

# **A Review of Governance of the Universities in Wales**

Gillian Camm - December 2019

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## **Executive Summary**

The main objective of this review of governance was:

***‘to enable governors to operate at the leading edge of good corporate governance both in terms of compliance and crucially boardroom culture.’***

This review has:

- looked at governance failures across a variety of sectors to identify what happened and why
- examined governance codes from different sectors to understand emerging themes
- looked to academic literature to appreciate important learning points
- carried out a series of interviews with individuals both inside and outside of Welsh Higher Education

Recommendations regarding complex issues such as culture and board effectiveness are difficult to frame beyond straightforward considerations to do with board size.

Contained within this review are 21 recommendations. Some require collective consideration; others will have relevance to some governing bodies more than others. There can never be a tick list of recommendations on complex matters such as governance; the recommendations in this report need to form part of a governance change agenda across Wales.

There is a growing impatience with the sector at UK level, and recent governance issues have fuelled the desire to see change. It is important that the HE sector in Wales acknowledges past failings, takes action and ensures that it can be held to account for the quality of its governance.

This report recommends that there should be a public document from the sector to this effect. In essence, there needs to be a Charter for Change. The Charter should contain ‘commitments’ regarding changes in governance and the delivery of these commitments should be audited and reported on. The universities in Wales need to take this leadership role and take it now.

## Review into Governance within Welsh Higher Education Institutions (HEIs)

### **Section 1: Introduction**

In July 2019 Universities Wales and Chairs of Universities Wales commissioned a review of the governance of Welsh universities. In August 2019 a Review Group was established, drawn from representatives of Chairs, Vice Chancellors and governors together with representatives from the clerks/secretaries of Welsh universities. In addition, the group included representatives from the trades' unions and the National Union of Students Wales. David Blaney, Chief Executive of HEFCW, was also in attendance. The background for the review was described as follows:

***'The drivers for the review are the new and more complex landscape for higher education following changes to fees and funding in recent years and the resultant increases in pressures on governance which have in turn led to a number of recent instances in Welsh universities where governors have struggled to deal optimally with particular issues.'***

The terms of reference for the review were to include:

- 1) the composition of the governing body
- 2) the process and quality of decision making
- 3) the relationship between the executive and the governing body
- 4) the remuneration of chairs and governors

The outcome from the review would be guidance designed to:

***'enable governors to operate at the leading edge of good corporate governance both in terms of compliance and crucially boardroom culture.'***

The terms of reference for the review and the membership of the Review Group can be found in Appendix A of this report.

It was anticipated that the Committee of Universities Chairs (CUC) review of the Higher Education Governance Code would have been completed by the end of October and that the work from the Welsh review may have formed an appendix to this main UK wide review of governance. The revisions to the CUC Code will not now be completed until 2020. The Review Group decided that it would not be appropriate to wait until this work was completed but neither was it appropriate at this stage to develop a separate code for Wales.

During the review process two meetings were held with the Review Group to discuss the initial findings (9<sup>th</sup> October and 12<sup>th</sup> November). The following principles were agreed at these meetings:

- that there was a need to acknowledge that governance in Welsh universities had not been as effective as it could have been;
- that in order to achieve a position on governance that could be described as 'leading edge' some of the ways forward may need to go beyond the initial headings in the terms of reference;
- that there was a requirement for a collective response from the sector in Wales;
- that individual universities should examine what the content of the review might mean for their institution;

- that rather than the guidance simply being received by the universities, the work should be regarded as the stimulus for a transformation plan for governance in Welsh Higher Education;
- that the transformation plan should be jointly owned by Chairs and Vice Chancellors across the whole sector and that key stakeholders, staff, students, NUS Wales and the trades unions should continue to play a role in its delivery.

This paper goes on to describe the methodology used in the review followed by the summarised feedback from the field work.

In the appendices there is a summary of some of the inputs to the work of the review, specifically:

- A summary of the background documentation each institution provided as background information. (Appendix B)
- A review of a series of governance failures from a variety of sectors (Appendix C)
- A review of a number of Codes from various sectors (Appendix D)
- Additional Reading on governance and board effectiveness (Appendix E)

## ***Section 2: Methodology***

2.i) The methodology for this review covered four main activities:

- a substantial piece of field work
- a review of governance issues in a variety of sectors including Higher Education Institutions (HEIs) (Appendix C)
- a review of the codes of governance from a variety of sectors. (Appendix D)

2.ii) Field work

The field work included visiting the eight universities in Wales (the Open University was not included in the scope). For each university there was a meeting with the Chair, Vice Chancellor and Secretary/Clerk who were spoken to on an individual basis. There were a series of stakeholder meetings that included:

- Students – NUS Wales and either current or incoming sabbatical officers.
- HEFCW Chair (David Allen) and Chief Executive (David Blaney), plus two meetings with the Council.
- Members of universities' governing bodies including lay governors, staff governors and co-opted governors and Pro Vice Chancellors.
- Trades union representatives.
- CUC Secretary (John Rushforth).
- Advance HE (Andy Shenstone and Gary Reed).
- Universities Wales Director (Amanda Wilkinson).
- Office for Students CEO (Nicola Dandridge).

The meetings were conducted using a semi-structured interview format that broadly followed the initial terms of reference for the review.

The results from the field work are summarised in the next section of this report but additional feedback has also been integrated into subsequent sections of the report.

### **Section 3: Feedback from the Field Work**

The interviews and meetings at universities took place during August and September 2019. The purpose of the field work was to establish themes and more general issues relating to governance within Welsh HEIs and to use these as a basis for developing guidance for the Review Group. The guidance could then be used to drive governance improvement within Welsh HEIs. The work was not intended to be a board effectiveness review of each institution, nor was it intended as an in-depth investigation into governance failings in those institutions where there had been issues. Each organisation provided a comprehensive list of documents as background information and a list of these documents has been provided in Appendix B.

Nearly everyone who was interviewed was candid, helpful and eager to learn how things could be developed going forward. Individuals from institutions where there had been issues were particularly reflective. There was a desire to move forward and not be defined by the past but there were clearly some important lessons to be learnt. It was made clear to participants that information gathered would not be attributable and indeed a number of the observations reflect past practice rather than the current position. Bearing in mind these caveats some of the key themes emerging are highlighted below:

#### **3i) Tone from the Top**

The relationship between the Chair and the Vice Chancellor is a critical component in establishing the tone from the top.

There were examples of where the relationship between the two individuals was supportive and effective. Governors talked highly of Chairs who were putting in a substantial amount of time and effort and of Vice Chancellors who were taking the boardroom seriously and supporting governors to become more effective in their role. Students felt that their ability to be effective in governance was hugely dependent on the VC, senior executives and Chairs taking time to support them and to listen first-hand to their concerns.

Many of the difficulties referred to below arose in previous regimes; nevertheless it will be important to ensure that the likelihood of these situations emerging again is minimised.

There had been some significant relationship issues between Chairs and Vice Chancellors, where Chairs had become involved in activities that went beyond their remit, perhaps due to a lack of confidence in the Vice Chancellor or possibly as a result of not fully understanding the scope of the role. Conversely there had been occasions where both the Chair and the governing body as a whole were unsighted on significant issues in a manner that was inappropriate. There were instances where governors were presented with strategies late in the day and then placed under pressure to sign them off, or alternatively strategies were progressed between meetings and governors felt bypassed as the strategies were implemented. Relationships were variously described as too close, where the other members felt excluded from governance or alternatively as hostile and dysfunctional. Students too had felt marginalised and unsupported in these situations. In these circumstances the role of the secretary/clerk to the board is critical and a number of these had played a key role in resolving these situations.

#### **3ii) Governor/Executive Relationships**

Governors talked with enthusiasm about occasions where they felt they had time to consider issues in appropriate depth either in a subcommittee or a short-life working group. Executive members were appreciative of governors who brought rigour to decision making, introduced new contacts or brought a high level of expertise in relevant areas.

There did seem to be, in some circumstances, a degree of confusion where governors felt that involvement in strategy development would compromise their independence. Whilst that could be a danger, the option of no involvement until the strategy is fully developed, subjecting it to scrutiny and deciding then whether this was the correct direction of travel, did not seem like a helpful approach. Later in this document there is a conceptual model for a board that demonstrates that boards will face a series of 'dilemmas' where the appropriate level of functioning is 'both – and' rather than 'either-- or'. There were examples of where the non-executive/executive divide became a source of tension; in some organisations this was dealt with and resolved by discussion but in others it was a source of frustration.

### **3iii) Not Knowing What You Don't know**

There were issues regarding the information provided for governors. It was felt by some governors outside of the sector that it was difficult to understand what data should be available and it was largely up to individual VCs to decide what information should go to the governing body. In other sectors such as compulsory education, governors are able to consult a comprehensive website that lays out the types of information that would typically be available and gives guidance as to how best to interrogate this data.

<https://www.gov.uk/government/publications/understanding-your-data-a-guide-for-school-governors-and-academy-trustees/understanding-your-data-a-guide-for-school-governors-and-academy-trustees>

There is information for governing body members on the HEFCW website but it is limited and dated. At present there are links to the CUC information including the Getting to Grips Guides most of which appear to be nearly 10 years old. There is a governors' tool kit from 2017 which provides comparative information between universities in Wales but does not allow comparison to relevant HEIs outside of Wales, specifically those with a comparable mission, size and location.

There was frustration on the part of some Vice Chancellors that quite long-serving governors did not appear to have a grasp of some of the basic issues such as Quality Related (QR) funding. Some governors felt they had been fed a diet of good news and had not been given a comprehensive picture about the performance of the university, such that when a significantly negative one emerged, governors were genuinely shocked. In other cases where there were concerns there was anxiety about the implications of raising the issues, for fear of damaging the university.

### **3iv) Creating a Challenging Environment**

The level of challenge varied from governing body to governing body; there were improvements in some organisations since leadership changes had occurred and the university appeared to be in a more positive place.

Some governors had struggled to engage with issues at appropriately strategic level, only being able to engage with the detail. There was a real feeling that the ability to have a view on the 'core' academic business of the university was not easy and indeed potentially a view that this was not the role of the governing body in any event. Once again there were other institutions where this did not appear to be an issue.

It was also felt that it was difficult to say anything during the meeting of the governing body due to the number of people being present and indeed feeling input was not welcome either.

The roles of the Chair and VC are critical in creating a challenge environment in the boardroom. There was widespread frustration that where there had been governance

issues; these were well known by the staff but somehow had not been picked up within the boardroom. In some situations, it was felt that it would be better not to raise concerns as this could have had an effect on the reputation of the university. There were some examples too however where individuals had raised concerns even though there was a considerable cost to themselves.

Agendas were often heavily compliance-focussed and there was insufficient time or space for strategic issues. There was a mismatch between the regulatory calendar and that of governing bodies resulting in recourse to Chair's action more often than both Chairs and Vice Chancellors felt comfortable. The Fee and Access Plan process felt particularly labour-intensive.

For some there was a feeling that governors were unpaid volunteers and it was therefore unreasonable and disproportionate to subject them to a structured recruitment process or to be appraised or indeed to have their attendance monitored. Others were keen to get feedback on their contribution and, in some instances, this was already the case.

### ***Section Conclusions***

The purpose of this section of the report is to give a flavour of the issues that are either currently around in Welsh HEIs or that existed in the recent past. It is important to note that a number of the issues are on the way to being resolved and many can be found in HEIs outside of Wales and indeed are common challenges to governance systems of all descriptions.

Before moving on from this section it is useful to draw on a summary of findings from the report in Appendix C of this report which looks at a series of governance failings from a variety of sectors. It is interesting to note that all of these aspects emerged as issues for HEIs in Wales.

#### **Governance Failure lessons From A Variety of Sectors**

- Hubris of key individuals in leadership roles usually the CEO
- Disengaged, unchallenging or uninformed non-executives
- Leaders not hearing the truth
- Lack of effective clarity between the role of CEO and Chair
- Unbalanced board skill - a lack of skill in the core business and recent financial experience
- Lack of relevant information and comparative data
- Inadequate response to and management of change
- Inadequate risk management
- Lack of effective engagements with stakeholders
- Ineffective management of whistle blowers

In Appendix D of the report there is a review of a number of governance codes, again from a variety of sectors and drawn from the learning that emerged from governance failures similar to those outlined above. There are some common characteristics of these codes and these have been summarised below:

### **Common Characteristics from Governance Codes**

- Emphasis on strategic leadership and the board's role in establishing organisation purpose, vision and strategy
- Accountability to the board to shape, monitor and model culture and behaviours
- Diversity of the board
- Evaluation and appraisal of the board and board members
- Transparency and openness
- Importance of challenge
- Strategy and risk management

The next section of the report will outline a conceptual framework for the work of a board or governing body, and this will then be used to move to a deeper analysis of the governance issues in Welsh Universities and begin to set out the basis for a way forward.

