



Seminar on

**Governing bodies of higher education institutions:
Roles and responsibilities**

The Effectiveness of Governing Bodies

by

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Introduction

Up to a few decades ago the governing bodies of universities in most systems would have been rather shadowy groups whose precise function would not have been altogether clear to the other members of the university or to the general public. In some cases, it would have been known that these bodies played a major role in making academic appointments and, perhaps every decade or so, in the appointment of a chief officer. The roles of the various academic departmental, school and faculty structures and of academic councils/senates would have been more widely known, at least internally, as decisions at these levels had a direct bearing on the type of course taught, on curriculum issues in general and on the all-important area of examinations.

To-day there is much more attention being paid to the overall university governance structures in general and on the role of the governing body in particular. There are many reasons for this new situation, most of which emanate from the major developments that have taken place in university systems world wide; in addition, the governance of universities has been affected by the international surge in interest in corporate governance, influenced (but not initiated) by the high-profile corporate scandals of recent times (Coaldrake, Stedman, Little, 2003).

Background

During the latter half of the twentieth century, most university systems experienced an unprecedented growth in student numbers, in some cases individual institutions growing four- or five-fold in two or three decades. While government generosity to publicly-funded universities was very little in evidence, the sheer growth in student volume meant that university funding now accounted for a greater proportion of state budgets than before. In common with all state funding, a much greater

degree of accountability was now demanded of universities and the earlier “hands-off” approach as to how universities allocated their budgets no longer applied.

Much of the debate has also centred on the perceived gradual shift from the traditional collegial or shared-governance modes of decision-making to more managerial models, with stronger executive control (Coaldrake, Stedman, Little, 2003). While this debate might have a particular emphasis on aspects of university governance other than that related to governing bodies, the issue inevitably surfaced at governing body level, in a re-balancing of influence between the governing bodies and the purely internal academic structures, with the governing body in the ascendant combined with greater authority being placed in the control of the chief officer. For example, in Ireland, new university legislation in 1997, clearly placed enhanced authority in the hands of the chief officer and of the governing body, with a perceived consequential reduction in the influence of the traditional academic bodies.

A recurring theme in the debate relates to the size of the membership of the governing body. There is a perception that large bodies (say, over 25) are unwieldy and ineffective, while smaller bodies are able to debate and reach decisions in a more “business-like” manner, the implicit analogy being with the boards of directors of private companies. In Australia, consequent on a number of official reports (Dawkins, 1988; Hoare, 1995) advocating an appropriate size of 10 to 15 members, considerable pressure was placed on universities to reduce the size of their governing bodies. During the 1990s, the response to this situation was that the average size of the governing bodies reduced from 25 to 21. In the United Kingdom, similar changes have been advocated (Jarratt, 1985; Dearing, 1997; Lambert, 2003), particularly in regard to the older universities, i.e. those founded before 1992. There is a view that the larger the size of the governing body membership, the stronger the executive is; the lowering of the governing body size is seen as creating a better balance with the executive. The governing bodies of all of the post-1992 institutions have or are in the process of reducing governing body membership and the average is expected to be slightly less than 28. In contrast, in Ireland, the new legislation in 1997 gave great flexibility in terms of governing body membership (to be determined by the body itself) with provision for a number as low as 22 and a maximum of 40; in practice, most of the universities have memberships approaching 40. An OECD report (2004) advocated that governing bodies in Ireland should comprise no more than 20 members. In the United States, the membership size of university boards, both public and private, varies enormously, with a range of 10 to 40 being indicative.

Another aspect of the debate is the balance between external and internal members, the latter being defined as those other than officers, staff and students and being referred to a “lay members“. In the United States, the vast majority of board members are external. In the United Kingdom, in most cases, there is a majority of external members. Similarly, in Australia, external members account for over 60% of membership. (Coaldrake, Stedman, Little, 2003). In Ireland, the balance is close to 50:50, the OECD report (2004) referred to earlier advocating a majority of lay members.

Another division relates to gender balance. Statistical information in this regard is scarce. It is understood that, in the United Kingdom, some 80% of members are male. In Ireland, where there is a legal requirement for gender balance (i.e. each gender should comprise at least 40% of the membership), the actual number of female members is understood to be less than the required minimum.

