



**A Final Report to the CUC on:
Good Practice in Six Areas of
the Governance of Higher
Education Institutions**

1 October 2004

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The Study Team

This study was undertaken by a team commissioned by CHEMS Consulting: **John Fielden**, Director of CHEMS Consulting (project director); **Professor Robin Middlehurst** of the University of Surrey and the Leadership Foundation for Higher Education; and **Allan Schofield**, Head of the Higher Education Consultancy Group.

Acknowledgements

We are extremely grateful to all those governors and clerks who responded to our survey and provided help with further information. Our work has been supported by day to day assistance from the study project manager (Eddie Newcomb) and the guidance of the Governance Group of the CUC.

Executive Summary

1 This report is part of a programme commissioned by the Governance Group of the Committee of University Chairmen (CUC), and its terms of reference were "to provide appropriate support to the CUC Governance Group so that it can identify and promote good practice in university governance to its members, and demonstrate publicly the standards by which the sector should be governed". With the agreement of the Group this has been interpreted as requiring two steps: first, identifying good practice, and second, advising the CUC on disseminating the findings to enable all higher education institutions (HEIs) to have the opportunity to incorporate the information into their own practice.

2 The Governance Group defined six key areas where there was high priority and interest in the higher education sector in exploring current practice. These were:

- The selection, induction and support of governors.
- The involvement of governing bodies in an institution's key decision processes.
- The relationship between the governing body and the senate/academic board and the development of committee structures.
- The role of the governing body in overseeing commercial and so-called 'third leg' activities.
- How the governing body can measure the performance of an institution.
- Ways in which the effectiveness of governance can be reviewed.

3 The work was undertaken by a team of three people brought together by CHEMS Consulting, and took place during the spring and summer of 2004. It included surveys of chairs, governors and clerks/secretaries to governing bodies, as well as conversations with stakeholder bodies. The study covered the whole of the UK and included institutions that were members of the Standing Conference of Principals (SCOP) as well as UniversitiesUK (UUK).

4 Overall, previous reviews have generally commented favourably on the quality and effectiveness of higher education governance. In particular, both the HEFCE Audit Service in its 2003-4 Annual Report and the Lambert Review (2003) took a positive view of governance. However, the former noted the need for HEIs to demonstrate that governance arrangements continue to be effective in practice, and the latter called for ongoing efforts "to ensure that both management and governance are fit for modern times".

5 This report notes that there are considerable differences in how 'good practice' in governance is understood and interpreted within HEIs, and that it is important to avoid adopting an overly simplified idea of what good practice means. Whilst this report documents many measures to enhance governance that may generally be thought to be desirable within the sector (and therefore collectively may be regarded as 'good'), it also notes many innovative practices regarded by the host HEI as 'good' but which may be at least questionable - and perhaps even downright 'bad' - in different settings.

6 The term 'good practice' appears to be used in at least four different ways within the sector:

- a) It can mean complying with legal and regulatory requirements, and therefore good practice is what government and the main funding bodies say that it should be.
- b) It can mean meeting a set of agreed standards determined by relevant professional bodies, leading possibly - but not inevitably - to a code of practice.
- c) Whilst taking account of regulatory requirements and professional standards, it can be defined as contextual and varying to suit local circumstances. This view is needs-based, and requires HEIs to have in place explicit systems to identify good practice that is 'fit for purpose'.
- d) It can mean the adoption of the best practice of comparable organisations that is relevant to the circumstances of particular HEIs.

7 Within many HEIs there appears to be a general acceptance that good practice in governance is closely related to the idea of 'fitness for purpose' contained in (c) above. This means that what is effective and 'fit for purpose' for one HEI may be unsuitable for another. The key indicator therefore is whether governance structures and processes fit with mission and objectives. If this view is accepted, it follows that there is no absolute 'good practice' solution to all governance issues beyond the adoption of a minimum set of core regulatory requirements. The implication for this report is that many of the practices described should be regarded as items on a menu of options rather than a list of recommended activities.

8 The definition of good practice we have adopted in this report is "those actions taken to meet specific institutional needs to enhance governance, that are fit for institutional purpose and broadly compatible with professionally validated standards and practice".

EMERGING ISSUES IN HIGHER EDUCATION GOVERNANCE

9 The report notes that the development of good practice needs to be seen in the context where governance is changing dramatically, and that this is calling into question many of the conventions on which the traditional models and styles of governance have been based. Some of the factors driving change are the growth in size and complexity of HEIs, the increasing expectations and requirements of funding bodies, the influence of changing corporate governance practice in the private sector, and pressures for speedier, more efficient decision making.

10 What is clear from the data collection for the report, is that governance - and in particular the role of the governing body - is understood in different ways in different HEIs, partly for reasons that are institutionally specific and partly because of the inevitable differences in the speed with which institutions are moving away from a

'stewardship' role for a governing body to one that is much more focused on strategic development and performance. It is in this latter area that the ideas of effectiveness and associated good practice are more contested, and the contextual and cultural factors specific to individual HEIs come into play. In some HEIs an important question remains as to which body is responsible for ensuring that the mission is achieved and that performance is maximised, for example, is it the governing body alone, or the senate/academic board, or a shared responsibility?

11 In such a situation some HEIs believe that despite the Higgs and Smith Reports and the importance of the Combined Code, the appropriateness of private sector models of governance has yet to be proven. Increasingly in the private sector high performing companies (measured in terms of enhanced shareholder value) require high performing boards, and it is difficult to conceive of a board being held to be effective where a company is performing less than satisfactorily. Indeed, much of the content of the Combined Code is predicated on the principle that the "board's role is to provide entrepreneurial leadership....". However, in higher education corporate governance has usually had little relationship to the effectiveness of teaching and research; indeed, some of the universities who score most highly in the various performance league tables may have weak systems of governance if measured against best practice in the sector and the Combined Code.

12 If it is assumed that effective governance in higher education should be similarly linked to institutional performance, then numerous questions are raised, in particular: what value does effective governance add to institutional performance, and what does a high performing governing body look like and actually do? More challengingly, can it be demonstrated that a governing body has helped to transform an institution? In short, what is excellence in higher education governance, and what kind of proactive behaviour does it require of a governing body? These questions were raised by a number of respondents and remain to be answered.

13 The most obvious challenge to individual governors cited by many respondents to this study is one of time commitment, and in some cases of motivation. We were frequently told by respondents that the existing voluntary model of lay membership sits uncomfortably with a performance-based approach to governance where effectiveness reviews are now required. A key feature of successful performance of individual governors is that they are 'engaged' with the institution and committed to it, yet this is becoming an increasingly time consuming objective. Although some HEIs are now considering introducing payments for governors, many others report being uncomfortable with the idea, preferring to continue with a model of community service for as long as possible.

14 The report documents concerns about whether the divide between management and governance is being appropriately maintained. This has been - and remains - central to most conceptions of 'good' governance, and yet the more performance-led a governing body becomes the greater the possibility of it straying into management. Similarly some respondents felt that the more an HEI chooses its governors on the basis of a specific set of skills, the more likely it is to want to use them to resolve or advise on managerial questions.

LEARNING FROM OTHERS

15 The report includes a brief review of governance practices in a few selected countries and elsewhere in the UK public sector. Internationally only a few higher education systems have undertaken much work relevant to the UK, and most of this is in the USA. However, practice in the USA is diverse because of the state based system of public universities, and the Association of Governing Bodies offers the best window on developing good practice. Their materials on assessing the effectiveness of university boards and many publications on good practice for trustees and board members are relevant and valuable.

16 The Australian scene is also relevant because its government has taken a keen interest in university governance and has introduced a set of protocols which all institutions will have to implement. The CUC's code of practice echoes many of these, but it is more comprehensive in the breadth of its recommendations. One immediate observation on governance in Australia is that their concerns are very similar to those of the UK, and a recent ranking of their key issues listed them as: performance monitoring, oversight of commercialisation, strategy formulation, and the evaluation of governing body effectiveness.

17 The UK public sector is reviewing and reforming much of its governance. There are several areas where the higher education sector can learn from others. In the NHS trusts, for example, there are clear descriptions of the role of non-executives, good induction schemes, and several years' experience of tailored training and annual assessment of the performance of trust members (the chair of an NHS trust is trained in assessing the performance of the chief executive). Finding good non-executives is a common concern across the public sector, and HEIs will need (to the extent that they may be in competition for good people) to pay attention to what public sector bodies are doing in order to attract and retain the best governors, particularly those from a diverse range of backgrounds.

GOOD PRACTICE FINDINGS IN THE SIX AREAS

18 The bulk of this report is devoted to a detailed analysis of what HEIs are doing in the six areas. In four of the topics practices are identified which might be regarded either as commonly accepted good practice or as innovative or distinctive practice in a specific institutional context. The aim of these six chapters therefore is to offer institutions a choice of ideas to consider when they next review their governance or undertake effectiveness reviews. It is not possible to summarise the detailed findings since they cover a very wide range of activity, but the following paragraphs present an overall picture of where the sector stands on each topic.