## Section 4: The Work of the Board – a Conceptual Framework

### 4i) Unitary Board

In any guidance that is given regarding governance or board effectiveness it is essential that there is a shared view regarding what the board is there to achieve and how it will achieve it. Underpinning corporate boards in the UK is the concept of the unitary board where it is a legal requirement that all directors are equal and must accept the same responsibilities and liabilities for the performance of the enterprise. This means that both non-executives and executives have the same accountability in law even though how they discharge their roles will be very different. Listed company boards (firms whose shares are listed on the stock exchange for public trading) will have a number of executive directors and non-executive directors but there will be a majority of independent directors; this tends to serve as a cap both to the total number of directors and the number of executive directors on the board. Non-executives take a lead in challenging the organisation's strategy. There will be a clear separation in the roles of Chair and the Chief Executive Officer (CEO).

Charitable Boards comprise wholly non-executive or trustee members; the chief executive may however be in attendance. This form of governance has come under criticism recently as it is felt that such boards lack appropriate first-hand financial input and that strategy is better formulated by executives and non-executives working together.

*Wilkinson, H. (2016). Charity chief executives should be on the board of trustees. Retrieved 24 November 2019, from <https://www.theguardian.com/voluntary-sector-network/2016/apr/19/charity-chief-executives-board-trustees>*

All of the governing bodies in HEIs in Wales have the Vice Chancellor as a full board member and a number have other executives as board members also. Whilst there are other ways of conceptualising boards (for example the supervisory board found commonly in Europe) the Review Group confirmed there was no desire to change the concept of a unitary board for HEI boards in Wales. The concept of a unitary board will underpin the recommendations found later in this report. It has important implications for the membership of the governing body and the way in which it operates.

### 4ii) Higher Education v Corporate Boards – a Key Difference

One of the key differences between a corporate board and an HEI governing body relates to how they are held to account.

The presence of non-executive directors on corporate boards grew out of what was known as the agency issue i.e. the separation of ownership from management.

A key paper by *Berle and Means (1932)* looked at the decreasing control shareholders had over the management of their assets. Ownership had become divorced from management and had also become more dispersed as the result of multiple shareholders.

*Berle, A. A., & Gardiner, C. (1968). Means. 1932. The modern corporation and private property, 204-5.*

Shareholders appointed directors to ensure the activities of management were more closely aligned to the interests of shareholders. After the second world war the shareholdings became more concentrated as an increasing proportion of shares became held by institutions such as UK pension funds. By 2016 individual ownership of quoted UK domiciled companies was only 12.3%.

*Sanders, C., Sanders, C., Sanders, C., & Sanders, C. (2017). Ownership of UK quoted shares - Office for National Statistics. Retrieved 17 November 2017, from*

<https://www.ons.gov.uk/economy/investmentspensionsandtrusts/bulletins/ownershipofukquotedshares/20>

This has resulted in institutional investors having the increased ability to shape the governance arrangements of boards and hold directors to account. Trade associations, lobby groups and consultancies such as the Association of British Insurers and the consultancy PIRC (Pensions and Investment Research Consultancy) can have a significant influence on the behaviour of corporations and their approach to governance. PIRC describe themselves as being dedicated to helping their clients effectively 'exercise their shareholder rights and mitigate governance risk in their portfolios.' The ABI investors services body carries out a similar function.

<https://www.ivis.co.uk/media/5929/ABI-Report-Improving-Corporate-Governance-and-Shareholder-Engagement.pdf>

<https://www.theia.org/about-us>

Shareholder institutions will not get involved in the day to day management of an organisation, but they will analyse the company's strategy and its adherence to corporate governance codes. They will then hold it to account at Annual General Meetings and through shareholder communication events. This focussed accountability does not exist within the HEI sector beyond regulation and legislation. There is an opportunity to gain insights from stakeholders to shape governance (and in some senses this is at the core of what university governance is about). A central premise of the recommendations of this report will be that stakeholders such as students, staff, communities and partners should be equipped to understand and challenge the governance of a university. The concept of a greater stakeholder engagement is now an important trend in governance.

In the corporate world until recently 'ownership' has been a key force in shaping governance. Over the last two decades or so however the role of ownership in the corporate sector has been shifting following the financial crash of 2008.

There has been much debate regarding the concept of shareholder primacy. The generally accepted view was that corporations were owned by their shareholders who ultimately have the ability to control the company. The roles of employees, directors and executives were to work together to maximise shareholder wealth. The contrary view is that companies are legal entities in and of themselves and have a responsibility to a wider set of stakeholders. The financial crash of 2008 has led to an examination of how institutional investors and others can exercise more effective and responsible stewardship of their assets, taking account of wider considerations.

This has culminated in the recent publication of the UK Stewardship Code 2020 by the Financial Reporting Council. (FRC). The introduction of the new Code makes it clear that 'Environmental, particularly climate change, and social factors, in addition to governance, have become material issues for investors to consider when making investment decisions and undertaking stewardship'

[https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code\\_Final2.pdf](https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Final2.pdf)

This sentiment is now very much part of mainstream investor culture. Larry Fink is the Chief Executive Officer (CEO) of BlackRock, an investment management company based in New York and one of the world's largest asset management companies. Every year Larry Fink writes a letter to the CEOs of corporations. In his 2018 letter he said the following:

***'Society is demanding that companies, both public and private, serve a social purpose. To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society. Companies must benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate.'***

It is interesting that corporate governance is moving more and more into the territory where the consideration of stakeholders is having increasing prominence in governance.

Professor Sir David Watson in a piece in *The Conversation* considered the issue of the ownership of universities and, reflecting on his views in at the time of the financial crash in 2008, said:

***"Nobody owns the university for ever, but we can all own it from time to time".***

<https://theconversation.com/after-the-crash-who-owns-the-british-university-in-2014-30593>

He went on to say:

***'Historically, universities have always been more comfortable fulfilling a major role within civil society than as instruments of state policy, and so it should be. All around the world, universities that align themselves too closely with state leadership have come to undermine their core values.***

Welsh universities have an important role to play in the culture, wealth and skills base of their local communities; they are often looking to be leaders in sustainability and the core mission centres on the development of knowledge and skills. The developments in governance sit well with the values and missions of Welsh universities which, as well as their contribution globally and nationally, have their roots in the communities that surround them, their staff and most importantly their students.

In an article for the Leadership Foundation for Higher Education (March 2009) Sir David defined governance as follows:

***The means by which strategy is set and monitored, the executive held to account, risks are managed, stewardship and trustee responsibilities are discharged'***

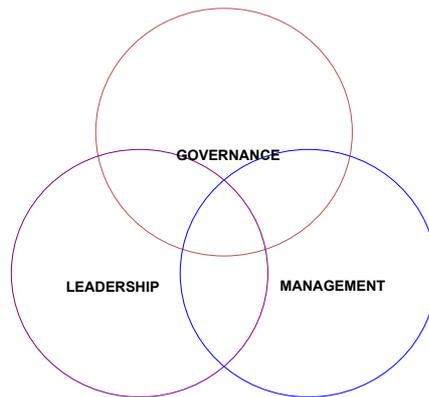
Watson went on to state:

***'One of the key aspects of governance is 'stewardship' of the institution as a whole, within a framework set by the institution's foundation and on-going legal and /or constitutional status. This will also include ultimate responsibility for strategic***

***direction. Governance is thus also about setting the conditions for, and holding to account, the leaders of the organisation.'***

Watson went on to describe the other two elements as leadership, which is to do with the performance of the institution, and management, which is the operational side of things, i.e. doing the right things and doing them well. If governance is about stewardship, then leadership is about stretch, and management is about institutional strength.

Sir David Watson



In the same article in 2009 Watson reflected on life after the banking crash of 2008; he described governance of universities as part of a long haul and that he could see stewardship making a comeback. He goes on to state:

***'It would be deeply ironic if university boards began to operate like banks and just as banks decide to operate like universities'***

## **Section Conclusions**

There has always been a degree of anxiety about the application of a business model of governance in HE. Universities are however at one level large and complex enterprises, employing thousands of people, raising finance and developing and maintaining large estates both in the UK and sometimes internationally. However, there are significant shifts in governance across the world where longer-term stewardship perspectives are encouraged, and account is taken of the views of a variety of stakeholders. This does not mean however that the complex governance architecture of universities is fit for purpose and lends itself easily to an environment where the two competing goals of performance and compliance need to be combined in the workings of one governing body.

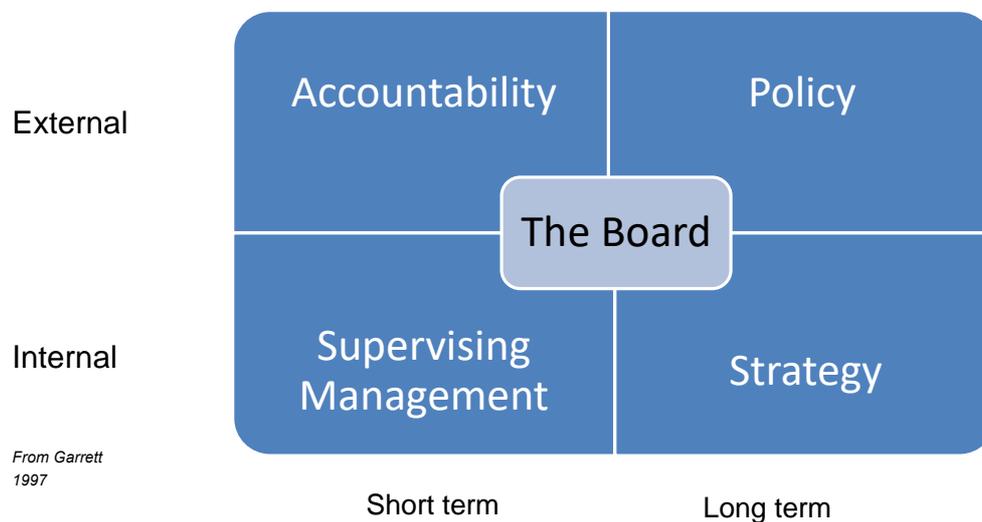
The next section of this report attempts to lift the lid of governance and understand at a deeper level what needs to happen in order to achieve this.

## Section 5: The Boardroom Governance Cycle – Getting Under the Bonnet of Governance

In this section the concept of ‘The Learning Board’ (Garrett 2010) will be used as a basis for analysing further some of the governance issues that have emerged during this review but also as the basis for future recommendations.

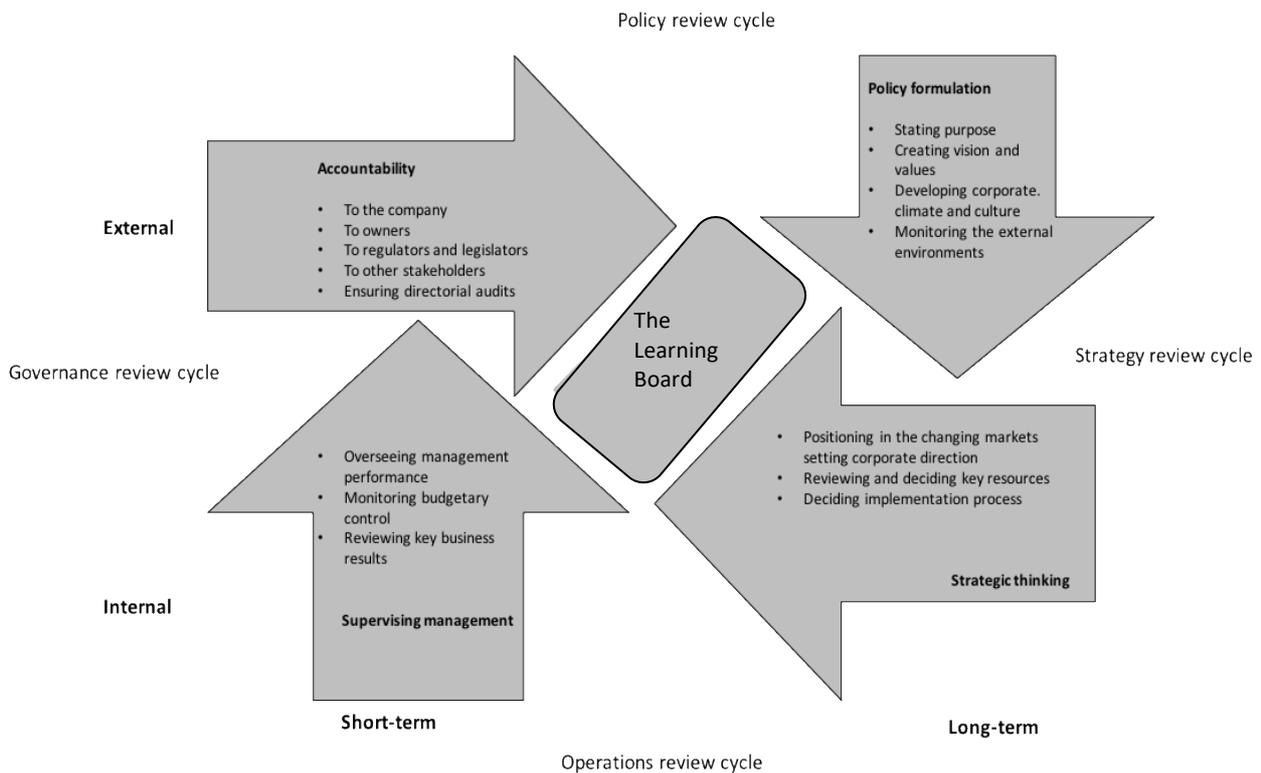
Garratt, B. (2010). *The fish rots from the head - The crisis in our boardrooms: developing the crucial skills of the competent director*. Profile Books.

