. This can be achieved through direct celebration by governors as figure heads, championing good practice from the colleges work around equality and diversity.

There should be opportunities via committees, and if necessary the board, to assure that the college is providing and maintaining resources of sufficient quality, which increase the equality of opportunity, raise awareness of and celebrate diversity.

The learner voice survey was identified as a powerful source of direct feedback, and the ability to analyse responses via protected characteristics can provide strong evidence on the colleges areas of strength and those requiring improvement.

The active monitoring of student issues is one in which the clerk can play an informal role, if enabled by the institution and role specific circumstances e.g. based on campus, links to the students' union, presence in communal areas or regular communication with student reps e.g. course reps. These can all improve the feedback channels and enable a responsive clerk to bring to the appropriate group's attention issues currently affecting the student body.

Clerks must however be sensitive to effective and efficient operational processes, which may already be in place. If the operational process is outside of their remit and is ineffective, a Clerk has responsibility for pointing that out under to the Board under its statutory responsibilities for oversight of the College's activities (Article 3(1) (a)).

2.5 Governor Training

Individual governors have varying levels of knowledge and experience of the FE sector. Training is a vital part of raising awareness of the key topics affecting a colleges' performance. Training in the interpretation of data that they are likely to be presented with, alongside up to date legislative information, can support governors in carrying out their roles to have maximum impact.

The focus group noted that governor involvement in assuring quality and quality improvement work, including validating of observations and college evaluations was a critical factor in assuring a successful Ofsted outcome.

In particular skills audit reviews, and as previously noted, monitoring of engagement and diversity of governing boards will enable a clerk to support the board in receiving the most appropriate training; thus filling the skills gaps to enable a harmonious board that is able to challenge with rigour and respond appropriately in line with college stakeholders' needs and requirements.

The focus group believed a boards ability to reflectively measure its current skills profile against the colleges strategic aims, is a real asset in future proofing the work of a board and ensuring the highest level of support for the college and senior management team.

Appendix 1 - Background

A focus group held at Warwickshire College, facilitated by Joyce Black, attended by Clerks to the Corporation from:

Abingdon & Witney College, a merged General Further Education College with a land based Campus (Common Leys Farm Campus) total college student numbers - Full-time: 2050 and Part-time: 5028

Myerscough College, a large specialist land based college in Lancashire, total college student numbers - Full-time: 2,306, Part-time: 783

Warwickshire College, a merged General Further Education College with two land based Campus (Moreton Morrell and Pershore) total college student numbers: 5,000 full-time, 12,000 part-time

Research aims and objectives.

The focus group was run as part of the wider Equality, Diversity and Innovation Fund of which Landex and Warwickshire College are currently leading development work on an EDI Audit tool to support Land based providers. The focus group utilised the audit tool developed by Landex and examined objectives including:

Legislative / Statutory Responsibilities

E & D / search committees,

Corporate values and aims,

Disseminating the values and strategic messages,

College profiling.

Clerk's functions in relation to E & D related to the board, chair, principal / chief executive

Appendix 2 - Landex Audit Document Questions discussed by the Focus Group

Is training in equality and diversity effective? Do leaders, managers, governors or supervisory bodies (where appropriate) understand their roles and responsibilities in relation to equality and diversity? How does the clerk's role engage and develop this understanding?

Do the college's recruitment policies have easily accessible, well publicised information on how to avoid discrimination and harassment for all involved?

Are governors confident that all learners have a voice, including for example, those of disabled or gay and lesbian learners, women on male-dominated courses and learners from black, asian and minority ethnic backgrounds?

How does the organisation's staff profile match the learner profile in relation to gender, race and disability? Is there any horizontal or vertical segregation? are there low levels of unknown returns?

Have governors explored strategies to ensure the recruitment of senior staff from the widest possible recruitment pool?

Have governors agreed strategies to address equality imbalance in the workforce? Are these working? Have targets been identified against which progress can be tracked?

Have governors completed a confidential (and perhaps anonymous) survey to determine the profile of the current governing body in relation to gender, age, race, disability, sexual orientation and religion?

Does the organisation keep information on a confidential database about the profile of governor applications and expressions of interest and appointment in relation to E&D?

Does the governing body reflect a diverse membership that matches the staff and learner profile?