Selecting, Inducting and Supporting Governors

19 Chapter 4 describes current practice for the whole recruitment cycle, from defining and specifying roles, to establishing a skills requirement, recruiting and selecting, and then inducting and training governors according to their needs. This is an

area where significant changes have occurred and are still taking place within HEIs. Some short case studies are presented which include:

- A university that has developed a detailed role description and person specification for the chair.
- Another that identifies the general and specific skills a governing body member should have.
- A description of how a university seeks to widen the range of applicants and increase diversity among its members.
- A three stage induction process adopted by one post-1992 institution.

20 The discussion in the report on how governors should be helped to develop their governance skills is inevitably linked to the questions raised above as to exactly what the role of a governor is in the light of rapidly changing external requirements and expectations.

Involving the Governing Body

21 Chapter 5 considers good practice in how a governing body is involved in the key decision making processes, and reviews the ways in which individual governors are informally involved. The scale and style of involvement owes much to the institutional culture. There are still a few HEIs where governors feel they are treated as 'rubber stamps', but in others they are accepted as key partners in developing a successful institution. However, minimising the role of the governing body is reported in only a small minority of HEIs, and overall there have been substantial changes in the extent to which governors are involved in strategic planning processes.

22 In addition, some clerks are devising imaginative ways of involving governors in the life of the institution, partly as a way of generating a feeling of engagement. Case studies in this Chapter describe governors being involved in annual open forums, special briefing programmes and mutual learning seminars run jointly with the academic staff.

23 Technology is increasingly being used to keep governors informed, and a growing number of institutions offer their governors access to dedicated web sites from which they can supplement the information they receive in governing body papers.

Governing Body Relationships with Senate/Academic Board and Committees

24 Chapter 6 covers good practice in the important topic of relationships between the governing body and the senate/academic board, and describes ways in which the two key parts of institutional decision making are being brought together. This is heavily influenced by four trends:

- A shrinkage in the size of governing bodies.
- A contraction in the number of sub-committees, often with one dominant committee overseeing strategy and resources and (sometimes) performance review.
- An increase in the number of joint committees of the governing body and senate.

- A gradual acceptance of managerial authority (and accountability) by academic managers, leading to fewer decisions needing committee input.

25 All these can add up to a significant change in the balance of responsibilities in an institution, and to increased roles for a few senior lay members of the governing body who serve on the important joint committees. The report gives case study descriptions of the reform of the committee structures in three institutions.

Overseeing Commercial and 'Third Leg' Activities

26 Chapter 7 considers the role of the governing body in overseeing commercial or 'third leg' activities. Sector wide generalisations in this area are difficult because of the wide range of activities (for example, a small HEI with little commercial activity at one extreme and a research intensive institution at the frontiers of technology transfer and commercialisation of IPR at the other). Our data suggest that for many governors the topic is unimportant, since small scale commercial activities are handled within routine risk appraisal and financial monitoring processes. However, for those in highly active HEIs major concerns exist due to their institution's involvement in so many potentially risk-laden enterprises.

27 Some of the good practice being adopted includes: establishing special committees to monitor the financial performance of trading and commercial activities; developing advanced management accounting disciplines to assess the feasibility and risk in commercial venture; and acquiring access to external sources of finance for any risk capital required. Most of those HEIs with significant commercial portfolios involve their governing bodies in agreeing policies on matters such as conflict of interest, sharing of profits with inventors, equity allocations to academic staff, and salaries from directorships in subsidiaries. Sometimes a separate governing body committee considers all the policy implications of third leg activity.

Measuring Institutional Performance

28 Chapter 8 reviews good practice in the ways in which governing bodies are involved in measuring institutional performance. This shows an interesting range of models and approaches, which are described in case studies. They include:

- The use of a select group of key performance indicators (KPIs) linked to the institution's strategic objectives.
- Performance monitoring of units at each governing body meeting, so that all are covered in a year.
- The use of comparative statistics and benchmarking (with the Russell Group and other peers).
- Specific methodologies such as the balanced scorecard approach or the European Foundation for Quality Management (EFQM) model are also being used.

29 The conclusion is that there is a lot of experimentation in an area which is becoming of major strategic importance to effective governance. There is plenty of scope for further central or CUC support to help in developing methodologies and disseminating experience.

Reviewing the Effectiveness of Governance

30 The final good practice Chapter looks at the topic of reviewing the effectiveness of governance. This is a subject where the CUC has invested considerable effort in the past, and most HEIs have undertaken at least one effectiveness review. Evidence shows that, although the sector has responded positively to the call for such reviews, many of the early reviews focused on issues of governing body size, process, and the conduct of meetings. The reviews are now turning to more strategic topics relating to how a governing body adds value, and how its performance in its key roles can be improved. A few HEIs have established comprehensive systems for reviewing the performance of their governing body, their chair and individual members.

31 Case studies in this Chapter include one that describes a university that has surveyed its governors on how governance could be made more effective and then discussed the resulting report at an awayday. Another describes an HEI where evaluation is annual and tests governors' satisfaction with the way they are performing their defined responsibilities. The effectiveness of individual governors is being tackled by some institutions - usually through a self review process, although some chairs are starting to conduct individual interviews with members and a case study describes one example of this.

CONCLUSIONS AND NEXT STEPS

32 This report has found many examples of good governance practice and of innovative activities in each of the areas we examined. It has also identified a significant gap between those institutions that are actively developing their governance practices and those that are not. This emphasises the need for an active programme of disseminating the findings of this report, and encouraging their use in future effectiveness review exercises. Accordingly, the report presents proposals for a number of dissemination activities, including a programme of regional seminars, and for the publication of working materials on web sites of the CUC and the Leadership Foundation. The report concludes by summarising some additional activities that the CUC might consider if it wishes to build on the ideas in this report and the momentum which we hope it creates.

1 Introduction

1.1 This report is part of a programme commissioned by the Governance Group of the Committee of University Chairmen (CUC). A main element in the programme is a revision of the CUC Guide in the light of the many developments in corporate governance since the last edition in April 2001. The recommendation of the Lambert Review of University-Business Collaboration¹ that the CUC should take the lead in developing a code of practice for institutional governance has also been handled by the Governance Group.

1.2 This study is not the first time that the CUC has sought to review aspects of university governance, as in 2000 it undertook two surveys. The first resulted from the efforts of a CUC Working Party that examined the effectiveness of governance in the light of the suggestion from the Dearing Report that governing bodies should periodically review this. The Working Party's report was in the nature of a progress report at a time when about half of CUC member institutions had set reviews in hand.² Later in 2000 a fuller survey was made of the 101 institutions in the CUC and 97 replied. Three aspects were studied and reported upon³: changes in legal instruments relating to governance, the conduct of effectiveness reviews, and performance reviews of the institution.

1.3 In October 2003 the CUC Governance Group undertook a survey covering similar topics to that in 2000 with a larger number of institutions, and the same questionnaire was also used by the Standing Conference of Principals (SCOP). The 104 responses to both surveys have been analysed and the results distributed internally, but not published. They have provided part of the evidence for this current study.

1.4 Other organisations in the UK have also been studying aspects of higher education governance:

- The Higher Education Staff Development Agency (HESDA) surveyed what was happening in the field of induction and training for governors.
- Consultants working for SCOP (under a HEFCE Good Management Practice study) asked governors what their information needs were before developing a web site aimed at providing briefing information on higher education governance (www.hegovernance.ac.uk).
- Members of the Association of Heads of University Administration (AHUA) were surveyed on the procedures for the nomination and appointment of lay governors.

1.5 Two recent reviews of governance in higher education have been generally favourable about its quality and effectiveness. The HEFCE Audit Service in its 2003-4

¹ *HM Treasury, Final Report of the Lambert Review of Business-University Collaboration, 2003* see at www.lambertreview.org.uk

² *CUC, Progress report of the Working Party on the effectiveness of governing bodies, 2000.*

³ *CUC, Review of university governance, 1997-2000, 2000.*

Annual Report noted that "our work has found strong governance arrangements in HEIs" although it then observed that "there is still a gap between that and HEIs being able to show that those arrangements then lead to governance being effective in practice".⁴ Similarly the Lambert Review reported in 2003 with a generally favourable view of higher education governance. However, while praising the progress made in recent years, it also called for continued efforts: "there needs to be a renewed effort to ensure that both management and governance are fit for modern times".⁵ This challenge is addressed by this report in seeking answers to the following questions: what is good practice in governance, how well is the higher education sector doing, and what lessons are relevant from elsewhere?

THE TERMS OF REFERENCE FOR THIS STUDY

1.6 The terms of reference were to provide appropriate support to the CUC Governance Group so that it can identify and promote good practice in university governance to its members, and demonstrate publicly the standards by which the sector should be governed. With the agreement of the Group this has been interpreted as requiring two steps: first, identifying good practice, and second, helping the CUC to disseminate the findings in a way that would enable all HEIs to incorporate the guidance into their own practices.

1.7 In a relatively brief study it is impossible to review all aspects of governance, and so the Governance Group defined six key areas which had been identified from survey responses as topics where there was interest in the sector in exploring current practice. These areas were:

- The selection, induction and support of governors.
- The involvement of governing bodies in the institution's key decision processes and how they should perform their role.
- The relationship between the governing body and the senate/academic board and the development of committee structures.
- The role of the governing body in overseeing commercial and non-academic activities.
- How the governing body can measure the performance of the institution.
- Ways in which the effectiveness of governance can be reviewed.