### The Learning Board



Garrett proposes a framework for the role of the board that is best illustrated by the diagram above. Each of the quadrants sits on a spectrum – on the y axis this is driven by an internal to external continuum and on the x axis this is driven by short-term to long-term. The two left hand quadrants (accountability and supervising management) relate to the conformance aspect of the role of the board and the two right hand quadrants relate to its performance role. The work of the board will cycle around all four of the quadrants at any particular time, but it is the policy quadrant that sets the ultimate context and that drives the work of the board.

Garrett has further developed this framework to look at the cycle of a board’s activities.



## The Policy Quadrant

The work of the board begins at the top right-hand quadrant. Garrett has called this 'policy'; it is essentially the strategic environment in which the board finds itself. It is imperative that time is spent getting a shared view on the policy formulation context.

There is evidence that this is where some governance issues begin. Governance commentator Paul Greatrix highlighted the importance of the whole board having a shared clarity regarding the external environment. In his article for WonkHE (July 2019) he talked about the need to penetrate the black box of governance particularly in uncertain times.

***'Getting governance right remains a critical issue for universities and is particularly important in a period of significant Challenge and regulatory turbulence'***

Paul Greatrix – Wonkhe 8/07/19

Greatrix talked about the lack of exposure within universities to governance with a capital G; he reflects on a Leadership Foundation for Higher Education report (a precursor to Advance HE) where the difference between the preoccupations of university leaders contrasted sharply with that of governors.

***'common challenges facing university leaders were described as financial sustainability, student recruitment and the volatile policy environment. Governors placed little if any emphasis on several of the key issues identified in recent studies of the higher education sector in the UK and internationally. For example, there was little mention of ethics, sustainable development, offshore campuses, transnational education or diversity-related challenges.'***

In the absence of this shared view, all other activities of the governing body will lack the context against which to form a view of the appropriateness of the strategic direction. It is in this area where the Chair has a critical responsibility to ensure that the governing body has a full understanding of this environment, from which it can look to articulate the purpose of the university and consider its vision and values. This activity would generally be carried out by

the whole board. There was within Welsh HEIs some recent evidence that this strategic policy formulation activity was not as developed as it should be.

Governing bodies need to be able to articulate for their institution:

- its purpose (with precision)
- the vision and values that guide its actions
- its culture

and demonstrate how everything from its strategies to its senior staff remuneration policies align with these.

It is in this quadrant that the governing body works to articulate the nature of its relationships with its key stakeholders, for example its students, its staff and its communities.

The Welsh universities, whilst competing for students, do not find themselves in as marketised an environment as those in England. Regulation in England is premised on the student as a consumer; it will be helpful to articulate the conception of students within the Welsh HEI system. Its relationship with the academic community may also require refining.

Governing bodies in Wales have had to deal with major shifts in funding, competition for students and major shifts in public and political support. Clarity in this quadrant is essential. Their strategies, governance, leadership models and cultures need to be developed in a way that allows them to navigate this turbulence.

### **The Strategy Quadrant**

The bottom right hand quadrant is about delivery of the organisations purpose, where specific strategies are generated in response to the issues identified above. In most cases this will be driven by the executive but with the non-executives testing the thinking and robustness of the strategies being put forward.

There needs to be scope for people below the governing body to be consulted even though the final decision belongs with the governing body. The strategy development process needs to be designed in such a way that inputs can be gathered from the academic community, employees, students and external stakeholders. These can then be synthesised into the strategic plans of the organisation. A number of the strategies in Welsh HEIs in the past were launched with limited input from stakeholders such as the academic community, students, staff or external stakeholders. This area of strategy is where the VC and the executive are the driving force for its creation.

Some governors have felt that it is not their role to engage with the strategic thinking but simply to scrutinise and either accept or reject the strategic proposal being put forward. The rationale for this was that their involvement would somehow compromise their independence. Conversely other governors had enjoyed being part of a shared endeavour especially those with relevant skill sets. Clearly care needs to be taken that governing body members do not become too executive but having early input into the direction of strategic travel can be very powerful. Whilst Chairs have accountability for facilitating the work in the policy quadrant, it is the VC who should take the primary role in facilitating contribution around strategy. In summary, the Chair manages the governing body and the VC manages the organisation.

### **The Supervising Management Quadrant**

The bottom left hand quadrant, supervising management, is again one where the VC should have more of a lead role, as it is the VC who is managing the executive. However, it is essential the governing body is able to have sufficient information to form a judgement as to

the effectiveness of management. It was surprising to hear of a governing body that had routinely been meeting without management accounts. There is a real issue as to how oversight is being exercised on academic matters with governors feeling unclear about how they would engage on these issues.

There were some institutions that had a suite of key performance indicators (KPIs) but governors seemed less clear in some instances about whether change programmes involving large investments had actually been delivered or not or whether there had been post-programme benefit reviews.

### **The Accountability Quadrant**

This quadrant explores the issue of the board's accountability to regulators and other stakeholders. As has already been discussed the broadening of the accountability from purely financial return into environmental, societal and governance issues in corporate boards is already shifting behaviours and reporting in these corporate settings. These shifts are meaning the boards are thinking more broadly about their accountabilities to a variety of stakeholders and regulators are having to think through how they regulate organisations to ensure these shifts can be measured. In a recent speech Rachel Fletcher CEO of Ofwat (the economic regulator for the water industry) described the desire to move water companies to what she described as 'social purpose organisations' and the challenges this presents for regulation. This is independent of ownership structure as there is a wide range of structures within the industry from PLCs, through to privately owned and the mutual Dŵr Cymru. In the speech she covers how regulators can move from economic regulation to the regulation of social purpose organisations.

<https://www.ofwat.gov.uk/wp-content/uploads/2019/10/RF-Beesley-Lecture-16-October-2019.pdf>

This broader social purpose should be core territory for universities, especially for universities in Wales where there are strong connections to local communities and where a thriving university will bring a much greater breadth of environmental, social and governance (ESG) benefits.

Following the 2015 Education Act HEFCW's role was clarified as a regulator. Its main regulatory tool is the Fee and Access Plan. Any institution that wishes for its full-time undergraduate courses to be automatically designated for student support is required to submit a Fee and Access Plan to HEFCW. If that plan is accepted the institution will be permitted to charge up to the maximum fee limit of £9k, and students studying those courses at that institution will be able to receive student support up to that amount.

The Fee and Access Plan process is an intensive process for universities and currently there is a misalignment between the regulatory calendar and that of the university. The governing body has particular responsibility for the Fee and Access Plan. This misalignment means that governing bodies are having to utilise Chair's action more often than they would wish to. HEFCW are aware of this and steps are being taken to resolve the situation in conjunction with institutions. HEFCW's focus is essentially finance and compliance focussed and whilst the organisation has a view on the governance strength of individual institutions its ability to take action is complicated. In other sectors attempts are being made to develop indices or certification that will provide a quantitative way of assessing issues such as social purpose and the strength of the organisation's approach to Environmental, Social and Governance issues (ESG). An example of an approach is the BCorp Movement.

<https://bcorporation.uk>

This approach could be helpful in providing quantitative guidance to governing bodies as to the strength of their governance and the extent to which the needs of wider stakeholders are being met. This type of approach would also make it clear to governing bodies where to take action to improve.

### ***The Four Directorial Dilemmas***

Garrett describes the work of the board balancing the requirements of conformance and performance as the four directorial dilemmas (adapted for a university context):

- The governing body must simultaneously be entrepreneurial and drive the university forward whilst keeping prudent control.
- The governing body is required to be sufficiently knowledgeable about the workings of the university to be answerable for its actions and yet to stand back from the day to day management and retain an objective long-term view.
- The governing body must be sensitive to the pressures of short-term local issues and yet be informed of the broader trends and competition, often of an international nature.
- The governing body is expected to be focussed on the commercial needs of the university whilst acting responsibly towards its employees, business partners and society as a whole.

In addition to the 4 directorial dilemmas it is probably worth spending some time looking at how the business of the board is conducted.

*Chait et al (2011)* described three different types of board modes of operation.

Chait, R. P., Ryan, W. P., & Taylor, B. E. (2011). *Governance as leadership: Reframing the work of non-profit boards*. John Wiley & Sons.

Type I – the fiduciary mode where boards are concerned primarily with the stewardship of tangible assets

Type II -the strategic mode where boards create a strategic partnership with management

Type III – where boards provide a less recognised but more strategic source of leadership for the organisation.

Whilst this study took place in not-for-profit organisations there are some important conclusions for HEI governing bodies. *Chait et al* were not necessarily saying that one form of governance was better than the other but that the three modes all had their place. The issue for HEIs and indeed other boards is that the truly generative thinking comes early in the boardroom process and that the opportunity to influence generative work declines over time. This is the place where nothing is ruled in or out. Governing body members are, due to the structures and processes of governing, more likely to be involved in the later stages of governing where they are required to react to strategies and oversee the implementation of plans. In Garrett's terms the structure and process of HEI governing bodies means that they are more comfortable operating in the lower half of the quadrants, whereas described by

Chait et al '**plans and strategies arrive in spiral bound reports and Power Point presentations**'. However, it is in these quadrants where the VC and the executive would have a more leading role.

A recent article in WonkHE ( 20/05/19) (*Cluer et al*) stated that the emerging sentiments from the WonkHE 360 research indicated many of the respondents felt that governance was no longer fit for purpose with the arrangements designed for a different age. There was also a feeling that decision making processes were slow and unwieldy.

The governance arrangements of universities are generally oriented toward Chait's Type 1 mode of functioning i.e.

- having a focus on the stewardship of tangible assets
- parliamentary and orderly in its deliberations
- having a more limited communication with stakeholders

For governing bodies to be able to provide more strategic leadership there needs to be more time spent in more flexible and less-structured settings – i.e. Type II and Type III governance.

### **Conclusions from this section**

Organisations from whatever sector are coming under pressure to be clear about their purpose, mission, values and culture and to articulate how their strategies will deliver not simply against their financial goals but against broader goals characterised as social purpose.

Universities in Wales have had a turbulent time over the last few years. There has been a crisis in confidence and competence with staff feeling that when things go wrong, they pay the price. This is even more galling when staff have often seen the issues emerging on the ground, sometimes well before the board. External bodies become increasingly frustrated at institutions appearing to have some often serious governance issues.

At the centre of Garrett's model is the concept of the 'learning board'. It is important in turbulent times that boards learn from a governance crisis in a mature and reflective way. In the review of learning from the Mid Staffs hospital (see Appendix C) it was important that individuals felt able to reflect honestly and learn; part of this included seeing all relevant information and not just the 'rosy' picture that had been presented to date. For governing bodies to be able to work on strategic issues in a generative fashion, the issues will need to be brought to it early. Governing bodies will need a level of maturity to operate in this way and often, as Garrett says, when things go wrong it is tempting to 'pull the plant up and examine its roots'. Operating in a non-executive capacity in a complex environment such as a university may require significant support to become effective.

Garrett, in his follow-on book on governance (*Stop The Rot 2017*), stated that his book was a provocation and "designed to encourage deep reconsideration of the international development of "corporate governance".

Garratt, B. (2017). *Stop the Rot: Reframing Governance for Directors and Politicians*. Routledge.

He talked about how there has been a failure on the part of the governance system to balance two crucial roles simultaneously, i.e. that of thoughtful direction-giving and prudent control of organisations. He talked about the need to recreate trust in the leaders of

organisations; he believed that there are two parts to this:- firstly, showing contrition at the increasingly out-of-touch governance values and secondly, a willingness for leaders to demonstrate publicly their competence in governing. He went on to talk about building human values into governing; the problem with human values is that it is difficult to legislate for, as the recipients of the governance are the only ones to know whether things are changing or not.

For Garrett the cornerstones of good governance have been built around the three values of Accountability, Probity and Transparency. In this report these values are helpful but additional values have been added in, specifically:

- Competence
- Challenge
- Trust
- Engagement

This report will move on to develop a series of recommendations for consideration by the universities in Wales built around these seven core values.

## **Section 6: Next Steps**

There have been a number of governance issues in Wales that have undoubtedly shaken confidence in the sector.

There is a sense that issues have not been dealt with quickly enough and that there is a need for governance to 'catch up' with the demands of operating successfully in today's more turbulent landscape.

The Review Group considered what the next steps should be, upon receipt of this report's recommendations. In light of the delayed publication of the updated CUC Code the recommendations could have been used as a basis for constructing a Governance Code for Wales. At this stage this proposition was rejected, as it was felt more important that Welsh Universities consider the recommendations, agree a way forward either on a sector or individual institution basis and to take action now.

Many of the governance issues in Wales relate to leadership, culture and behaviour. This is no real place for regulators and legislators. The recommendations in this report have been constructed around the latest thinking and developments on governance and as such are likely to be reflected into the CUC Code in any event. In order to give a clear commitment for action it is proposed that a collective Wales Governance Charter is agreed that outlines a series of commitments for change in governance, including commitments to timescales. There would in addition be a commitment to use some form of auditing process to confirm to stakeholders that action had been taken.