Other features of modern development in universities relate to financial matters. Apart for the much larger budgets being managed, the nature of those budgets has also changed. Universities, very conservative in the past in regard to borrowing, now venture into this area much more frequently, a response in part to the paucity of state support particularly for new buildings. The financial arrangements often include tax-based borrowing, public-private partnerships, long-term loans and bonds and other sophisticated borrowing products. Universities have also embarked on commercial

ventures related to, for example, research and testing services, sports and other student facilities, student accommodation, continuing and adult education, teaching services abroad, etc. In many cases, these services are provided through subsidiary companies, a development which brings its own governance demands. They have also recruited large number of foreign students, who are not reckoned for state funding and thus are required to pay high level “economic fees”. All of these developments mean that the risk profile of universities has increased with a consequent need for enhanced governance.

As a consequence of this growth, universities now became not unlike medium to large-scale corporations, often being one of the largest employers in their area and having a significant economic impact on their region. Both central and local government took notice of this new situation and sought to have a greater say in how universities made decisions. One way of achieving this influence was to enhance the involvement of lay governors (as mentioned above), often either politically nominated or co-opted, as a leavening of the more traditional self-governing structures that were the previous norm. This trend is prevalent in many European countries (OECD, 2004) and, as has been pointed out in regard to the UK system (Shattock, 2002), government viewed the governing body as the “guardian of propriety” and the identification of governing bodies with this type of responsibility had an effect on the behaviour of lay governors, who saw their own significance in modern governance terms.

Mention has been made of the governance debate in the private sector. The greater size of many modern corporations and the complexity thereof have led to demand for greater accountability and more transparent governance. This move has been accentuated by the major corporate scandals of recent years (e.g. Enron, Worldcom, Tyco, etc.) and the responses of these from financial regulatory authorities and governments. For example, in the United States, where the Enron collapse was carthartic, the government’s response was to bring in a very demanding new law referred to as Sarbanes-Oxley (2002). While this law does not apply directly to universities (with the possible exception of some private institutions), it is suggested that 85% of all governing boards in the United States have discussed this new statute as it might apply to universities. (Michaelson, 2005). Whatever about its direct applicability, it is clear that it will be hugely influential in determining best-practice governance for not-for-profit organisations, including universities, in the United States and further afield. In the United Kingdom, several committees have issued guidance to the corporate sector on many aspects of governance and these have influence also in the public sector, including universities; the guidelines are now consolidated in “The Combined Code of Corporate Governance.” (2003),

In spite of all the references to and analogies with the private corporate sector, it must be pointed out that one major distinguishing characteristic of universities is the multiplicity of stakeholders. For example, in the United States, stakeholders are regarded as including higher education associations, funding organizations, the Department of Education, related congressional committees, accrediting institutions, system-level offices, governor, state departments or boards of education, state legislature, students, alumni, local community members, trustees, senior administrators, faculty leaders and president.” (Gayle, Tewaire, White, 2003). The titles may vary but most countries would have a similar list of stakeholders for their university systems.

Modern Governing Bodies

While all of the foregoing developments (and indeed many others) have contributed to the importance now attaching to modern best practice governance practices for universities, the changes (e.g. governing body membership size, re-balancing authority between governing bodies, chief officers and academic staff) have most often taken place without any great debate of the rationale for the particular change then being considered. It would seem that the ultimate objective often is to achieve change, almost any kind of change, as it is perceived that that is what that most significant stakeholder, the state or funding body, requires. Furthermore, in spite of the significant changes in many aspects of governance in recent years, there is a considerable dearth of research or independent review of the impact or effectiveness of the changes themselves or of the new-style governing bodies now operating. However, in the United Kingdom, the Committee of University Chairmen (CUC) reports that most universities have or are about to carry out an assessment of the performance of their governing bodies. In Ireland, it is noteworthy that, while there is a statutory obligation to carry out quality assessments of all departments and services (and to arrange for the publication of the results) there is no requirement for the governing body to carry out an assessment of its own effectiveness.