STUDY METHODOLOGY

1.8 The groundwork for the study was undertaken in the first half of 2004 and included:

- An analysis of the responses to the 2003 survey of CUC and SCOP members.
- Design and despatch of two surveys in early 2004: one to clerks of governing bodies and one to chairs and governors.
- An analysis of the 152 responses from the two surveys.
- Literature reviews of selected published material on governance in UK, USA, Australia and elsewhere (see Bibliography in Appendix I).

⁴ HEFCE, *Assurance Service Annual Report 2003-4*, page 3 unpublished.

⁵ *Ibid* para 7.5, page 93.

- Interviews and correspondence with stakeholders and some key players nationally and internationally in higher education governance.
- Visits to, and telephone conversations with, senior staff and members of governing bodies in sample institutions to follow up claims of good practice.
- Regular liaison with CUC's project manager and reports to the CUC Governance Group.

The bulk of the study time was devoted to interviews and discussions with individuals who had been involved in studying governance issues, as well as with managers in institutions with practices that we wanted to investigate.

1.9 The two surveys were sent out by the Association of Heads of University Administration (AHUA) to its members, and secretaries to governing bodies were asked to pass on the survey form designed for governors to two or three of their choice. There is no way of knowing what criteria they used for selection, but a significant number appear to have sent it either to their chair or to senior governors. The surveys sought to avoid duplication of topics covered by the earlier CUC exercises. Although satisfactory for our purpose, the response rates were not as high as in earlier surveys, perhaps because they followed so closely on the one in October 2003. The response rates were:

	CUC surveys October 2003	CHEMS 2004 Clerks	CHEMS 2004 Governors
Number of questionnaires sent out	111	111	Unknown*
Number returned	82	64	88
% returned	74%	58%	n/a
Number of Scottish responses	10	7	11
Number of Welsh responses	6	2	2

[* See paragraph 1.9)

1.10 The implications of this are that, although there was a reasonable response, there is a risk that we may not have learned about some good practice. However, all but 17 HEIs responded to one or the other of the various surveys, and ten who did not reply in 2003 replied to our survey. Most of the 17 non-respondents were smaller or more specialist HEIs or ones that were in a transitional stage such as a merger.

THE STRUCTURE OF THIS REPORT

1.11 This report starts with a discussion of some of the major contextual issues concerning governance. There have been substantial developments in governance practices generally in almost all institutions in recent years, and stakeholders are holding governing bodies accountable in ways that were not explicit before. We explore some of the tensions and questions that this raises for governing bodies in HEIs. In the following Chapter 3, the contextual analysis is completed by a brief review of what has been happening in the UK public sector, and developments in higher education governance in some comparable countries overseas.

1.12 Then follow the six chapters that are at the heart of the study, and for Chapters 4 to 7 we record what we have found as regards good practice and in Chapters 8 and 9 we note the developments in practice that are taking place in a rapidly changing area.

Finally, in Chapter 10 we conclude with some thoughts about the dissemination of good practice in governance, and suggest some issues that the CUC and the sector may wish to study in future.

1.13 One of the study's objectives was to consider how good practice might be promoted and disseminated. We are very aware of how busy governors and senior managers are, and how difficult it is to find the right balance between information starvation and information overload. One lesson seems to be that a range of communications methods need to be offered. Therefore this paper report is only one of the mechanisms for drawing good practice to the attention of those who may wish to adopt it. Further details of the issues identified in this study are being made available on the internet, and it is hoped that dissemination seminars may also take place.

1.14 The core audience for this report is governors and senior managers, and in order to produce a report that is readable and avoids being overly long, the details concerning the many examples of good practice cited below have been kept to a minimum. However, in order that readers may find out more about some of the examples, references are provided to original sources, or web based 'working materials', showing where they can be found on web sites.

WHAT IS MEANT BY GOOD PRACTICE IN GOVERNANCE?

1.15 In one way, identifying and then introducing good practice in governance appears to be plain common sense: adopting what works elsewhere and applying it to all HEIs. However, although this is an appealing idea, defining and identifying practice that is generally accepted to be 'good' can be a complex and elusive activity. In the following paragraphs we therefore set out some of the factors involved, offer a working definition of good practice in governance, and consider the different types of practice examined in this report. What follows is only a short overview of some of the complexities involved in defining good practice; indeed, some of these complexities mirror the difficulties encountered in defining 'quality' about which there is an extensive literature and where there has been a wide-ranging debate in the sector.

1.16 In undertaking the research for this study we have found considerable differences in how good practice in governance is understood and interpreted, and recommend that work continues to be done by CUC and other interested bodies. This proposal is closely related to a suggestion that is made later in the report, that (notwithstanding the current activity of CUC) much more work is required to identify and conceptualise what effective governance means in a rapidly changing context. From that position it will be easier to locate 'good practice'.

1.17 The difficulties associated with any simple identification of good practice are likely to be immediately evident to readers when reviewing some of the institutional activities reported in Chapters 4 - 9. Whilst some activities will generally be thought to be desirable (and therefore may well be regarded as 'good' practice), others are likely to be controversial. Readers may consider a particular practice regarded by one HEI as 'good' to be at least questionable and perhaps even downright 'bad' in a different setting.

1.18 To take one simple example from Chapter 5: in an attempt to increase the involvement of governors, several HEIs have adopted a system of pairing governors with faculties or schools so that they can learn more about 'what goes on' and have a better understanding of academic work. However, we also report that other HEIs have abandoned such a system as it has led governors to favour the faculties concerned. Both sets of universities claim that the different approaches meet their needs and aid good governance, and often result from the outcomes of effectiveness reviews that took account of the needs of governors. Can it be claimed that one approach is 'good' and the other not, or are both appropriate for different institutional circumstances? Moreover, if such difficulties exist on a relatively simple issue, defining what is 'good' in more complex areas is likely to be still more problematic.

1.19 Within HEIs our data collection revealed that there appears to be a general acceptance that good practice is closely related to the idea of 'fitness for purpose'. This means that what is effective and 'fit for purpose' for one HEI may be unsuitable for another. Thus a large research intensive university may require a different approach to aspects of its governance from a small specialist college. The key indicator therefore is whether the governance structures, processes and culture fit with institutional goals and objectives. If this concept is accepted, it follows that there is no absolute 'good practice' solution to all governance issues. Instead, the higher education sector should be talking about 'good principles' (as Nolan did), and the need for 'good process' in constantly seeking to review and refine practice in the light of changing institutional requirements and a changing context for governance.

1.20 Another useful approach is to consider what 'good practice' is to those involved on the ground. From our interviews and the numerous reports on the subject, it is clear that there are markedly different approaches. Four of the main ones are briefly summarised below:

1	<i>Good practice in governance is complying with all legal and regulatory requirements of government, the funding bodies and other stakeholders.</i>	<i>This approach essentially says that good practice is what the law and funding bodies say that it is, and therefore that it changes as a result of external rather than internal factors. Although all HEIs surveyed regarded it as important to comply with regulatory regimes, we found relatively little support for this definition, which was generally regarded as an overly reactive approach and a definition of minimum - rather than good - practice.</i>
2	<i>Good practice is defined by an agreement on standards and approaches to governance by relevant professional bodies.</i>	<i>This approach suggests that good practice may exist independently of the requirements of the funders (although it must take them into account). Current work by the CUC on providing guidance on governance is an example of this approach, as is the current work of the Independent Commission on Good Governance in Public Services.⁶ This approach can - but does not necessarily have to - lead to codes of practice, and is likely to be voluntary (or it would fall into category 1). A major challenge for this approach is that it tends to be input oriented, and there may be</i>

⁶ For details of the Independent Commission see www.opm.co.uk/ICGGPS/index.htm

		<i>difficulties turning relatively high level statements of intent into operational practices which suit a wide range of organisations.</i>
3	<i>Good practice is contextual.</i>	<i>Whilst acknowledging the importance of agreed standards and regulatory regimes, this approach regards the implementation of much good practice as varying to suit local contexts. It is therefore needs based, and involves HEIs having explicit systems in place to define and enhance governance to meet their own particular circumstances. This is the approach to defining good practice preferred in most HEIs.</i>
4	<i>Good practice is held to be broadly synonymous with the best practice of relevant comparators.</i>	<i>This approach goes well beyond (3) and requires institutions continually to improve governance arrangements in the light of changing external practice. Those holding this view expect that HEIs will adopt the best practice of comparable organisations that is relevant to their own circumstances. This is likely to include comparative analysis (eg through benchmarking) with relevant institutions. Some HEIs take this view and constantly seek to adopt governance practices that are 'best in class'.</i>

1.21 A number of issues follow from this analysis:

- Depending upon the approach adopted there may not be any necessary agreement on what constitutes good practice. For example, an HEI adopting a best practice view may well be frustrated by a particular funding body adopting what the HEI perceives to be a narrower approach.
- The approaches vary in the extent to which they are dynamic or static. In general approaches (1) and (2) are static in the sense that the definition of good practice only changes when key decision makers deem it so. Conversely approaches (3) and (4) are much more dynamic and recognise that good practice is constantly changing to meet market needs, whether or not key decision makers have recognised the changes.
- If good practice is deemed to be at least in part comparative and contextual, it follows that at least some elements of it must vary with the nature, size, culture, mission, and so on of the institution.
- To what extent is it possible to seek to identify good practice in areas of governance that are themselves problematic? For example, it is clear from the discussion in Chapter 7 that many HEIs are noting increasing tensions in dealing with aspects of commercialisation, and some feel that fundamental changes in structure may be required in order to do so. As a result there is a danger that enhancing aspects of current practice may disguise rather than address more fundamental problems.