Reassuring stakeholders that the governance issues are being resolved is a leadership issue. It is one where action is required sooner rather than later.

## Section 7: Governance Values – a Basis for a Charter

### 7.1: The First Governance Value is TRUST

Lack of trust in governance is an issue for a large number of sectors, and the reviews of governance failings in Appendix C highlight the huge damage these failings can do to individuals and to the reputation and standing of the institutions themselves. The first step to regaining confidence is a public acknowledgement that governance has been inadequate and taking action to put things right. This is an important starting point in regaining the trust of students, staff and other stakeholders.

#### Recommendation 1

The Chairs of Universities Wales (ChUW) and Universities Wales should consider acknowledging that governance within Wales is in need of improvement. This should be accompanied by a Charter or a series of commitments specifying where the sector is proposing to take action either collectively or individually, together with timescales for implementation. There should be an audit of the implementation of the Charter after the first year.

### 7.2: The Second Governance Value is ACCOUNTABILITY

#### a) Organisation, Purpose, Vision and Values

It can be seen from the preceding sections of this report and the Appendices that much of good governance comes from an organisation's clarity of purpose and accountability. Within the corporate sector simply being in existence to make profits is no longer regarded as sufficient. Access to investment is increasingly dependent upon being able to describe the organisation's purpose in terms of a broader societal contribution that take account of the needs of stakeholders other than just owners. Universities have always been organisations with a broader societal purpose however there has clearly been a failure on the part of universities across the UK, not just in Wales, to communicate this effectively. Boards whether in the corporate, health, charitable or educational sectors need to provide leadership in respect of the purpose of the organisation, its culture and its values. They need to be able to demonstrate this alignment to stakeholders. The university sector is no different.

This year's report from WonkeHE 360 summed up the issue as follows:

***“Whether fairly or unfairly, there is evidence of a strong degree of scepticism about leadership and governance in the higher education sector. Where leaders and boards of governors are dealing with sceptical and disengaged staff, it may be time to review relationships between senior managers and staff, the visibility and accessibility of governance systems, and the extent to which leaders are perceived to manifest the values of the institution in the way they carry out their roles.”***

Governing bodies need to satisfy themselves that they have a high-quality articulation of the vision, mission, vision and values of their institution and that it is regularly tested with all stakeholders. Taking a stakeholder approach includes identifying and keeping under review who stakeholders are and why, identifying which stakeholders need to be engaged with directly and reporting on stakeholder engagement that has taken place.

## **Recommendation 2**

ChUW and Universities Wales should consider adopting a stakeholder approach to governance. This should include sharing and testing organisation's vision, values, strategy and culture together with the principal risks facing the institution. Progress against plans should also be communicated. Feedback from stakeholder engagement should be relayed to the governing body.

### **b) Composition of the Governing Body**

#### *bi) Size of the governing body*

There has been extensive research on the size and compositions of boards – it is not proposed to rehearse this here but there is general acceptance that smaller boards are more effective.

It is apparent, from those who were interviewed and from an examination of board effectiveness reviews from institutions, that a number of universities have looked or are looking to reduce the size of their governing bodies. The CUC code recommends a governing body to be in a size range between 15-25 members but in addition says there is no optimal size and that its total memberships will be dependent on the nature and history of the HEI concerned. The potential size of governing bodies in Wales ranges from 18 to 28 and the actual number of members in post from 17 to 26.

For some governing bodies there are a variety of individuals in attendance; these include members of the executive, the Chancellor, etc. This can result in meetings having a very large number of attendees, and there is a concern that this can result in a diffusion of responsibility and make the generative discussion around strategy difficult and unwieldy. The presence of executive members on the governing body will be covered below but in a unitary board with clear governance responsibilities the presence of 'ceremonial' and representational roles (where there will be a clear conflict of interest) is not recommended.

## **Recommendation 3**

The size of governing bodies should ideally be kept below 22 members. Attendance at meetings and membership of governing bodies should not be encouraged for individuals who do not have a formal governance role nor a role reporting and presenting to the governing body. It is not appropriate to have representational roles on governing bodies.

#### *bii) Executive Members of Governing Bodies*

There was discussion with interviewees about the appropriateness of Pro Vice Chancellors and other members of the executive as governors. There was concern amongst some of those interviewed that having members of the executive as members would mean that the work of the governing body becomes more collective in nature and would dilute the ability of independent governors to challenge. The governing body is underpinned by the concept of the unitary board which means that all members have a shared accountability for the decisions of the board, albeit that they may have differing roles, i.e. executive and non-executive. The appointment of other executives as governors besides the Vice Chancellor means that the collective ownership of strategies is broadened, and non-executives can more easily form judgements regarding the capacity and strength of the leadership team. In

extremis the extent to which the governing body is being led solely by the views of the Vice Chancellor can also be tested.

Executive membership of the governing body is therefore supported however an independent lay majority must still be a requirement.

#### **Recommendation 4**

Universities' governing bodies should be free to consider executives for membership of the governing body, providing an independent majority is still in place.

#### *biii) Staff and Student Membership on Governing Bodies*

Staff and student members of governing bodies make an important contribution and efforts need to be made to increase the effectiveness of their contribution alongside the contribution of all other members (see 'competence' later in this report). Both students and staff who were interviewed showed they understood the collective nature of governing body decision making. They appreciated that whilst they would bring differing perspectives to the governing body their roles were not representational. Ideally staff and student members should not be excluded from any aspects of decision-making including remuneration committees. CUC guidance is that members should not be unreasonably excluded.

Students were supported to a large extent by the chief executive of the Student's Union, and there was a suggestion that this individual should also attend governing body meetings. (This is not supported for two reasons:- firstly it results in another 'attende' at the meeting, and secondly that accountability rests firmly with individuals in the governing body.)

Students did appreciate the comprehensive support they received in some universities and in particular regular meetings with the Chair and the Vice Chancellor. This was reported as not always having been the case and some students reported that under previous regimes colleagues had been marginalised and almost ignored at the governing body. This does not appear to be happening now.

It is really important that the presence of students or staff members on governing bodies is not regarded as sufficient engagement with these particular stakeholder groups. This will be returned to later under 'engagement'

#### **Recommendation 5**

The important contribution made by staff and students needs to be encouraged and developed. However, presence on the governing body relates to governing the institution and as such there needs to be substantive engagement with these groups outside of the boardroom

#### *biv) Independence*

Lay governors are regarded as independent on appointment, and this independence is regarded as time limited with individuals normally only being able to serve two four-year terms or three three-year terms. This is appropriate. There are however other aspects that may compromise independence; for example, it is not appropriate to be carrying out a paid consultancy in business related in some way to the university whilst a governor. There may

be interlocking directorships that cause issues. The corporate sector has recently broadened its definitions of independence and it is recommended that work is undertaken to establish a higher bar for independence than exists at present. These restrictions should be made public and information provided which demonstrates that each independent member is regarded as such.

#### **Recommendation 6**

The definition of independence should be developed beyond periods of appointment as governors. Information should be provided in the annual report which demonstrates that each lay member is regarded as independent.

#### **Recommendation 7**

There should be a majority of lay members and these individuals should be appointed by a clear and transparent appointments process. Roles should be advertised, and a transparent selection process adopted. A skills matrix and the need to create a balanced governing body should form part of the consideration.

#### **Recommendation 8**

The role of Chair has been demonstrated to be absolutely pivotal for a governing body to be effective. It carries a huge responsibility for the governance effectiveness of the institution. Individuals should not be appointed to the role unless they can demonstrate proven effectiveness in the skills required for the role and that they have the personal qualities required. There should be a transparent recruitment process, including external independent input.

The tenure of the chair should include time as a member of the governing body, any exceptions to this should be strictly time limited and extensions should be no longer than one year.

### **c) Committee Structure**

#### *ci) Strategic Planning and Implementation*

Nearly all of the universities concerned had some significant investments as part of their strategic plans. Some of these plans were being monitored against a set of key performance indicators – monitoring performance where it happened tended to take place within finance committees. It may be helpful for the progress of large change programmes to be overseen by a separate committee charged with ensuring that whilst finance committees/governing bodies give the go ahead for the expenditure against a business case, there is a separate committee charged with ensuring these programmes are sufficiently monitored in terms of benefit realisation, and are appropriately structured, have the right governance and are designed to bring about holistic organisation change as opposed to simply being on time and on budget. Major programmes in HE can have a focus on physical changes such as buildings rather than behavioural change, or role changes that may be required to deliver the required benefits. In strategic terms major changes are usually oriented to realising opportunities, growing income, reducing costs, reducing risks or ensuring regulatory

compliance; there needs to be clarity about the benefit that will be delivered. Governing bodies need to have an overarching view of all change initiatives and assess their collective impact, ensuring that the strategy is actually being delivered.

### **Recommendation 9**

Governing bodies should consider whether there is sufficient ongoing scrutiny of large-scale multidisciplinary programmes in terms of benefit realisation, post-project reviews, etc.

#### *cii) Remuneration*

Remuneration has been a contentious issue within the HEI sector particularly in relation to Vice Chancellors' remuneration. The CUC has issued separate guidance on this issue.

CUC – The higher Education Senior Staff Remuneration Code 2018  
<https://www.universitychairs.ac.uk/wp-content/uploads/2018/06/HE-Remuneration-Code.pdf>

HEFCW has also laid down the degree of disclosure required regarding these arrangements and that is contained within the following documents

[https://www.hefcw.ac.uk/documents/publications/circulars/circulars\\_2018/W18%2019HE%20Accounts%20Direction%20to%20Higher%20Education%20Institutions%20for%202017-18.pdf](https://www.hefcw.ac.uk/documents/publications/circulars/circulars_2018/W18%2019HE%20Accounts%20Direction%20to%20Higher%20Education%20Institutions%20for%202017-18.pdf)

Whilst this level of disclosure is appropriate and in general terms the CUC guidance to remuneration committees has been a step forward, remuneration at all levels gives important signals to the organisation about values and priorities and to that extent it is proposed that the remit of remuneration committees should be strengthened.

### **Recommendation 10**

- Remuneration committees should comment on the alignment of Senior Staff remuneration in the context of the university's values and strategic goals.
- The committee should have oversight and understanding of the remuneration and terms and conditions for the staff generally within the university, and their alignment with those for staff as a whole.
- Where a bonus scheme is in existence, the structure of that scheme should be contained within the Annual Report including details of the bonus measures and the triggers for on target and above target payments.
- The remuneration committee should ensure that any additional payment is fully justified and calculated against the objectives set.

### ciii) Nominations Committee

There is a helpful CUC Practice Note (no.7) outlining the role of the Nominations Committee, The note contains the following:

***The Nominations Committee will usually have a general role in the oversight of succession planning – not just of governing body members but in the assurance that effective plans are in place to manage succession for key roles.***

This activity takes place within the HR committee in some institutions but wherever it takes place the contract renewal/retirement of the VC has been a difficult topic in some institutions. Given the lack of a set retirement date or conversely a VC can be on a fixed-term contract, a planned approach is sensible from the point of view of both the VC and the institution. The nominations committee should ensure that it is able to do the following:

- has contingency plans for sudden unforeseen departures
- has medium term plans for the orderly replacement of current governing body members and senior members of the executive team, and ensure there is an open discussion with those concerned such that all parties can make plans.
- undertakes long term planning, considering the shape and nature of the university and the governing body in the light of the strategy and the requirements this may have for the shape of both and the skill sets required.

Through the nominations committee the governing body needs to be able to manage the process surrounding the tenure of the VC and the Chair. The committee should ensure that the governing body has had exposure to key individuals who may be important from a succession point of view.

#### **Recommendation 11**

The nominations committee should take a proactive approach to ensuring succession to the governing body and for ensuring that the governing body has had exposure to the level below the current senior management team.

Individuals such as the VC or the Chair should not be present when their tenure is under discussion.

### Diversity

Governing body leadership is essential in creating a diverse organisation.

#### **Recommendation 12**

The governing body has a central role in respect of diversity and HR committees where they exist can provide support and focus. The nominations committee should be able to articulate the strategy in respect of diversity, the steps that are being taken to achieve diversity and the success of these strategies. These should form part of the nominations committee report in the Annual Report.

It may however be appropriate at a UK level to consider a more overt approach to diversity particularly in respect of the boardroom and senior positions along the lines of the Hampton Alexander Review for FTSE 350 companies

#### **d) Audit, Risk and Control**

The original terms of reference did not specifically include audit, risk or control issues and as such the field work carried out was not focussed specifically on these areas. Nevertheless, in the course of the fieldwork discussions and as a result of reviewing some of the documentation including Annual Reviews/Reports and risk registers, it appears that there are aspects of audit, risk and control that may require specific attention.

There was a general sense that the internal audit function may not be as well developed as it could be, and when tested with those interviewed this proposition was either accepted or the function had recently been subject to review and new arrangements had been put in place.