However, there is no shortage of guidelines to inform the new situation. For example, the CUC in the United Kingdom has published a Governance Code of Practice (November, 2004). CUC also has an on-going programme on the effectiveness of governing bodies (2000) and is now embarked on a project on establishing Key Performance Indicators for governing bodies and expects to publish the results late in 2006. In Ireland, a joint publication of the Higher Education Authority and the Conference of Heads of Irish Universities (now the Irish Universities Association) on “The Financial Governance of Irish Universities” was issued in 2001 and is currently being reviewed. Such guidelines are voluntary in nature but influential as the perceived alternative is a legally imposed set of practices.

Issues to be addressed in a review of effectiveness

At this stage, in approaching the subject of the effectiveness of modern governing bodies, the following are suggested as the type of issues that need to be addressed, in the context of the developments outlined above and in order to achieve a satisfactory assessment of current practice (the corresponding “Main Principles” from the Combined Code are set out in italics where relevant)

1. determine how to carry out the review, e.g. by sub-committee or external consultant; the independence of the review must be assured and it is not appropriate that it be carried out by the executive.
2. clarify whether the governing body is adequately informed about the functions of the university in all its diversity and, in particular, about its own role.
3. clarify whether there is proper induction of new members and whether all members are kept up-to-date in regard to information necessary for their function.

“...All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.” -

Combined Code A. 5.

4. examine the membership structure and consider whether the balance of members as between internal and lay is operating in an effective manner, and whether the membership represents all the necessary skills/experience to oversee a major complex organisation. The issue of gender balance should also be considered.

“The board should include a balance of executive and non-executive directors (and in particular independent non-executive directors) such that no individual or small group of individuals can dominate the board’s decision taking.”

Combined Code A. 3.

5. ask whether the governing body interrogates proposals brought forward by the executive and whether the decisions taken are considered ones and not simply adopted “on the nod”.
6. clarify whether the governing body is clear as to how to operate at a strategic level, whether clear choices are presented for discussion and whether the governing body contributes in a real way to the strategic plan of the university, including the determination of the mission and objectives of the institution.
7. consider whether there is an agreed understanding of the different roles of the governing body and of the executive, and whether the governing body examines the broad structure of the executive to satisfy itself that it is appropriate for the institution.

“There should be a clear division of responsibilities at the head of company between the running of the board and the executive responsibility for the running of the company’s business. No one individual should have unfettered powers of decision.”

Combined Code A. 2.

8. as regards academic matters, ask whether the governing body is adequately briefed as to as to the views of the senior academic body on the particular proposal being considered, and whether the sensitive balance between the responsibilities of the governing body for overall review (and for the budget) is handled appropriately.
9. consider how the governing body ensures that it is enabled to carry out a regular monitoring of the approved strategic plan.
10. consider how effectively new members of the governing body are selected (where this is feasible under legislation).

“There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.”

Combined Code A. 4

“All directors should be submitted for re-election at regular intervals subject to continued satisfactory performance. The board should ensure planned and progressive refreshing of the board.”

Combined Code A. 7.

11. review the servicing of meetings and ask whether all the required information is provided in a timely manner.

“The board shall be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.”

Combined Code A. 5.

12. consider how the governing body ensures that its functions in the overall financial governance of the institution is carried out, how it relates to its own audit committee and what relationship it has with the university's auditors.

“The board should present a balanced and understandable assessment of the company's position and prospects.”

“The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.”

“The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.”

Combined Code C. 1, C. 2 and C. 3.

13. ask whether the governing body is adequately informed about the commercial and non-academic activities of the university, whether these activities are appropriate and complementary to the main roles of teaching research and public-service, and whether all the risks associated with such activities are made transparent to the governing body.

14. consider the extent to which the governing body maintains contact with the many stakeholders of the university, including students, staff, local and national/international business, local and national government, funding agencies for teaching and research, benefactors, teaching hospitals, church authorities, schools, other colleges and universities, etc.

“There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.”

Combined Code D. 1.

15. ask whether the governing body is ensuring that the university is compliant with legal obligations in such areas as health and safety, taxation, employment law, procurement, estate management, charitable status, etc.
16. review the role of the secretary to the governing body, to ensure that the independence of that office is protected, irrespective of any other duties or reporting relationship the officer may have, and that the secretary is clearly seen as being in that role solely responsible to the governing body.
17. consider the functioning of the various committees that report directly to the governing body and also the contributions which individual members of the governing body make to the institution.

“The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.”

Combined Code - A. 6.

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