These are difficult and challenging questions, and it is hoped that this report and its subsequent dissemination will help to generate a sector-wide debate on the meaning and practice of 'effective governance'.

1.22 So far as this report is concerned there is a need to adopt a working definition of good practice that can be used for summarising the many examples of institutional activities in the six main areas reviewed. We assume that all HEIs accept the need to meet regulatory requirements, and therefore (with the agreement of the CUC Working Group who steered the study) the following definition has been adopted:

Good practice in higher education governance is:

Those actions taken to meet specific institutional needs to enhance governance, that are fit for institutional purpose and broadly compatible with professionally recognised standards and practice.

1.23 Within this definition the phrase 'fit for institutional purpose' is intended to indicate that good practice must match institutional goals and needs, and in a rapidly changing environment be under constant review. The identification of such good practice must therefore at least involve a process of assessing institutional needs and, at best, require wider environmental scanning or benchmarking. In addition, subsequent implementation needs effective leadership and a clear link to institutional strategy. In this way, the agenda is moved towards the idea of 'good principles' and 'good processes' in constantly seeking improvement, including fundamental change where required.

1.24 It follows that there is the need to distinguish between what might be regarded as commonly adopted good practice (that is, where similar institutional needs have brought about broadly similar actions across the sector), and institutionally innovative or distinctive practice that is legitimately regarded as good in the HEI concerned, but may not be appropriate elsewhere due to different needs and circumstances. In Chapters 4 - 7 we have, therefore, sought to distinguish these two kinds of practice, although this has been difficult to do for Chapters 8 and 9.

A NOTE ON TERMINOLOGY

1.25 Because of the different terms in use in various parts of the UK higher education system we have had to standardise on a common terminology. Accordingly, we have used the same terms as in the CUC Guide for Governors as follows:

- **Governing body** The body ultimately responsible for the affairs of the institution, usually called the council or board of governors in England and the court in Scotland.
- **Head of the institution** The person with executive responsibility for management, that is the vice-chancellor, principal, director, rector or provost.
- **Chair** The chairman, chairwoman, pro-chancellor or other

person who takes the chair at meetings of an institution's governing body

- Secretary
The clerk, secretary or registrar or other person responsible for providing support services (including minuting) for meetings of the governing body and its committees.
- HEI
Higher education institution.
- Pre-1992 HEIs
Institutions in England and Wales which had university status before the Further and Higher Education Act 1992 came into force, Scottish universities established before 1992, and the two Northern Ireland universities.
- Post-1992 HEIs
Institutions which acquired university designation as a result of the provisions of the 1992 Act, and in Scotland those established after 1992.
- Colleges
Colleges of higher education funded by the funding bodies for England and Wales.
- Senate/academic board
The supreme academic decision making body, which can be called the senate (in most pre-1992 HEIs), the academic board (in most post-1992 HEIs) or the academic council.

2

Governance in Higher Education: Context and Emerging Issues

2.1 As the brief discussion in the previous chapter indicates, any identification of good practice has to take into account the context in which governance takes place. Therefore, this short Chapter summarises both the main factors which are leading to changes in the practice of governance in higher education, and also some of the issues emerging from changes of practice. The discussion is not intended to be comprehensive, but is an overview to 'set the scene' for what is reported in Chapters 4 to 9.

THE GOVERNANCE CHALLENGE FACING HIGHER EDUCATION

2.2 Until relatively recently governance in most HEIs has been characterised by a number of well recognised features including but not limited to: a generally collegial and consensual approach; external or lay membership of governing bodies characterised by multiple appointment criteria (including those nominated because of their personal experience and others as nominees of stakeholder bodies, for example local authorities); unusually high levels of participation in comparison to public sector bodies by internal members (including students); in many institutions (particularly pre-1992 universities) a separation between corporate and academic governance; and high levels of perceived institutional autonomy.

2.3 Amongst almost all those from whom we sought evidence for this study, there is a recognition that institutional governance is changing. Among the reasons for such changes are:

- The increase in size and complexity of many HEIs which means that existing governance systems designed for smaller institutions in a more stable environment are no longer appropriate.
- Greater requirements for transparency and social responsibility in governance generally, starting in the UK as part of the post-Nolan agenda and developing internationally in the light of well publicised corporate failures. As prominent public bodies, HEIs might legitimately be expected to be in the vanguard of such developments.
- Concerns within the funding bodies about occasional past failures of governance in a few HEIs, and current worries about others which for some reason or other are perceived to be at risk. Although small in number, their impact in causing questions to be asked about the robustness of existing governance arrangements should not be underestimated.
- Greater demands for accountability from the media, politicians and (arguably) the public about quality, value for money and other key issues. In the face of such pressures (for example over admissions policies) the 'traditional'

distinctions between academic and non-academic governance are not understood, and demands for more effective corporate governance follow.

- Within many HEIs concerns about the efficiency, effectiveness and speed of decision making in traditional governance systems, particularly in relation to commercial or so-called 'third leg' activities and dealings with external customers.
- The current funding regime which brings with it demands for greater accountability in the use of public funding and is also likely to involve greater customer (student and parental) demand for demonstrating value for money in the light of student fees.

2.4 For these and other reasons governance is changing, and in this report we document such changes in the six areas identified for investigation by the CUC. Within the sector we came across a wide range of opinion about the desirability of such changes. In many HEIs they are broadly welcomed as providing an opportunity to address long standing problems in governance. In others a danger is felt of 'throwing the baby out with the bathwater' in that, although some specific changes are welcomed, a risk is perceived of moving too quickly when governance is generally sound. In a relatively small number of other institutions the need for change is not widely recognised, and there is a perception that prized institutional autonomy is being violated by calls for adherence to any form of good practice in governance. It follows that, although we report considerable changes of practice within HEIs in all the areas reviewed, comprehensive sector-wide adoption of new practice is likely to be relatively long term, particularly in those areas where new governance arrangements are felt to be a low institutional priority.

PRIVATE SECTOR DEVELOPMENTS AND THE COMBINED CODE

2.5 Much of the stimulus for changes in institutional governance has come from private sector developments. The 1990s saw a stream of reports on corporate governance which was followed by the Stock Exchange authorities producing a Combined Code summarising those elements in the reports that should be followed by all listed companies. In July 2003 a revised version of the Combined Code was published⁷ with revisions based on the Higgs Review⁸ and the Smith Report.⁹ The first of these considers the role of the non-executive director and thus has considerable relevance to discussions on the functions of a governor in an HEI. The Smith Report was a review of audit committees and is of less generic relevance to this study.

2.6 The Combined Code repeats many of the suggestions for good practice that appeared in the Higgs Review including two pages of guidance on the role of the non-executive director. This reminds the non-executive of his or her primary functions as a member of a unitary board, and then adds four areas where it suggests the non-executives have a particular responsibility:

⁷ See www.frc.org.uk/documents/pdf/combinedcodefinal.pdf

⁸ See www.dti.gov.uk/cld/non_exec_review

⁹ Called *Audit Committees – Combined Code Guidance* and see www.asb.org.uk/documents/pdf/acreport.pdf

- Constructively challenging and helping to develop proposals on strategy.
- Scrutinising the performance of management in meeting agreed goals.
- Satisfying themselves on the integrity of financial information and the robustness of financial controls and risk management.
- Being responsible for determining levels of remuneration of executive directors and for appointing and removing them.

2.7 All of these have been accepted by the corporate sector as a realistic description of the duties of a non-executive; they also have clear echoes in the CUC Guide's summary of the role of members of governing bodies. The Institute of Directors goes further on the role of non-executives and suggests that because they are outsiders they also have a valuable communications function to fulfill through connecting the board to external networks and contacts.¹⁰ The IOD also emphasises a point that a recent court ruling¹¹ has highlighted – that there is no legal difference between executive and non-executive directors. Both are equally liable for any failure.

2.8 Since Higgs and Smith reported, the debate on governance has broadened into the topic of corporate social responsibility, triggered in part by the various corporate failures that have occurred in both the UK and USA. This is being promoted by government with the aim of helping all companies to "integrate socially responsible behaviour into their core values in recognition of the sound business benefits in doing so".¹² There are suggestions that the proposed Operating and Financial Review¹³, which all companies "of significant economic size" may be required to publish, will include reports on the environment and on social and community issues. The implications of this for the governance of higher education are not yet clear, but it is certain that many HEIs will wish to give more emphasis than they do now to reporting on their social responsibility and their engagement with the community. Lay members of governing bodies could play a significant role in this.

2.9 A further important development with implications for HEIs is the forthcoming Charities Bill which will, if enacted, mean that all those institutions that are currently technically exempt charities will not be exempt from regulation as charities. However, in order to avoid any further intervention the duties of charity regulator would be taken on by the funding council in England, which would act as agent for the Charities Commission.¹⁴ The implications for members of governing bodies are that they would then be formally recognised as trustees of a charity and subject to the obligations this imposes under charity law. For institutions there are possible implications for the style of financial reporting, disclosure of endowment funds, and for 'third leg' commercial activities.