The following are areas where further focus may be required:

- the extent to which an internal audit charter had been developed – regarding the definition of the Head of Internal Audit’s relationship to the governing body and defining the scope of internal audit, specifically the relationship of risk management to internal audit.
- Given some of the strategic issues that had been encountered, there has to be a question as to the relationship between the audit plan and the university’s risk register. There are separate questions as to the quality of some of the risk registers.
- given some of the governance issues that have emerged there is the potential for internal audit to assess and make recommendations in respect of the processes for:
  - making strategic and operational decisions
  - overseeing risk management and control
  - promoting ethics and values within the organisation
  - ensuring effective organisational performance management and accountability
  - communicating risk and control information to appropriate areas of the organisation

The environment in which universities are operating is distinctly less stable than it has been in the past; universities need to have a clear view not just about the principal risks that exist but also the emerging risks. These emerging risks need to be debated and agreed by the board and a view formed about the governing body’s appetite for risk.

#### **Recommendation 13**

Institutions should consider undertaking a review of their approach to internal audit and risk management to ensure it adopts a best practice approach.

#### **e) Long term Viability Reporting**

This area was again was not formally part of the review.

Governing bodies already need to report on a going concern basis and provide reassurance on organisational sustainability (CUC Practice Note 4), However this, together with the ASSUR process, does not quite give as full a picture on organisational sustainability as the Long Term Viability Statement used in the corporate world.

In a Long Term Viability Statement directors need to take account of the organisation's current position together with the Principal and Emerging Risks; the directors should explain in the annual report how they have assessed the prospects of the company, over what period they have done so and why they consider that period to be appropriate. The directors should state whether they have a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary. Essentially boards need to look at the long-term viability of their organisation in the light of threats to income, risks associated with financing and investment strategy timelines. Clearly the issues surrounding long-term viability in the world of higher education are not the same as in a corporate shareholder environment but the principle of modelling scenarios and the inter-relationships between risks over a longer-term time horizon is important. This approach should be considered by HEFCW together with the universities in Wales.

#### **Recommendation 14**

The universities within Wales together with HEFCW should consider whether Long Term Viability Reporting would help provide additional insights for governing bodies.

### **7.3 The Third Governance Value is PROBITY**

This is an area where leadership from the top is imperative. Welsh Universities must create a culture where conflicts of interest are not just reported on but are anticipated, tracked, managed and made transparent. Governors and management teams will almost certainly be operating in an environment that is more commercial than ever before. Secretaries/Clerks and internal audit functions may require specific training in this area. What is required here is a clear unequivocal leadership from the top.

The starting point is the requirement for governing bodies to make it clear to the organisation where it stands culturally on the issues of probity, transparency and openness.

The issue of transparency goes beyond declarations of interest. For trust to be restored in some institutions there needs to be a wholesale commitment from the governing body to increase the transparency and openness of its operation.

Listed below are some websites from other organisations that may be useful when looking at this topic.

The National Audit Office gives helpful guidance on adopting a proportionate response together with some useful best practice guidance.

The Financial Conduct Authority provides advice particularly in respect of entertainment and the Charity Commission provides amongst other things a useful checklist. There is interesting guidance from the Institute for Management Development. It can be seen from the links that conflicts of interest goes far beyond simply completing a form every year.

<https://www.nao.org.uk/wp-content/uploads/2015/01/Conflicts-of-interest.pdf>

<https://www.fca.org.uk/publication/corporate/conflict-of-interests.pdf>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/636091/CC29.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/636091/CC29.pdf)

<https://www.imd.org/research-knowledge/articles/the-four-tiers-of-conflict-of-interest-faced-by-board-directors/>

The internal audit function should provide assurance to the audit committee and the governing body that policies and procedures in these areas have been adhered to. It should be made straight forward for staff to report concerns in this area.

#### **Recommendation 15**

- Governing bodies should review their processes and procedures relating to such matters as declarations of interest, management of conflicts of interest in the light of best practise from other sectors, for example financial services. A deeper understanding needs to be developed regarding the identification of conflicts and the management and recording of them
- Governing bodies should receive information on the following: adherence to conflicts of interest policies backed up by audits, comprehensive report backs on whistle blowing.
- Governing bodies should consider how to establish a governance culture of openness, transparency and trust that is led by the board.
- Governing bodies should consider how to create a 'speak up' culture where staff feel confident to challenge.

#### **7.4 The Fourth Governance Value is TRANSPARENCY**

Governance within universities generally is distinctly opaque; it is useful to compare the Annual Reports of corporates and charities with those from universities. There should be greater consistency in the reporting from universities and ideally the universities in Wales should agree a common level of disclosure. It is difficult to discern the contribution of the governing body; members' names are included in reports but with no photographs and few details regarding committees sat on, attendance levels or even the achievements of the committees throughout the year.

Staff and students are important stakeholders of the university and their ability to engage with the governance of the university is hampered by this lack of transparency. Information regarding governance is often presented in a very dry and unimaginative format. Universities have to become easier for stakeholders to engage with and comprehensive information presented in an accessible format is just the start.

It may be helpful to look at a good example of an effective and engaging Annual Report from Vodafone PLC. The governance report (page 52) gives a comprehensive understanding as to how governance actually works in the organisation.

<https://www.vodafone.com/investors/investor-information/annual-report/downloads/Vodafone-full-annual-report-2019.pdf>

Outlined below are some of the typical areas a university could report on:

## Annual Report

### Chair's Statement – Photo of Chair

#### **The Strategic Framework:**

*Who we are, why we are here and what we stand for  
Highlights of the year*

### **The Strategic Report**

#### **Photo of VC**

University on a page  
Key trends affecting the sector  
Our Strategic Proposition

*VC Review*

*Our Strategy*

*Students and research – what we have done and are going to do*

*Key trends – anticipating and reacting*

*How we will know we have been successful (KPIs)*

### **Financial Lead + Photo**

*Financial reporting*

*Sustainability – diversity, acting responsibly, environment, anti-bribery*

*Viability*

*People and culture*

*Risk management*

*Non Financial Information Statement*

Governance

*Chairs statement*

*Leadership and organisation mission*

*Division of responsibilities*

*Governing body (photos, committees, attendance, biography, tenure*

*Executive Committee*

*Induction, development and evaluation*

*Nominations and Governance Committee (photo of chair, terms of reference, committee business for the year, membership and attendance)*

*Audit and Risk Committee (as above)*

*Remuneration Committee (as above)*

*Remuneration Report*

### **Students Report**

#### **Governors Report**

- *Code compliance*
- *Company structure*

Current university reporting approaches are disparate without a clear and consistent aim or audience. In addition to improving the quality of Annual Reports universities may also consider how to improve the way in which they articulate the value they create for their stakeholders and society. through addressing global challenges and workforce and leadership skill needs and providing opportunities for individuals to fulfil their potential.

A recent report by Advance HE describes work carried out with a small sample of universities to develop this broader approach to reporting.

Let's talk value: How universities create value for students, staff and society.  
Professor Carol A Adams  
Advance HE 2018

#### **Recommendation 16**

- Universities in Wales should look to agree a common standard for an Annual Report (combined annual review and annual report). The report should be engaging and comprehensive and aimed at encouraging stakeholders to engage with the university.
- Consideration should be given to exploring how the value created by Welsh universities could be better articulated

### **7.5 The Fifth Governance Value is ENGAGEMENT**

It can be seen from the review of governance failures in all sectors that very often employees within the organisations were aware of the issues long before the board. The lack of visibility of board members was a feature of the governance issues in De Montfort University (see Appendix C). Stakeholder engagement is a key part of governance especially where there is no additional scrutiny from institutional investors.

Governing bodies need to be explicit about their purpose, their relationship with stakeholders, especially students, and the culture they are looking to create. It is important to hear first-hand from staff whether the strategic direction is supported and whether the reality of the organisation's culture is actually aligned.

Where the following does not take place already, governing bodies may want to consider vehicles such as 'town hall meetings' and 'strategy cafes' to test strategy with staff and students. Boards should look at various sources of feedback on culture: social media, employment sites such as Glass Door, the Student Room, employees' grievances, student complaints, etc. (One audit committee does indeed look at some of this data on behalf of its governing body.)

Staff surveys, including information/opinions on morale and engagement, can provide reassurance or otherwise to the governing body.

Gallup provide the ability to benchmark results against a variety of other organisations.

<https://www.gallup.com/access/239210/employee-engagement-survey.aspx>

### **Recommendation 17**

The Review Group were particularly interested in the role which culture could play in governance and indeed the latest thinking on governance is that organisational culture is a key component of organisation performance. Welsh universities may want to consider collectively or individually commissioning a review of organisational culture.

All governing bodies should consider and report on culture in their organisation at least annually.

## **7.6 The Sixth Governance Value is CHALLENGE**

In the review of governance, there was plenty of evidence that unchallenging non-executives played a significant role. Why were individuals unchallenging?

Governing body members interviewed as part of the fieldwork for this review gave a number of reasons, including lack of information to use as a basis for challenge, a feeling that perhaps things were in order and therefore did not require challenging, or that decisions had been made elsewhere and that challenge was not welcome.

There did seem to be differences in the information provided to governing bodies and as stated in earlier in the report consideration should be given to ensuring governors are made aware of the typical data sets that they should be seeing and how to interrogate them. (There are some sources of guidance on this topic, but they are relatively dated.) Detailed guidance on red light topics, e.g. internalisation, student recruitment and numbers, new campus development, commercial partnerships, subsidiary colleges, would be really helpful as a basis for improving debate and challenge.

The orchestration of debates and the level of challenge are very dependent on the role of the Chair and Vice Chancellor. It is difficult to legislate on the creation of an effective boardroom culture, but governing body members should be able to evaluate whether one has been achieved. For this reason, consideration should be given to the use of 360 degree appraisal for both the Chair and the VC where these are not already in use.

Governing body evaluations could also be a useful way of establishing the level and effectiveness of challenge particularly if they included feedback from a variety of sources on boardroom behaviour. At present there is a requirement to conduct an externally facilitated board evaluation every four years. It is recommended that this takes place more often every three years which should allow for feedback from most governing body members at least once in their tenure. Governing bodies should report on the nature of any relationship if any with the independent reviewer, for example, if they provide additional consultancy to the organisation.

Finally, governing body members said that they felt less-structured gatherings such as social events and away days gave opportunities to check out informally how other members were reacting to what they were hearing in the boardroom. They also gave useful insights into the wider executive team.

### **Recommendation 18**

- Common data sets and the availability of benchmarking and comparative information will help to provide a basis for challenge. Steps should be taken to ensure this sort of information is readily available to governing bodies.
- Chairs and VCs should consider 360 degree appraisal
- Governing body evaluations should explicitly cover boardroom behaviour and take place at least every three years. The findings and actions taken as a result of such reviews should be described in Annual Reports
- There should be relatively frequent opportunities for lay members and executives to meet in a less formal setting. Non-executive members should meet at least once a year without members of the executive.

## **7.7 The Seventh Governance Value is COMPETENCE**

### **a) Governing Body**

Becoming a member of a governing body is a serious undertaking with a complex set of accountabilities, the personal accountability is extensive. The membership of most governing bodies comprises students, independents, vice chancellors and executives – for many this may be their first governance role. Experienced independent members may have had little if any exposure to higher education.

The role of managing the induction of new governors falls to the Clerk/Secretary in most institutions. Students have the initial training supplemented by the National Union of Students (NUS) and occasionally staff representatives may receive input from the Trade Union. Typically, there will be a focus on the governance structure of the university, and there is sometimes a fairly comprehensive handbook. Accompanying this may be an opportunity to look around the university and meet staff. There is a developing suite of governance development activities under construction at AdvanceHE which take the form of workshops or seminars – generally in London but with some opportunities in Cardiff.

In addition to the above there are various learning resources on the Advance HE website such as the 'Getting to Grips Guides' and CUC Practise Notes that sit behind the CUC Code. There is some information available on the HEFCW website, but this is somewhat outdated.

Whilst this approach has been reasonably adequate there are a number of reasons to believe that the development of governors requires an overhaul.

- 1) Governors of universities face onerous and complex responsibilities when they take on such a role. The cost of governance failure is substantial both for their institutions and for the reputational equity of the individuals concerned – we owe it to both to ensure that governor competence is fit for purpose.
- 2) Governors are recruited throughout the year, they live in different locations, they are generally time poor and they have different starting points in terms of their non-executive experience and skill sets.
- 3) In order to increase the pool of potential governors available to universities we need to ensure we are able to rapidly develop the competence of individuals who may be attracted to the role and who may be put off by the lack of remuneration. Instead we

could be offering access to a rich seam of non-executive development learning resources. Demonstrable competence in a non-executive role may well prove attractive to individuals looking to develop their careers and skills for example returning to work from parental/adoption leave, changing career, moving from an executive to a non-executive role or as part of a portfolio career.

- 4) Becoming a university governor can provide really valuable experience to individuals wanting to develop a career in non-executive work and an excellent development and grounding in the role could improve its attractiveness to applicants.

It is proposed that :

- that a UK wide Governance Knowledge Hub is developed
- that this would be an online facility available to governing body members and executives, and would be constructed as broadly as possible so that it could be relevant to all universities
- that there may be the facility to have some tailored pages, for example, where the regulator was HEFCW as opposed the OFS
- that it should be designed with some overarching sections, which would then have more detailed information sat behind them
- that there would be a combination of factual information, how to guides, articles and possibly case studies

Whilst universities may have differing missions and constitutions there are some common issues that require a sound appreciation on the part of all members of governing bodies.