¹⁰ IOD, *The Role of the Non-executive Director. Factsheet, 2003.*

¹¹ *In which the non executive directors of Equitable Life sought to limit their liability for the failures of the company.*

¹² UK Government Gateway to Corporate Social Responsibility. See www.csr.gov.uk

¹³ See www.dti.gov.uk/cld/financialreview.htm for a consultation document on the Review.

¹⁴ A different arrangement will apply in Scotland where there is no Charities Commission. In Wales the Charities Commission is expected to be the regulator.

THE LAMBERT REPORT

2.10 This study is closely related to the issues raised in Chapter 7 of the Lambert Report covering management, governance and leadership¹⁵, which invited the CUC to take the lead in developing "a concise code of governance, representing best practice across the sector". The CUC's prompt action in responding to this has been welcomed by the government in its response to Lambert with confirmation of the understanding that the code should not become a national prescription¹⁶ (thus differing from the introduction of a similar code in Australia – see Chapter 3).

2.11 One of Lambert's recommendations touches directly on reviews of the effectiveness of the governing body, one of the six topics in this study. The government's response widened the scope of the topics that are within most current reviews by suggesting (paragraph C70) that they should "take into account the stated objectives of the governing body, the performance of the institution against key performance indicators, evaluations of senior management and *the results of effectiveness reviews of senate and its committees*" (our italics). This last named review has been included as an element in the CUC Code of Practice and its application could raise some potentially sensitive and difficult issues (see Chapter 9).

2.12 The government response to Lambert's suggestion that a lighter touch to regulation (described as a "step change in the approach taken to regulate the sector and hold it to account") might be the reward for advances in governance and leadership is broadly positive. However, it is unspecific about how this might be achieved and there is only the promise of further consultation.

WHAT IS AN EFFECTIVE GOVERNING BODY?

2.13 The UK is not alone in reviewing governance, and similar concerns about ensuring that HEIs are responsive to pressures for enhancing governance are found in several comparator higher education systems (see Chapter 3 for a brief review). One key question asked in all such countries is of central relevance to this study: 'what is an effective governing body and an effective system of governance in higher education?' On the answer to this question rests any long term identification of good practice.

2.14 In a private sector setting whilst ensuring compliance to regulatory requirements is important, effective governance is nearly always related to the performance of the company concerned. In other words high performing companies increasingly require high performing boards, and it is difficult to conceive of a board being held to be effective where a company is performing less than satisfactorily. Indeed, much of the content of the Combined Code is predicated on the principle that the "board's role is to provide entrepreneurial leadership...".¹⁷ However, in higher education it has been perfectly possible to have the situation where corporate governance has had little relationship to the effectiveness of teaching and research; indeed, some of the universities who score most highly in the various performance league tables may have weak systems

¹⁵ HM Treasury, *Lambert Review of Business-University Collaboration*, see www.lambertreview.org.uk

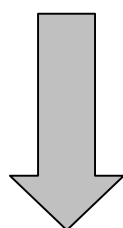
¹⁶ HM Treasury (July 2004) Para C76 of Annex C to the *Science and innovation investment framework 2004-2014*.

¹⁷ See paragraph A1 page 4 of the *Combined Code*, *ibid*

of governance if measured against best practice in the sector and the Combined Code. Nor is it suggested anywhere that it is the role of the governing body to provide entrepreneurial leadership; if this function is in the institutional vocabulary, it is usually seen as being with the head of the institution.

2.15 A central issue to explore is the extent to which effective governance (and an effective governing body) in higher education is the same as a high performing board in the corporate sector, if not what the differences are, and whether they are so great as to change the nature of what makes good practice. A useful small research literature is developing on the subject (which we make no attempt to explore here), but we do propose that more effort is put into making such work known in an accessible way to those involved in governance in HEIs.¹⁸

2.16 What is clear from our data collection is that governance is understood in different ways, partly for reasons that are institutionally specific and also because of the inevitable differences in the speed with which institutions move away from a 'stewardship' role for a governing body to one that is much more focused on successful strategic development. One way of thinking about these differences is to explore a possible continuum in the roles that a governing body might adopt. This might range from a focus based on following procedures or codes of practice (possibly relying for information on just input indicators) to one that takes an outcome and performance based approach and looks at results. Possible stages in such a continuum might include:

- 
- a) Ensuring compliance with all legal and regulatory requirements.
 - b) Ensuring the financial health of the institution.
 - c) Ensuring the effectiveness of service delivery through appropriate monitoring and reporting.
 - d) Ensuring that the mission of the institution is achieved.
 - e) Ensuring that the performance of the institution is maximised.

2.17 These stages are sequential, for example (e) cannot be achieved without (a) to (d) being in place. Currently within higher education it is likely that there would be general agreement that stage (b) would be the minimum to capture any notion of effective governance that met the previous codes of practice. From stage (c) onwards the ideas of effectiveness are likely to be more contested, and the contextual and cultural factors specific to individual HEIs may come into play. A related key question is which body in an institution is responsible for undertaking these roles. Is it the governing body, or the senate/academic board, or is it shared? For example, some pre-1992 universities may well argue that it is the role of the academic governance system to ensure these criteria are met, and not directly that of the governing body.

2.18 In the private sector effectiveness is defined in terms of ensuring that institutional performance is maximized through enhanced shareholder value and a healthy 'bottom line'. If we assume that effectiveness in higher education is similarly linked to good performance but of a different kind, then numerous questions are raised - in particular: what value does effective governance add to institutional performance and what does a high performing governing body look like and actually do? More challengingly, can we

¹⁸ See, for example, *Cheit RP, Holland TP, and Taylor BE, Improving the Performance of Governing Boards, American Council on Education and Oryx Press, 1996*

show where a governing body has helped to transform an institution? We are made aware by the Public Accounts Committee of those occasions where governing bodies have failed to perform effectively, but where are the examples of them performing superbly? In short, what is excellence in institutional governance and what kind of proactive behaviour does it require of the governing body?

2.19 These and related questions are major issues which the sector needs to study now to ensure that changes to governance arrangements represent considered innovation and provide genuine benefits to HEIs rather than constraints to growth and entrepreneurship. The new CUC guide will be an important starting point for such discussions, but in the long term the focus probably needs to be on defining effectiveness in terms of outcomes and thus enabling the impact of effective governance to be measured. These issues are considered further in Chapter 9.

THE CHALLENGE TO GOVERNORS

2.20 In his new book the eminent economist J K Galbraith¹⁹ mischievously and provocatively sets out the challenge to governance:

"it must be accepted that power in the modern great corporation belongs to the management. The board of directors is an amiable entity, meeting with self-approval and fraternal respect but fully subordinate to the real power of the managers. The relationship somewhat resembles that of an honorary degree recipient to a member of a university faculty".

Galbraith's assertion will be contested by many, but although aimed primarily at the corporate sector, it nonetheless raises directly the challenges faced by governing bodies in HEIs and their individual members in seeking to undertake their roles. We note briefly below some of the challenges as they have been described to us.

2.21 The most obvious challenge to governors cited by many respondents to this study is one of time commitment, and in some cases of motivation. We were frequently told by respondents that the existing voluntary model of lay membership sits uncomfortably with a performance-based approach to governance where effectiveness reviews are now required. In addition, the CUC survey in 2003 indicated that approximately 60% of HEI governing bodies only met on three or four occasions a year: thus, some governors might have no more than 8 to 10 hours a year involvement, a workload consistent with a stewardship approach suggested in paragraph 2.16, but probably at odds with performance-based governance. Although some HEIs are now considering introducing payments for governors, many others report being uncomfortable with the idea, preferring to continue with a model of community service for as long as possible. In such circumstances the motivation for serving as a governor may change, and some HEIs have concerns that this may not be for the better.

2.22 Performing effectively in the changing role is another challenge identified to us, and, although governors appear to welcome greater clarification of their obligations, there are numerous concerns about equipping them to meet the challenge. This report identifies some of the good practice being undertaken to address such concerns (for

¹⁹ Galbraith JK, *The Economics of Innocent Fraud*, Allen Lane, 2004 page 74

example, by providing appropriate information, and achieving 'engagement' with parts of the institution), but some of the key concerns that remain are cited as:

- A potential for stepping over the divide between management and governance which has been - and remains - central to most conceptions of 'good' governance. The danger is that the more performance-led a governing body becomes the greater the possibility of it straying into management activity.
- Current trends are towards a greater overlap of activity between the executive and the governing body (for example, some HEIs report a greater day-to-day involvement of the chair than has been usual in higher education). For some HEIs this has obvious advantages, but in others it raises further questions about the distinction between governance and management, and also affects the ability of a governing body to scrutinise and supervise the work of the executive impartially.
- Increasing levels of devolution in many HEIs (with individual budget units often being given considerable financial autonomy) and an increase in the responsibilities of governing bodies are combining to limit the role of academic governance (especially senates/academic boards), perhaps to the point that the need for such bodies will be questioned. Views in the sector are sharply divided on the desirability of this, with many seeing strong advantages, while others are opposed. Nonetheless there is concern in some HEIs that such a fundamental change should not occur almost by default. Similarly, emerging good practice may challenge the special characteristics of governance within individual HEIs, such as the unique position of students electing a rector to chair the court in the ancient Scottish universities.
- In some HEIs the need for greater discussion with and engagement of the governing body by vice-chancellors or principals. Although in many institutions this already occurs, several respondents noted that communication with governors was often relatively minimal outside governing body meetings, and mutual trust had not developed to the point where an effective professional relationship existed between the executive and members.

2.23 Many HEIs have already made rapid strides to meet some of these challenges through the good practice reported in the following chapters, and one frequently cited concern in such institutions is the possibility that new guidelines may actually inhibit innovation. To take just one example provided to us: in order to increase the effectiveness of their governing body one or two HEIs are thinking about reducing its size to well below the maximum size of 25 indicated in CUC guidance, and creating an executive board of, say, a dozen or so active members. In these institutions there is some concern that such an approach may be discouraged, as the resulting body may be felt to be too small. Therefore, as we note above, the desirability of much innovation in this area is not value free and can be contested from numerous perspectives.

3

Corporate Governance in Other Sectors and Countries

3.1 In this Chapter we review briefly developments in corporate governance in parts of the UK public sector and in higher education in selected overseas countries. Our aim in doing so is to position the work of the CUC and this study in a wider context and, more specifically, to highlight any activities that might be relevant to UK higher education. For reasons of brevity the international review is limited to the United States, Australia and New Zealand, countries with broadly similar traditions and academic structures to the UK.

3.2 There is a common thread to the issues considered in this report in that governments everywhere are showing increased interest in institutional governance and, depending on their powers to do so, are seeking to improve governance standards in the bodies they fund. Governance standards are also becoming of interest to regulators and are gradually entering the brief of those charged with exercising quality assurance at national levels. Since UK universities increasingly deliver their services in a global environment, it is important that their governance standards are at least as high as those of competitor institutions.

THE UK PUBLIC SECTOR

3.3 Growing interest in the role and effectiveness of governance in the public sector has been fuelled from several sources, including the interest of government in performance and service delivery, and a series of reports and changes to governance in the private sector. Guidance has been developed for different parts of the public sector and reviews are in progress in several areas. For example, the Public Services Productivity Panel at the Treasury is studying the governance of non-departmental public bodies,²⁰ and the Neighbourhood Renewal Unit is producing guidance for partnership governance.²¹

3.4 Such developments have been usefully summarised as part of a study being undertaken by the Office for Public Management with CIPFA, in comparing governance structures and current guidance in different sectors. The purpose of the last of these reviews is: "to inform thinking about what an overarching code for public services might cover, and the approach, including the tone and level of detail, it might adopt".²²

3.5 The OPM/CIPFA report covers ten sectors or organisational types and also offers an overview of the private sector: foundation trusts, further education, higher education, local government, the NHS, non-departmental public bodies (NDPBs), the police, registered social landlords (housing associations), schools and charities. Labelling

²⁰ See http://www.hm-treasury.gov.uk/documents/public_spending_and_services/public_ser...

²¹ See www.neighbourhood.gov.uk

²² OPM/CIPFA Draft Report Paper 4: Overview of current governance structures and guidance for public services. February 2004., p1. www.opm.co.uk/ICGGPS/index.htm

universities as part of the public sector is usually disputed, as they are independent statutory or chartered entities and the OPM/CIPFA report fails to capture the diversity of constitutional and practical governance arrangements across the sector. The CUC Guidance is extensively quoted.

3.6 In its summary of governance arrangements across the ten sectors, the report compares the size and composition of governing bodies and arrangements for selection and remuneration of governors. Most sectors have governing bodies of between 15-25 members; the schools' sector includes the smallest size of governing body and some pre-1992 universities appear to have the largest governing bodies in comparison with the other sectors.

3.7 Sectors vary as to where decisions about the selection of governors rest. They may lie with the institution and governing body itself (as in further and higher education), with ministers in non departmental public bodies (NDPBs) or with a range of interested parties, following specified formulae for different categories of governor. Selection methods can include a mix of election, nomination and co-option in relation to the different categories (independent or appointed) and different constituencies are in many cases involved in the process: shareholders, local communities, partner organisations, and users of the service. Formal and open arrangements including advertising, interviews and selection panels are used by a number of sectors.

3.8 There is no common pattern of remuneration across the sectors. Members of police authorities, NHS trusts and local authority councillors are paid. Policy varies between NDPBs, as do the levels of fee paid. New draft guidance for housing associations now suggests that boards can decide to pay members, but (following the Combined Code) that such pay should be linked to performance in governance. Elsewhere, as across all education sectors, governors only receive reimbursement of expenses.

3.9 Many sectors are reported as having difficulties in attracting a diverse range of governors with the appropriate skills and qualities for what is becoming an extremely demanding role. The authors suggest that public service organisations need to draw from as large a pool of potential governors as possible, should identify and assess the skills and categories of governor required to ensure an appropriate balance in the governing body, and should provide job descriptions for governors. Others appear to be looking closely at the recommendations of the Tyson Report.²³

3.10 Higher education as a sector appears to be at least as good as other publicly funded sectors in its rate of success in attracting high calibre governors, with the majority of institutions giving careful attention to the identification, recruitment and selection of governors, as we illustrate in Chapter 4. Achieving a diverse range of experienced governors, however, remains a cross-sector issue and there is potentially useful guidance available on this topic in other sectors. For example, the Association of Police Authorities and Home Office²⁴ provide joint guidance on 'attracting the right people' including advice on varied forms and locations for publicity material. Another recent report on

²³ *Tyson Report on the recruitment and development of non executives is at www.london.edu/tysonreport/*

²⁴ *APA and Home Office Joint Guidance, Selection and appointment of Independent Members of Police Authorities in England and Wales, 2004.*

'Trustee Recruitment, Selection and Induction' for charities²⁵ contains a section on diversity with a case study on methods used to recruit young trustees. An Annex on 'Resources for Trustees' includes contact details for organisations that keep trustee registers; these might also be useful sources for recruiting higher education governors.

3.11 Of particular relevance to this study is comparable public sector activity that highlights generic developments in governance in areas such as the changing role of the governing body, recruitment and remuneration, and support and induction.

3.12 So far as the changing role of the public governing body is concerned, earlier research by OPM²⁶ notes that both governors and executives appeared to have a range of understandings and interpretations of the role of the governing body. The authors note that: "Few of them described an overall role of steering the organisation to meet its objectives or an integrated set of responsibilities that together would serve this purpose, in the public interest" (p2, Paper 3). While responsibility for developing the strategy and mission of an organisation may be emphasised "this is not always linked with the delegation of powers to the executive, with challenge and scrutiny of the executive or with holding the executive to account" (p2, Paper 3).

3.13 The OPM study suggests that the most comprehensive descriptions of role, which show clearly how different functions are intended to fit together, are provided for housing associations and NHS Trusts. In Trusts, induction includes both familiarisation with the staff and business of the organisation, and also a definition of the boundaries of responsibility between the executive and non-executive. Handbooks containing such information for governors are provided in some sectors (for example in local government, the NHS, and police authorities), and such provision could be benchmarked against similar materials produced in many HEIs.

3.14 As in higher education, the assessment of board performance and individual appraisal of governors is emerging as common practice in other sectors. For example, in housing associations, a formal and open process of appraisal (making use of independent consultants) is intended to produce a 'governance improvement plan', while the purpose of performance assessments in NDPBs is to inform decisions about re-appointment of members or their appointment to other bodies. The NHS goes further, and it is the responsibility of the chair to organise a board's self-appraisal, the purpose of which is to take an overview of the added value the board brings to the whole organisation. The chair is also trained to carry out performance reviews of the chief executive and non-executives.

3.15 Overall, there are some specific areas where higher education could usefully benefit from examining practice and resources in parts of the public sector. These include: considering the implications of the different interpretations of the role of governance in evolving to meet new circumstances; learning from efforts to increase the diversity of types of governor appointed to boards; reviewing training and other resources available; comparing approaches to the appraisal and review of governance; and reflecting on mechanisms for providing independent advice on the practice of

²⁵ Charity Commission, *Trustee Recruitment, Selection and Induction*, 2004. <http://www.charitycommission.gov.uk>

²⁶ OPM, 'Rubber Stamped? The Experience of Public Service Governors', London, OPM, 2003.

governance in order to strengthen and ensure its continuing effectiveness. These issues are taken up in the following chapters.

HIGHER EDUCATION GOVERNANCE IN OTHER COUNTRIES

a) The United States

3.16 UK higher education has always been interested in the approaches to institutional governance in the USA; however in governance, as in any other higher education topic, it is very hard to generalise about practice. The public or state universities (which are the obvious comparator for this study) are subject to state level supervision, and their governance model depends on what the state legislature decides is an acceptable level of autonomy for its institutions. This means that there is every kind of variation along the spectrum of control, ranging from states where a centrally appointed board of regents or trustees has total control over the affairs of a state university, to the other extreme where the state only seeks to set overall policy, leaving the individual institution with substantial autonomy²⁷. In the latter case the role of the board is more analogous to that of our governing bodies.

3.17 Notwithstanding such variation, the governing boards of public universities are usually much smaller than in the United Kingdom (ranging from 8 to 20), and most members are appointed by the state governor. In most states a board manages the whole state system of higher education and sets the key policy parameters for state universities, leaving them with institutional boards which have limited powers.