Outlined below is a potential site map for a Governance Hub:

## **Governance Hub Examples of Potential Sections (for illustration)**

### Good Governance

- *Accountable Governance*
- *Effective Governance*
- *Ethical Governance*

### Vision, ethos and strategy

- *Governors role in developing a strategy*
- *Strategic Choices – questions governors should ask*
- *Working with the executive*
- *Information that might be needed*
- *Where to pay particular attention (International, partnerships , subsidiary companies, associate colleges, student recruitment)*
- *Financial matters*

### Student Success and Wellbeing

- *Understanding graduate employment*
- *Key measures eg NSS, Continuation*
- *Curriculum*
- *Assessment*
- *Mental health*
- *Alcohol, drugs, social media*
- *Prevent*

### Leaders and governing boards

- *Governing boards and the executive: what to expect of each other*
- *Holding the executive to account*
- *Appraisal, development, performance management*
- *Remuneration*
- *Succession planning*

### Working with others

- *Students*
- *Engaging with staff*
- *Understanding the culture*
- *Knowing your stakeholders*
- *Your regulator and what it means for your university*

### Understanding and using data

- *Benchmarking*
- *Financial information*
- *Other important data*

As well as having its own carefully curated content the hub could potentially have links with information from UUK, CUC, regulators, HEPI, AdvanceHE etc.

The hub could also contain – specially commissioned articles, events and training. These could include contributions from current board members.

In terms of who should ‘own’ the hub the options could include:

- AdvanceHE – on behalf of the sector
- UUK
- Regulators

There would clearly be all sorts of issues regarding monetisation, up keep, content provision but it would seem imperative that governing body members in the sector have access to this sort of service.

It is interesting to note what is available in other sectors:

The NHS

<https://www.leadershipacademy.nhs.uk/resources/healthy-nhs-board/>

<https://www.leadershipacademy.nhs.uk/wp-content/uploads/2013/06/NHSLeadership-HealthyNHSBoard-2013.pdf>

Multi Academy Trusts

<https://www.nga.org.uk/Home.aspx>

#### **Recommendation 19**

There needs to be a far greater emphasis on the professional development of both governors and executives in respect of governance

#### **b) The changing role of clerks and secretaries to governing bodies.**

The discussions with governing body members and individuals holding the Secretary/Clerk role threw into sharp relief the sheer importance of this role. In the organisations where there had been significant governance issues, often the Secretary/Clerk had played a pivotal role in ensuring that good governance was restored. There were occasions where the Secretary/Clerk had found his/herself in an incredibly difficult situation having to arbitrate between powerful individuals.

There was discussion regarding reporting lines for these roles and the extent to which they had additional roles within the executive.

From the various meetings the following key themes emerged:

- The roles had to have a dual reporting line into the Chair and the VC (or another very senior executive). This would include access to both on a confidential basis.
- The role needs to be sufficiently senior in its own right to have the impact and seniority required; this should be the case even if the role reported to another senior executive.

- Consideration should be given to instituting a duty of candour (potentially for other key roles e.g. the finance director).
- The Secretary/Clerk should be present during strategic discussions and executive management meetings in order to have early warnings of potential issues
- The individuals in these posts need to have a blend of particular skills including authority, the ability to be trusted by the board and colleagues, influencing skills and courage.

Good governance is absolutely essential to HEIs and the focus is moving beyond compliance into more of a strategic partner.

<https://www.grantthornton.co.uk/insights/is-the-company-secretary-role-fit-for-the-future/>

The Secretary/Clerk to the governing body is one of the key governance professionals, a critical conduit to and from the governing body and a governance advisor to the university as a whole.

The Chartered Governance Institute 2018 Next Generation Governance Report described communication and stakeholder engagement as the key areas that would have the largest impact on governance effectiveness. They saw this a major role contribution to be made by the company secretarial role.

There is no doubt that the secretarial role can play a key part in the implementation of governance reforms including in the areas of culture.

#### **Recommendation 20**

A working group drawn from the relevant roles within institutions in Wales should consider whether the role profiles of Secretaries/Clerks (including skills and behaviour) require clarification and further development.

#### **c) Remuneration of Chairs and other governors.**

The terms of reference of the review included consideration of remuneration of chairs and other governors.

The discussions with the current members of the governing bodies in Wales overwhelmingly came down in favour of not paying governors. In some respect this is not surprising since the current cadre of governors was selected on that basis. There was more sympathy for consideration for payment for Chairs as there is an acceptance that the role is becoming increasingly more onerous. There were some governors that felt payment was appropriate; often younger ones who had a more portfolio life style, i.e. unlike those on a pension or those who were released by their organisation on full pay. For these individuals, attending meetings would mean they were unable to earn for the days they were at the university. Other governors said that if there was a conflict between a paid role and the unpaid university one, the paid one would take preference. There was a worrying sentiment that because the role was 'voluntary' that it was unreasonable to expect governors to be appraised or to take part in a formalised recruitment process. It was also felt that it was 'unfair' to be too demanding of governor's time.

More and more people are having a portfolio approach to their working lives, combining unpaid directorships with roles attracting remuneration. Search agencies report that there

may be less about remuneration and more about the reputational risk should something 'go wrong'. This could damage an individual's reputational equity such that it becomes impossible to secure roles elsewhere, regardless of any culpability the individual may have had. In addition, prospective candidates are more aware of the time, risk and regulatory burdens.

There is no doubt that the role of a university governor is far more accountable and requires a much higher level of expertise than would have been the case in the past. The demand for directors with recent financial experience is universal amongst non-executive roles and means such individuals are in short supply.

There are no easy answers to the vexed question of payment; and it is important to be clear what problem the review is seeking to solve.

- Experience from the private sector has shown that remuneration for non-executives does not automatically result in good governance.
- Payment for some roles and not others (i.e. the chair) can leave others feeling undervalued which may impact on motivation
- Would all governors be paid including student governors and staff representatives already employed by the university?

There is a likelihood that payment will increase the available pool of governors but yet it is unknown whether this would increase the pool of 'suitable' governors.

The Higher Education Policy Institute has produced a helpful paper.:

Payment for University Governors? A Discussion Paper Alison Wheaton  
HEPI Report 118 July 2019

<https://www.hepi.ac.uk/2019/07/11/hepi-asks-is-it-time-for-university-governors-to-be-paid/>

The paper reviews payment for non- executives in a series of sectors and highlights typical payment levels. These can be summarised as follows:

- **Housing Associations**

A 2015 Grant Thornton Survey of Housing associations in England found that the largest housing associations paid their board members an average of £18k a year.

- **Charities**

Payments to 16 of the UK's largest charities all paid one or more of their non-executive trustees. (2017)

**'There may be circumstances where payment may be justified' although the charity must seek Charity Commission approval to do so.'**

Charity Commission for England and Wales, Trustee, Payments and Expenses 2017 p21

- **NHS Organisations**

NHS Foundation Trust Chairs earn around £40k for 11 days a month and Foundation trust members around £13k a year for five days a month

See below links to recent roles advertised within Wales:

<https://cymru-wales.tal.net/vx/mobile-0/appcentre-3/brand-2/candidate/so/pm/1/pl/8/opp/1664-Non-executive-Director-Public-Health-Wales-NHS-Trust/en-GB>

<https://publicappointments.cabinetoffice.gov.uk/appointment/cardiff-and-vale-university-health-board-independent-member-capital-and-estates/>

- **Higher Education Sector**

There are apparently seven English universities that currently pay their chairs. These include:

- Leeds Beckett (since 2007/08;
- Northumbria (since 2011/12 for Chair and 2015 for Committee Chairs)
- Ravensbourne University London ( pre 2014/15)
- Salford (since 2014/150

There is no doubt that remuneration will increase the pool of available talent. Poor governance can occur even when board members are remunerated. Payment of governors may prove controversial in today's environment.

**Recommendation 21**

In the words of one governor – 'we all know we are heading towards paying governors but now does not seem the right time'.

## Section 8: Conclusions

**The central proposition of this review is that better engagement in governance by stakeholders including staff, students, communities and partners will improve its effectiveness. Having students and staff on governing bodies is important but it is not a substitute for a well-structured engagement plan taking place throughout the institution as a whole. This will require increased transparency and the provision of comprehensive information on strategy, culture, risk management and the workings of the governing body.**

The main objective of this review of governance was:

***'enable governors to operate at the leading edge of good corporate governance both in terms of compliance and crucially boardroom culture.'***

This review has:

- looked at governance failures across a variety of sectors to identify what happened and why.
- examined governance codes from different sectors to understand emerging themes
- looked to academic literature to appreciate important learning points
- carried out a series of interviews with individuals both inside and outside of Welsh Higher Education

Recommendations regarding complex issues such as culture and board effectiveness are difficult to frame beyond straight forward considerations to do with board size.

Contained within this review are 21 recommendations: some require collective consideration; others will have relevance to some governing bodies more than others. There can never be a tick list of recommendations on complex matters such as governance; the recommendations in this report need to inform a governance change agenda across Wales.

There is however a growing recognition at UK level of the need to change and recent governance issues have fuelled the desire to see change. It is important that the HE sector in Wales acknowledges past failings, takes action and ensures it can be held to account for the quality of its governance.

This report recommends that there should be a public document from the sector to this effect. In essence there needs to be a Charter for Change. The Charter should contain 'commitments' regarding changes in governance and that delivery of these commitments should be audited and reported on. The universities in Wales need to take this leadership role and take it now.

## Appendix A – Terms of Reference

### Review of Governance in Welsh Universities, 2019

#### 1. Background

Following initial consideration at the Universities Wales Committee (7 February 2019) and during a meeting between representatives of the Chairs of Universities Wales and the Chair and Chief Executive of HEFCW (14 February 2019), and following further informal discussions with HEFCW, during their respective meetings on 9 and 13 May 2019, the Universities Wales Committee and the Chairs of Universities Wales Committee approved proposals for the commissioning of an independent review of governance in Wales.

The principal drivers for the review are the new and more complex landscape for higher education following changes to fees and funding in recent years and the resultant increase in pressures on governance, which have in turn led to a number of recent instances in Welsh universities where governing bodies have struggled to deal optimally with particular issues.

#### 2. Purpose and scope of the review

The review provides the opportunity to emphasise the importance that Wales places on the leadership and governance of its universities and for Wales to be global leaders in these fields.

Underpinned by the Nolan Principles of public life and the CUC's Higher Education Code of Governance (2014, revised 2018) the review should critically examine the current arrangements in Wales with a view to developing guidance for governors designed to enable them to operate at the leading edge of good corporate governance, both in terms of compliance and, crucially, boardroom culture. The aim should be to provide a baseline from which further good governance practice in Wales will be built. Reference might also be made to guidance in the voluntary, health and corporate sectors. The findings of the Wales review will take the form of Supplementary Welsh Guidance to the CUC Code. (The CUC Code is currently itself under review, with the final draft of a revised version expected to be presented to CUC Plenary in October 2019. It is expected that preliminary findings from the CUC review will be available to the independent lead in order to inform the development of the Wales review.)

The review will need to take into account recent governance effectiveness reviews which a number of individual governing bodies in Wales have undertaken, as well as the regulatory environment overseen by HEFCW.

#### 3. Methodology

The review will be conducted by an independent lead, from outside Wales, with extensive experience of UK higher education. Gillian Camm, formerly Chair of the Board of Governors at the University of West of England and Chair of the Leadership Foundation, has been appointed to this role. She will be supported by a small review group drawn primarily from amongst chairs, vice-chancellors, and other governors and clerks/secretaries of Welsh universities, and observed by HEFCW. With support from the review group, the independent lead will consult a range of stakeholders individually or in focus groups.

## 4. Terms of Reference

The review will look at consistency and transparency, as well as cultural issues. It will focus around four areas:

### 1. Composition of governing body

The emphasis will be on ways of ensuring diversity, as well as an appropriate balance of skills and experience. This will include:

- Size and composition of the governing body;
- Whether it is appropriate to have pro vice-chancellors and other members of the executive on the governing body;
- Process for appointment of governors including skills and diversity analysis and matrices; and
- Length of tenure of governors, including for those who become officers such as Chair.

### 2. Process and quality of decision-making

The quality of decision-making, and not simply of the process by which decisions are made, will be reviewed. This will include:

- Induction and training of governors and the appraisal of their performance and contribution;
- Transparency of processes such as the management of declarations of interest (such as for commercial benefit);
- Testing that governing bodies are aware of the context in which universities must operate, are responsive to that context, and have sufficient capabilities to discharge responsibilities (e.g. role of governing bodies in providing quality assurance on academic matters);
- Approaches to delegated authority, including the appropriateness of requesting chair's action (on behalf of the governing body) rather than governing body sign off (for example, of responses to requests from HEFCW);
- The changing role of Clerks and Secretaries to governing bodies;
- The role of the governing body in overseeing and scrutinising wholly or partly owned subsidiaries and joint ventures whether in Wales, the UK or internationally.

### 3. Relationship of executive and governing body

The relationship between respective roles of the executive team, including the Vice-Chancellor, the Chair and governors will be reviewed, including:

- How these relationships are articulated;
- The level of accountability of the roles; and
- The boundaries between the Vice-Chancellor and chair, and how these are managed;
- Desirable behaviours and cultures in the boardroom.