3.18 Recent analyses of the situation suggest that there is a general trend to granting more autonomy to state universities with a corresponding emphasis on ensuring the quality of governance required at institution level²⁸. In all the states where structural changes have recently taken place the effect has been to change the role of the centre from one of regulation and control to one of policy leadership in the sector. Florida, Kentucky and West Virginia are among those that have created governing boards for each of their state institutions, having reduced the controlling powers of the state accordingly. However, these changes are not universal and many states "remain mired in the policies and regulatory practices of the past".²⁹

3.19 In this varied and changing environment, the Association of Governing Bodies of Universities and Colleges (AGB) offers board members and trustees a large range of professional advice and support. Although founded in 1921, the AGB did not get any full time professional staff until 1963. Its services now include:

- A range of technical publications for board members covering all aspects of their role from fund raising to sitting on an audit committee.
- A resource centre in Washington.

²⁷ For a full analysis of the position in each state see the Post Secondary Governance Structures Database maintained by the Education Commission of the States at www.ecs.org/clearinghouse.

²⁸ For a discussion of the role of states see McGuinness A., *Reflections on Post Secondary Governance Changes*. Education Commission of the States. Denver, 2002.

²⁹ McGuinness A, 2002, *Op cit.* p 7.

- A self study workshop using AGB facilitators in which governing boards review their responsibilities and performance. The methodology adopted is considered in Chapter 9.
- Publications and advice for those appointed to fund raising and development boards.

3.20 The AGB's experience and publications have been drawn on by us in four of our six topic areas. The range and quality of its support and publications is a possible model for the CUC to follow, but only if the CUC changed its scale of operations and appointed permanent staff.

3.21 The AGB's starting point is that "within the uniquely American traditions of volunteerism and philanthropy, serving as college or university trustee surely is the crown jewel of public service".³⁰ They aim to ensure that, however politically or socially eminent the trustees are, their performance is based on a full awareness of the role and its professional obligations. However there is also an expectation in most states that the board member will play an active role in fund raising and will set a personal example by contributing to university funds.

3.22 The AGB has defined the primary responsibilities of governing boards in terms that are similar to those listed in the revised version of the CUC's Guide, although items 8, 10 and 11 of the listing below reveal interesting differences of emphasis. It is also noteworthy that no mention is made of monitoring institutional performance.

AGB: Primary Responsibilities of the Governing Board

- 1 Setting mission and purposes
- 2 Appointing the president or chancellor
- 3 Supporting the chief executive
- 4 Monitoring the chief executive's performance
- 5 Assessing board performance
- 6 Insisting on strategic planning
- 7 Reviewing educational and public service programmes
- 8 Ensuring adequate resources
- 9 Ensuring good management
- 10 Preserving institutional independence
- 11 Relating campus to community and community to campus
- 12 Serving as a court of appeal

Source: Richard Ingram (1995) Effective Trusteeship. AGB, Washington

3.23 There is also a small but developing literature on the enhancement of governance in universities in the USA, see for example the work of Cheit and others.³¹

³⁰ Ingram, RT, *Effective Trusteeship: a Guide for Board Members of Public Universities and Colleges*. AGB. Washington, 1996.

³¹ Cheit RC, Holland TP, and Taylor BE, *Improving the Performance of Governing Boards*, American Council on Education, Oryx Press, 1996

b) Australia and New Zealand

3.24 Higher education governance has been high on the political agenda in Australia for the last three years. The present government's policy paper on higher education 'Our Universities: Backing Australia's Future'³² suggested a set of national governance protocols for public higher education institutions. It proposed that these be adopted over a period of three years and that some of the federal funding for institutions should be made conditional on their adherence to them.

3.25 The Australian Vice-Chancellors Committee (AVCC) did not contest the idea of the protocols, but was unhappy with some of the detail. Therefore in October 2003 they developed a revised set in collaboration with university chancellors (chairs of governing bodies) and it is this set that has now been adopted by government with minor modifications, and institutions are expected to comply with all the protocols.

3.26 The revised protocols are broadly similar in coverage to the draft code of governance recommended by the Lambert Report and now amended by CUC. Both include statements of the primary responsibilities of the governing body, but there are some significant differences as follows:

- Australia sets a maximum size of 22 members for university councils while the CUC benchmark of good practice is 25. However, Australia specifies that at least two members must have financial expertise, and one commercial experience.
- The role of the chair and vice-chancellor is set out in the CUC code but not in the protocols.
- The protocols are also silent on the role of the secretary and the provision of information, unlike the code.
- Reviews of institutional performance using key performance indicators and benchmarking are only covered in the UK publication.
- The protocols give detailed guidelines for overseeing 'controlled entities' (subsidiary profit making enterprises). None of this is in the CUC code.
- The Australian protocols set out some of the attributes and values that new members of governing bodies should have.
- The CUC code suggests at least four meetings are held each year while the protocols are silent on this.

3.27 Compliance with the protocols is one of the elements included in the federal government's new 'Institutional Assessment Framework' which brings together all the regulatory and reporting requirements. The inclusion of a protocol relating to commercial subsidiaries is explained by recent government and public concern over a number of cases where university subsidiaries have failed or lost money.

3.28 Australia has seen a lively debate on aspects of university governance which is partly fuelled by the existence in Canberra of a National Institute for Governance which takes an active interest in universities and holds conferences for those who serve on

³² See www.dest.gov.au

governing bodies. One such event in Canberra launched a useful 15 part set of resource materials for training clerks and governors, which are all publicly available.³³

3.29 The AVCC plays an active part in sponsoring workshops on governance. The proceedings of these events show how the issues that concern participants are very similar to concerns in the UK, with the addition of 'oversight of commercialisation' as the second highest priority on a list of Council functions where clarification was needed.³⁴

3.30 In New Zealand there have been similar developments. In 2003 the Director of the National Institute, Dr Meredith Edwards, wrote a report on governance in universities, which concluded that there were areas for improvement and recommended that New Zealand follow Australia's example by developing governance protocols.³⁵ This was then followed up with institutional codes of governance practice.³⁶ One outcome of this, the report suggested, "would be an effective and balanced leadership though a strong chair, a strong chief executive and a strong academic board", a tripartite prescription which is unlikely to be echoed in the UK.

3.31 The politicians to whom the report was directed have not implemented its recommendations which were coolly received by the sector. However, the report emphasised a generic point in relation to governance, which supports our own findings: "international research shows that effective tertiary governance cannot be simply secured by formulaic prescriptions and compliance measures or by adopting a 'one size fits all' approach. At its heart good governance is about strong relationships and shared understandings among people".³⁷

c) Conclusions

3.32 A recent OECD-IMHE-HEFCE study has reviewed financial management and governance in eight OECD member countries, including the USA, UK and Australia.³⁸ The study's findings on institutional governance are limited and unsurprising. They note the trend in the improvement in the independence and professional quality of members in smaller and more effective governing bodies, and conclude that the role of governors is becoming more critical to institutional sustainability alongside that of senior management.

3.33 Overall, the general conclusion from this brief review of governance practice elsewhere is that the trends in the countries reviewed are moving in the same direction as the UK, towards an increased reliance on institutional governance. Governments are asking that the autonomy that institutions gain be matched by a qualitative gain in the way they manage themselves.

³³ See www.governance.canberra.edu.au/the_institute/uni_governance.html for the papers from the 2003 National Conference on Governance

³⁴ At the last workshop in November 2002, the five most important topics (in order) were: performance monitoring, oversight of commercialization, strategy formulation, evaluation of council effectiveness and the role and duties of individual governors.

³⁵ Edwards M, *Review of New Zealand Tertiary Education Institution Governance, 2003*. Available from www.governance.canberra.edu.au/the_institute (the National Institute for Governance)

³⁶ A comprehensive example of one such statement of institutional policies on corporate governance is on the web site of Edith Cowan University at www.ecu.edu/GPPS/policy/ad/ad021.php

³⁷ Edwards, M. *op cit.* 2003

³⁸ OECD, *On the Edge: Securing a Sustainable Future for Higher Education, 2004*.

4

Good Practice in Selecting, Inducting and Supporting Governors

4.1 In this Chapter we explore how HEIs are recruiting and selecting governors, how they induct them into their role and how they offer continued support so that governors can actively engage with the institution and its strategic agenda. The first section deals with the initial stages of finding and selecting governors and then preparing them for their role, while the second part describes approaches to the training and development of governors. Examples of what might be generally recognised as core good practice are given alongside examples of interesting or distinctive practice which may be appropriate for some, but not all, institutions. In addition, we raise a number of issues about practice in this area.

4.2 CUC and SCOP surveys since 2000 have sought information from institutions about:

- Membership of governing bodies (for example, numbers of governors, types of governor, appointment periods and limitations, profiles of members).
- Nomination and selection including responsible committees and their terms of reference, selection criteria, identification processes and succession planning.
- Recruitment and appointment practices.
- Orientation, briefing and induction processes.
- Training and development opportunities offered to governors.

We address these issues in sequence below, summarising 'good practice' and providing examples.

A) MEMBERSHIP

4.3 Existing CUC guidance notes formal differences in the constitutional position of governing bodies, councils and courts. The numbers and categories of governors for each type of institution are defined in the guidance and relevant areas of flexibility are noted. The general trend is towards smaller governing bodies, and in the surveys many universities and colleges report that they have reduced the numbers of members following membership or effectiveness reviews.³⁹ However, in the interviews we held, concerns were also raised about the need to have enough capable governors to cover the wide range of responsibilities that they now carry including the important contributions that governors make to the working committees of the main board.