### 4. Remuneration of Chairs and governors

The review will look at the benefits and disadvantages of the remuneration of chairs (and other governors). This may help universities overcome the difficulty in attracting appropriately qualified governors. The unintended consequences of such a route will be reviewed; such as governors becoming too close to the delivery of strategic objectives (and therefore creeping into executive) and the capacity for independent oversight being compromised.

## 5. Reporting

The independent lead will produce a final report including recommendations which will need to be submitted to HEFCW by the end of November 2019.

## 6. Timeframe

Following finalisation by Universities Wales and ChUW of the process, timeframe, terms of reference and membership of the review group:

July 2019	Independent lead to be appointed by the Chairs of Universities Wales and ChUW, as authorised by their respective Committees
July 2019	Funding to be agreed with HEFCW (grant to be handled by Universities Wales)
July-October 2019	Review to be conducted. (The independent lead to meet with review group, perform literature review and engage with stakeholders)
September / October 2019 (dates tbc)	Independent lead to discuss review with Chairs of Universities Wales and ChUW and present initial findings
30 November 2019	Final report to be submitted to HEFCW

15 July 2019

## Appendix B: List of Documents Provided

### Review of Governance in Welsh Universities 2019

#### Documents and information to be requested from Universities (via Clerks / Secretaries)

1. Primary Instruments of Governance: Charter and Statutes / Instrument and Articles of Association / Governance, Ordinances, Regulations
2. (Where not defined in (1)) Constitutions and Terms of Reference of Committees (including, where applicable, Remuneration, Nominations, Governance and Compliance, Audit, Risk and Assurance, Planning / Strategy, Investments, Finance and Resources, Estates, Equality, Human Resources, Redundancy, Senate / Academic Board, Senior Management / Executive)
3. Lists of current members of the Board / Council and Committees (with dates on which terms of office began)
4. Policies and procedures for the identification, selection and appointment of Officers and Board / Council members
5. Policy on remuneration of Chairs and members of Boards / Councils
6. Code of Conduct for and statements of responsibilities of Board / Council members
7. (For the Board / Council and each committee) lists of persons (and their roles within the University) who are not members of the committee but who attend meetings or parts thereof
8. Provision for the induction and ongoing training of Officers, Board / Council members and senior staff
9. Schedules of delegation from the Board / Council to other committees / Officers
10. Reports of reviews of governance effectiveness (all since 2015)
11. Policies and Codes of Practice (including, where applicable, public interest disclosure (whistleblowing), data protection, freedom of information, freedom of speech, declaration / conflict of interest, complaints, privacy, risk management, pay and remuneration, Prevent, procurement, strategic equality, corporate governance)
12. Details of any other management / executive duties carried out by the Clerk / Secretary
13. The most recent versions of the Strategic Plan, Annual Report and Financial Statements

The report by Eddie Newcomb, *Ensuring Excellence: Higher Education Governance in Wales* (July 2010), will also be provided to the independent lead.

July 2019

## Appendix C: Lessons from Governance Failures

### Governance Failures – what have we learned?

#### 1) Corporate Governance Failures

In many senses there is ‘nothing new under the sun’ in respect of governance and corporate failures

Argenti, J. (1976). *Corporate collapse*. Wiley.

Argenti carried reviews of a series of corporate collapses in the 70s including Rolls Royce. Following extensive research, he concluded that most corporate collapses could have been predicted and that there were a series of clear indicators that were effectively warnings of trouble ahead.

These included:

- An autocratic chief executive
- Non participating non executives that did not know enough about the organisation’s affairs
- A chief executive who was also the chairman
- An unbalance board in terms of skills
- A weak finance function
- Insufficient management skill below the board
- An inadequate response to change

Argenti also referred to organisations that continued to treat their staff as if ‘society had stood still since the war.’

It is depressing to see that many of the predictors outlined above were identified thirty years before the banking crisis and indeed how many applied to the world of higher education.

Global business has continued to be affected by a series of major corporate failures in recent years. Nash Riggins reviewed a series of these failures from Enron, through to Societe Generale and RBS. He discovered that in many cases there were clear signs to outsiders and even regulators that all was not well.

*Financial Director Nash Riggins 10 reasons for corporate failure Financial Director March 2019*

The fall of Enron in 2001 was investigated by the US Senate in July 2002. It was concluded that the directors were inexperienced and that the board contained many conflicts of interest. Whilst there were many issues surrounding the whole Enron debacle Riggins points out that ‘US law makers ultimately ruled that it was Enron’s ineffective board that was responsible for running America’s seventh largest public company into the ground.’

Blame was also laid at the board of Carillion. Carillion was a British multinational facilities management and construction company – the UK’s second largest building and outsourcing provider. At its height Carillion employed 43,000 across the world. According to the Parliamentary Inquiry (Work and Pension BEIS Joint Inquiry - Carillion May 2018) the UK’s Financial Reporting Council (FRC) raised concerns about Carillion’s future in 2015 while conducting a regular review of the company’s accounts. Twelve potential issues were highlighted with Carillion’s books. Banks too could see the warning signs and warned

investors to see a profit shortfall. Despite the warnings Carillion continued to be awarded huge tenders, went on to issue three profits warnings before being placed into compulsory liquidation on 15<sup>th</sup> January 2015. There were clear issues for the board and its handling of the potential future sustainability of the business.

Riggins draws the lessons learned from Enron Carillion and other corporate failures to formulate 10 most common reasons for corporate failures.

These can be summarised as follows:

- Ineffective boards
- Complexity
- Poor communication
- Risk blindness
- Unhealthy company culture
- Technological disruption
- Not enough working capital
- Information glass ceiling
- Systemic failure
- Economic distress

## **2) Charity Governance Failures**

In contrast to corporate organisations, charity trustees generally receive no payments for their services. This level of financial independence from their organisations has not seemingly ensured robust challenge and the charitable sector itself is has been the recipient of its own high-profile failures in corporate governance.

### *OXFAM*

On Friday 9 February The Times published a front-page story over claims that Oxfam had covered up an investigation that found that aid staff working in Haiti had been using sex workers. The newspaper had been leaked a confidential report from 2011 about Oxfam's investigation into allegations, which said there had been "a culture of impunity" among staff in Haiti.

The allegations surrounded the behaviour of aid workers in Haiti following the 2010 earthquake. The Times coverage culminated in the Charity Commission launching a statutory investigation into OXFAM – on the 12<sup>th</sup> February 2018. The Commission published a highly critical review of the charity in which it found that the charity had failed to heed warnings from its own staff.

Many of the recommendations centre around the culture of Oxfam. It found that there was no embedding of responsible behaviours, the workforce that was not empowered or confident enough to challenge poor behaviours nor did it have the necessary confidence in management and systems for reporting concerns. It goes on to explain that victims, whistle blowers and staff who tried to raise concerns were let down.

The following are quotes from the final report:

- ‘Trustees are collectively responsible for their charity and ultimately accountable for everything done by the charity and those representing the charity. Trustees must understand the risks to their charity and make sure those risks are properly managed; the higher the risk the greater the expectation and the more oversight is needed. In a large and complex charity it is normal for the executive to have significant decision-making authority - but the trustees must still be willing and able to hold the executive to account.’
- ‘Effective trustee boards lead by example, setting and owning the charities values, setting the standard and modelling behaviours that reflect those values, and requiring anyone representing the charity to reflect its values positively ..... There should be clear consequences for anyone whose conduct falls short of what is required regardless of how senior they are.’

#### *Kids Company*

Another high profile failure in charity governance concerned the Kids Company. Its high profile collapse was in 2015 and was the subject of an inquiry by the Public Administration and Constitutional Affairs Committee (PACAC) of the House of Commons. The PACAC published its report in February 2016

#### ***The Collapse of Kids Company: Lessons for Charity Trustees, Professional Firms, the Charity Commission and Whitehall. 1 February 2016***

There were newspaper reports at the time of the reports publication that once again there were significant warnings that about the organisation’s financial health and hubris of the Chief Executive

#### ***Financial Times 1 February 2016***

#### ***Kid’s Company Trustees ‘negligent’ and ‘ignored repeated warnings’***

The think tank New Philanthropy Capital (NPC), think tank had raised concerns about Kids Company’s funding and governance as far back as 2006. The CEO of NPC was quoted in the FT article as saying ‘*Kids Company offers the worst-case scenario of a charity relying too heavily on powerful senior figures, not managing its reserves properly and having too little data*’

The PCACC identified a series of failings / issues of particular relevance to this review specifically:

***‘Trustees should consider whether long tenures and familiarity can give rise to misplaced trust and a lack of critical challenge and whether a rolling programme of recruitment of new trustees would help the board engage with individuals across the organisation, have a breadth of understanding of its activities and a willingness to constructively challenge.’***

### 3) NHS Governance Failures

#### *Mid Staffordshire NHS Foundation Trust*

Probably one of the most shocking cases of failed governance relates to the Mid Staffordshire NHS Foundation Trust (Mid Staffs) which was subject to a public inquiry led by Robert Francis QC

#### ***Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (6 February 2016)***

The Inquiry made 290 recommendations which were grouped into six themes: openness, transparency and candour; compassionate and committed nursing, strong patient centred leadership; and accurate, useful and relevant information. A number of these have been implemented in the NHS, including the requirement that clinicians and managers work with a 'duty of candour' towards patients and relatives and the establishment of an NHS leadership . This review will look at both of these ideas in respect of university governance.

Given the breadth and depth of the issues uncovered at Mid Staffs one of the most frequently expressed sentiments was 'how on earth could this been allowed to happen?'

Robert Francis's view was there was 'A culture focussed on doing the system's business, not that of the patients.' He identified over fifty occasions where different health organisations missed opportunities to spot and act on events.

Clearly something must have gone wrong with the governance and leadership at Stafford Hospital.

#### Work of Newdick and Danbury

Newdick, C., & Danbury, C. J Med Ethics. 2013

- Value of the duty of candour
- Management culture of relentless focus on good news and denying failure
- Dept of Health's and political centre's sometimes overbearing treatment of NHS managers and boards
- Strengthen the patients voice and influence in the NHS – mechanisms are deeply inadequate

Having the potentially damaging and negative health leadership culture

#### Analysis

- Get serious about strengthening the patient voice at local level
- Implement a duty of candour with legal backing
- Support boards to prioritise quality alongside their financial and other duties
- Make sure the political centre treats NHS organisations and leaders in a mature and respectful manner.

The Francis Report and indeed the continuing work and research by Robert Francis and emanating from the original inquiry continues to have a profound effect on governance with in the NHS.

The purpose of its inclusion in this review is to highlight yet another sector where governance issues could arguably have sat at the heart of a governance scandal.

#### 4) Higher Education Governance Failures

##### *De Montfort University and others*

The HE sector has been affected by a series of governance failures and the debate regarding Vice Chancellors pay has been dominating the head-lines for nearly two years. Plymouth University faced amongst other things a breakdown in the Chair/VC relationship, and the University of Bath acted as a lightning rod for anger regarding VC remuneration. Those in Wales will be familiar with the issues that have arisen in Swansea in recent times. Reading University has reported itself to the regulators over a £121 m loan. The issues at Reading will echo some common themes across many universities: large losses from overseas ventures and falling student numbers and potential conflicts of interest surrounding key decision makers.

It is unsurprising that governance is under pressure from uncertainty over Brexit in respect of EU students, staff and research funding. This has created a perfect governance storm when combined with over optimistic student number forecasts.

The recent case of De Montfort University (DMU) once again brought university governance into the foreground. The 39-point action plan developed by the university in response to the OFS investigation highlights some of the key issues in governance in the institution.

A recent report on its governance from De Montfort University noted that there were a series of improvements required in the areas of:

- international travel
- breaches of University Financial Regulations
- management of whistle blowing allegations
- rigour and independence of some remuneration decisions
- awarding consultancy contracts to governors
- governing body appointments, terms of office and conflicts of interest

The University prepared detailed a 39-point action plan which covered where improvement was required and plans for improving governance including:

- robust governor recruitment process
- better process for identifying conflicts of interest for Governors and Executive Board members and to deal with issues arising from this
- closer working relationship between the Executive Board and the Board of Governors
- the need to document all regulatory and legal issues and a wide range of relevant policies and procedures
- revision to the Instrument and Articles of Government
- publication of Executive Board minutes
- adoption of an Ethics Code
- following the CUC code
- a series of steps to rebuild trust between staff and students

## Critical Lessons Learnt from Governance Failures

- Hubris of key individuals in leadership roles usually the CEO
- Disengaged, unchallenging or uniformed non executives
- Leaders not hearing the truth
- Lack of effective clarity between the role of CEO and Chair
- Unbalanced board skill - a lack of skill in the core business and recent financial experience
- Lack of relevant information and comparative data
- Inadequate response to and management of change
- Inadequate risk management
- Lack of effective engagements with stakeholders
- Ineffective management of whistle blowers

## Appendix D: Governance Developments and Codes

### Corporate Governance

Large publicly quoted companies in the UK are governed by the UK Corporate Governance Code (the 'Code') issued from time to time by the Financial Reporting Council (FRC) The most recent version of the Code was published in 2018 together with an updated Guide to Board Effectiveness.

<https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF>

<https://www.frc.org.uk/getattachment/61232f60-a338-471b-ba5a-bfed25219147/2018-Guidance-on-Board-Effectiveness-FINAL.PDF>

The documents reflect the key trends in governance : culture, stakeholders, remuneration, viability and succession planning.

The new Code came into force for accounting periods beginning on or after 1 January 2019 and reporting against the new Code is expected to start in 2020. Some organisations have however started to use the Code ahead of this time.

The Code centres around ensuring the success of the organisation over the long term. There is increased emphasis on stakeholders rather than shareholders that follows much debate about shareholder primacy vs the concept of the social purpose organisation (enlightened capitalism)

The regulator, the FRC, is the guardian of the Code but does not have any powers of enforcement however it has indicated that it is intending to escalate its approach to monitoring and reporting.

There are a variety of changes in the new Code but there are two in particular that will resonate with the HE Sector in its current thinking on governance: culture and stakeholder engagement.

### Culture

As a result of extensive corporate governance failures there was a crisis in confidence in the governance of the corporate world and there were some notable scandals concerning executive pay, payment of tax, and a lack of transparency regarding company structure and financial dealings.

This led the FRC to undertake an exercise in 2016 (the culture coalition project) to explore corporate culture.

Culture was defined as ' A combination of the values, attitudes and behaviours manifested by a company in its operations and relations with its stakeholders.'

The new Code and Guidance has a focus on the board's responsibilities to culture, values and the purpose of the board.

The following observations about culture:

That Boards should:

- *‘Connect purpose and strategy to culture. Establishing a company’s overall purpose is crucial; in supporting the values and driving the correct behaviours. The strategy to achieve the company’s purpose should reflect the values and culture of the company and should not be developed in isolation. The Boards should oversee both’*
- *‘Assess and measure. Boards should give careful thought to how culture is assessed and reported on. A wide range of potential indicators are available. Companies can choose and monitor those that are appropriate to the business and the outcomes they seek. Objectively assessing culture involves interpreting information sensitively to gain practical insight ‘*

## Stakeholders

The move away from shareholder primacy means that directors need to take account of other matters beside shareholder returns when making decisions, these include:

- The long- term consequences of decisions
- staff
- suppliers
- community and environment
- reputation
- balancing between stakeholders

The Code puts forward various mechanisms to ensure that there is greater engagement with the workforce, e.g.

- having a director on the board from the workforce
- a formal advisory workforce panel
- a NED designated to engage with the workforce on behalf of the board.

## Stakeholder Engagement

The Governance Institute ICSA and The Investment Association produced a joint publication ‘The Stakeholder Voice in Board Decision Making’

<https://www.icsa.org.uk/assets/files/free-guidance-notes/the-stakeholder-voice-in-Board-Decision-Making-09-2017.pdf>

This publication looks at how boards manage stakeholder engagement, for example, through employee surveys, exit interviews, feedback from customers and feedback from investors.

The Stakeholder Guidance outlines 10 principles for stakeholder engagement:

- Identifying and keeping under review who stakeholders are and why
- identifying which stakeholders need to be engaged with directly

- considering whether they need a director with experience relevant to the stakeholder – what knowledge board members need about the stakeholders
- ensuring decision-making processes take account of stakeholders
- ensuring stakeholder engagement takes place
- reporting to shareholders on stakeholder engagement that has taken place

Increasingly common now is the concept of environmental, social and governance (ESG) reporting ahead of pure financial reporting.

The term ESG was first coined in 2005 in a landmark study entitled “Who Cares Wins.”

The idea that investors who integrate corporate environmental, social and governance risks can improve returns is now rapidly spreading across capital markets on all continents. In Europe, for example, a critical mass of pension funds and insurers have started to award new business exclusively to asset managers with ESG capabilities

The remarkable rise of ESG Forbes.com  
George Kell July 2018

Integrated Reporting is having a profound impact on corporate thinking and reporting. Value is being assessed on the basis of the sources of value creation used by an organization and not through a financial lens alone. Clearly cultural change cannot be brought about by reporting alone but increasing pressure is now being brought about by investors and lobby groups to ensure boards give these areas attention. (that said Mervyn King a global corporate governance and reporting leader sees the role of finance director more in terms of Chief Value Officer.

Chief Value Officer: Accountants Can Save the Planet, Mervyn King,

ESG issues can include how corporations respond to climate change, how good they are with water management, how effective their health and safety policies are in the protection against accidents, how they manage their supply chains, how they treat their workers and whether they have a corporate culture that builds trust and fosters innovation.

## The Walker Review

The Walker Review 2009A review of Corporate Governance in UK Banks and other Financial Entities November 2009

Walker made a number of recommendations :

- Board composition and Quality – where the focus was on the induction and training of nonexecutives and increasing expectations on time commitment and clarity of those expectations
- 
- Board Dynamics – One of the key issues emerging from the review was the lack of challenge from non-executives in challenging the executive (the essential challenge step). The Review reiterated the recommendation that the NEDs should ‘ be ready

and able and encouraged to challenge proposals on strategy put forward by the executive.

- It was recommended that the chair was the key role in ensuring that the board met its governance duties
- Board evaluations should include the evaluation of committees.

There were 39 recommendations emanating from Walker with those applicable to all listed companies. These recommendations were fed into the review of UK Corporate Governance Code.

In addition the following points were also made:

- Directors should not wait for a crisis before they focus on culture.
- Boards need to demonstrate leadership – Boards have a responsibility to act when leaders do not deliver.
- Boards should be open and accountable – good governance means a focus on how this takes place throughout the company and those who act on its behalf. It should be demonstrated in the way the company conducts its business and the way it engages with stakeholders. This involves respecting a wide range of stakeholder interests.
- Embed and integrate – the values of the company need to inform the behaviours that are expected of all employees and suppliers. Human resources, internal audit, ethics and compliance and risk functions should be empowered and resources provided to embed values and assess culture effectively.

## Charity Code

A new Charity Governance Code was launched in July 2017

<https://www.charitygovernancecode.org/en/>

In recent years as with the corporate sector, public trust and confidence in charities has hit all-time lows, according to the Charity Commission. Adopting good governance practices, which enable charities to comply with the law, is central to regaining the public's trust. To help charities develop high standards of governance, a Charity Governance Code steering group, observed by the Charity Commission, updated the Charity Governance Code on 13 July 2017.

The code is comprised of seven distinct sections. While not a legal or regulatory requirement, the code outlines beneficial principles and recommended practices for good governance. As a replacement for the previous Code of Good Governance and endorsed by the Charity Commission, the Charity Governance Code outlines the high standards that all charities should aspire to and is designed to help charities and their trustees develop high standards of governance. The Code is deliberately aspirational, and some elements of the Code will be a stretch for many charities to achieve. This was intentional as the requirement was for the new Code to be a tool for continuous improvement toward the highest standards.

The Code was developed by a steering group with the help of over 200 charities, individuals and related organisations.

The Code has the following sections:

### **1. Organisational purpose**

The board is clear about the charity's aims and ensures that these are being delivered effectively and sustainably.

### **2. Leadership**

Every charity is led by an effective board that provides strategic leadership in line with the charity's aims and values.

### **3. Integrity**

The board acts with integrity, adopting values and creating a culture which help achieve the organisation's charitable purposes. The board is aware of the importance of the public's confidence and trust in charities, and trustees undertake their duties accordingly.

### **4. Decision-making, risk and control**

The board makes sure that its decision-making processes are informed, rigorous and timely and that effective delegation, control and risk assessment and management systems are set up and monitored.

### **5. Board effectiveness**

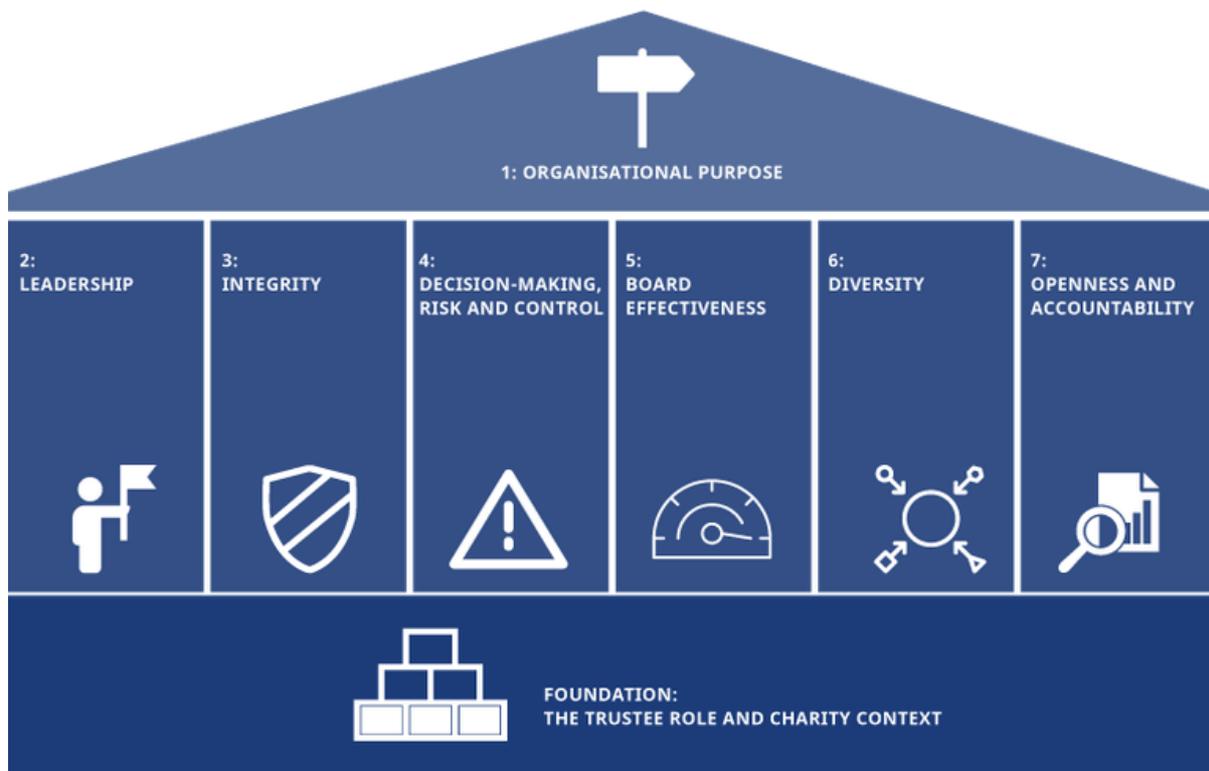
The board works as an effective team, using the appropriate balance of skills, experience, backgrounds and knowledge to make informed decisions.

### **6. Diversity**

The board's approach to diversity supports its effectiveness, leadership and decision-making.

### **7. Openness and accountability**

The board leads the organisation in being transparent and accountable. The charity is open in its work, unless there is good reason for it not to be.



In the Code – there are seven key principles. Each of the principles is accompanied by a rationale explaining why it is important, it outlines the key outcomes and there is a helpful piece on recommended practice.

Overall the Charity Code has a number of themes in common with the Corporate Governance Code.

These can be summarised as:

- To be clear about the charities purpose and its achievement
- Leadership particularly of the charities values (including the board leading by example)
- Creating an appropriate culture
- Appropriate attention to risks
- Board effectiveness reviews and that of the chair CEO and Trustees
- Diversity
- Openness and accountability

#### Higher Education Governance in the UK – The CUC Code

In the HE Sector the relevant Code has been developed by the Committee of University Chairs (The CUC Code) (revised in June 2018) and the Scottish Code of Good Governance (2017) ('the Scottish Code') (Committee of the Chairs of Scottish Higher Education Institutions)

The Council of University Chairs states that 'good governance is at the heart of the higher education (HE) sector in the UK and it will continue to be of the highest importance as it continues to develop.

The last iteration of the Code was in June 2018 (following on from the original version of the Code issued in December 2014.) The Code is currently under going a refresh and it is potentially being reissued in February 2020.

The key audience for the Code is members of the HEI governing bodies , and its purpose is to identify the key values and practices on which effective governance of UK HEIs is based, in order to deliver institutional mission and success.

By adopting the Code the governing bodies demonstrate leadership and stewardship in relation to the governance of their own institutions – this will help protect the reputation of their institutions and ideally provide a level of assurance to their stakeholders, partners, students and society more widely (quote from code)

Code needs to read alongside the governing instruments of HEIs and the relevant legal and regulatory requirements.

The Code is in a literal sense voluntary – it comprises seven primary elements of governance and it is up to each governing body to decide how best to implement each element. The Code is premised on an ‘apply or explain’ basis.

The CUC code currently covers HEIs in both Wales and England. It is currently being rewritten and it is anticipated that revised version will be released in February 2020. It will contain references to the Board’s responsibility for culture.

#### **Common Characteristics from Governance Codes**

- Emphasis on strategic leadership and the board’s role in establishing organisation purpose, vision and strategy
- Accountability to the board to shape, monitor and model culture and behaviours
- Diversity of the board
- Evaluation and appraisal of the board and board members
- Transparency and openness
- Importance of challenge
- Strategy and risk management

## Appendix E - Additional Reading

The following articles developed the thinking for this report but were not cited in the main review.

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