³⁹ *The recent Lambert Report recommended a membership of 27*

4.4 HEIs have also changed their approach to membership categories, reducing the numbers of 'representative' positions (for example from local government) to focus instead on the range of skills and attributes that they seek in their governors.

4.5 All institutions specify the role of the governing body as a collective and many also specify the responsibilities and desirable qualities of governors as individuals. For example, the **University of Westminster** specifies that each governing body member should have: a commitment to the University, a willingness to devote the necessary time and effort, integrity, strategic vision, sound, independent judgement, an ability to think creatively, an understanding and acceptance of the legal duties, responsibilities and liabilities of trusteeship, and an ability to work effectively as a member of a team.

4.6 An example of a comprehensive guide for governors is the handbook produced by the **University of Leeds** on the 'Role and Responsibilities of the Council'. It covers the University's mission and values, the constitutional context, strategy, corporate policy and major business decisions, corporate governance and management, monitoring performance and the contribution of individual members. Many other HEIs produce similar handbooks.

4.7 Institutions also typically provide descriptions of at least three key roles: the chair of the governing body, the executive head of the institution, and the secretary or clerk to the governing body; in addition the position of the treasurer may also be included. The most useful examples include a detailed specification of the duties involved, describe the relationships between roles, and provide a person specification for the role. An extract from the **Open University's** 'Note on the Appointment and Role of the Pro-Chancellor' (ie the Chair of Council) provides one such example:

***Duties:** The duties of the Pro-Chancellor cover a wide range [including] formal constitutional duties, representational/public relations' duties, consultative/advisory duties and managerial duties, as follows:*

A) Formal Constitutional

Chairing meetings: the Council; Remuneration Committee; Joint Committee of the Council and the Senate to appoint the Vice-Chancellor.

Committee Membership: Membership of the Finance Committee; Membership of the Strategic Planning and Resources Committee; Membership of the Membership Committee

B) Representational/Public Relations

Ceremonial – presiding at high profile events such as major public lectures or graduation ceremonies and other official occasions.

Promotional activities – lobbying government ministers and funding bodies as necessary

Attendance at the meetings of Chairs of University Councils.

Occasionally representing the University formally and informally at special events or conferences.

C) Consultative/Advisory

To the Vice-Chancellor on strategic and policy issues

D) *Managerial*

Appraisal of the Vice-Chancellor.

Removal from office of the Vice-Chancellor.

Person Specification: *It is considered that a Pro-Chancellor of the University should demonstrate the following qualities, skills and experience:*

- a) *Enthusiasm for and commitment to the mission of the **Open University**, with a commitment to diversity and widening participation.*
- b) *An understanding of the higher education sector.*
- c) *The potential, in principle, to serve for up to eight years and to have the necessary time available to fulfill the duties.*
- d) *Broad experience which preferably includes some connection with an academic institution.*
- e) *Experience of (large) organisations and the associated management issues, an understanding of markets, delivery of value-added services and managing in a competitive environment.*
- f) *A high profile within their sphere of endeavour and the ability to command respect.*
- g) *Credibility with the funding councils and similar relevant bodies.*
- h) *A network of contacts in government, business and the wider community.*
- i) *Experience of chairing board meetings and ensuring the smooth conduct of business.*
- j) *Good interpersonal/communication skills at all levels.*
- k) *Not overtly party political.*
- l) *Able to establish a good working relationship with the Vice-Chancellor.*

4.8 All institutions specify the terms of appointment for governors and some publish profiles of their governors, and current practice can be summarised as follows, using the classification we described in paragraph 1.24 between commonly adopted good practice and innovative institutional practice:

	Good Practice	Innovative Institutional Practice
Responsibilities and role specifications	Role and responsibilities of governing body is specified	Roles of individual members are specified
	Role descriptors exist for chair, executive head and secretary/clerk	Clear responsibilities, duties, and person specifications exist and the relationship between roles is specified
Terms of appointment	Terms of appointment and limitations are specified	
Profiles of governors		Profiles of governors are published and circulated widely

4.9 In general, the recommendations of the Tyson Report⁴⁰ on measures to facilitate the appointment of non-executive members of boards from a range of different backgrounds are too recent to have had much effect on HEIs, although in discussions several institutions told us they were considering the implications of the Report for making future appointments. Universities and colleges already find it difficult to recruit

⁴⁰ *Recruitment and development of non executive directors (June 2003). Available at www.london.edu/tysonreport/ The report recommends that companies broaden their processes for searching for non-executives in order to draw from a wider pool of talent than at present.*

governors with the right personal attributes and available time so that extending the search to bring in a more diverse and culturally varied range of applicants presents extra challenges. Nevertheless, this must be done if governing bodies are to be representative of the communities they serve and institutions will need to look carefully at the mechanisms and routes that they use to identify and recruit their governors.

B) NOMINATION AND SUCCESSION PLANNING

4.10 Current CUC guidance specifies that each HEI should have a committee to seek out and recommend new lay, independent and co-opted members and that this committee should keep membership needs and balance under review. On the data available to us, all institutions have such a committee - generally entitled 'nominations' or occasionally 'governance' committee.

4.11 The CUC guidance further specifies that vacancies for lay/independent members should be publicised and that staff and students as well as members of the governing body and executive should be invited to submit names so that a wide trawl is achieved. As far as we are aware all universities and colleges undertake a trawl for nominations, however the scope and channels used to identify names varies across the sector.

4.12 A nominations committee (or equivalent) typically identifies the range of skills and attributes that the institution is seeking at any one time (or for some years ahead in cases where succession planning is done systematically), comparing this with the existing balance across the membership. Different HEIs seek governors for a range of purposes, reflecting the diversity of institutional needs and characteristics, although there are some core attributes related to the responsibilities of the governing body. A sample of these generic and institution-specific needs is identified below, linked to the role of the governing body:

Role and Responsibilities of the Governing Body	Requirements of Governors: Characteristics Sought
Linking the institution to its stakeholders and community	Providing contacts and access to key organisations and networks
Developing mission and strategy	Specialist knowledge and ability to promote the institution
Fulfilling legal and constitutional responsibilities	Specialist skills and expertise; also skills of critique
Ensuring due process and application of public standards and values	Parallel responsibilities in public life, previous relevant experience; skills of critique
Selecting the CEO and senior staff	Specialist expertise, experience of senior staff selection, access to relevant networks
Monitoring performance and risk, including commercial activities	Parallel experience and expertise in other sectors; specialist expertise
Ensuring solvency	Parallel experience and specialist expertise
Specific responsibilities (eg audit)	Specific relevant expertise
Delivery of mission and strategy	Specific experience and expertise that is

	additional or complementary to expertise of institutional staff; expertise may also be sought in relation to core activities, strategic direction and academic units
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4.13 An example of the particular range of skills and expertise that universities and colleges are seeking in their lay members was provided by **Sheffield Hallam University**:

General Skills:

The University is a 'higher education corporation' which operates within the public sector of education and looks for the following qualities in the members of the board of governors: an understanding and commitment to the purposes of higher education; ability to take an independent and objective view; analytical skills and the ability to take a strategic overview; experience of management.

Specific Qualities:

Members of the Board should possess expertise in an area of relevance to the University's activities such as finance, human resources, estates, public relations, marketing, professional and vocational training, research or to its overall mission. They are likely to be senior, multi-skilled managers working in external organisations, able to take a strategic view and to contribute ideas and an innovative approach. Board members are required to engage quickly with the issues facing the higher education sector so that they can make an effective contribution at strategic level to the University's development and the achievement of its overall mission.

4.14 The value that universities can get from careful selection of governors, combined with systematic briefing and support, is illustrated by an example from the **University of Sussex** in trying to make best use of their governors' specialist skills and knowledge:

*Like most universities, **Sussex** seeks Council members with specialist skills that fit the University's particular needs. Experience of chairing other public bodies is a useful pre-requisite for a Chair of Council while expertise and experience in the finance sector is valuable for the role of Treasurer. Lay members' specialist expertise assists the University with the development of its policies and strategies. Educational expertise has contributed to the University's teaching and learning strategy, in depth knowledge of human resources' practice has fed into the HR strategy – as has specific lay interest in equality and diversity issues. Business expertise has informed the University's innovation and outreach work. The academic schools also gain from the targeted use of specialist skills. Knowledge of the media has helped in developing a strategy for the creative and performing arts, while expertise in medical manufacturing has benefited the School of Life Sciences. In addition, lay expertise is valued in the management of change. Clear lines of communication between Schools and Council members have assisted in making the recent debate on academic re-structuring an open and inclusive process.*

4.15 HEIs vary as to whether they seek nominations 'in batches' for up to three years ahead or trawl for members as needed. In recent times, greater emphasis has been placed on acquiring a balanced membership in terms of equality and diversity. In order to try and achieve this there is a growing trend towards advertising vacancies for members locally, regionally and nationally, but this is not universal and institutions report mixed results from their investment in such advertising. Some institutions are

systematically using the resources of other organisations either to advertise or trawl for potential governors, for example through the Register of Public Appointments.

*Many HEIs have reviewed their selection processes in order to broaden the scope of board membership. Several are also increasing membership diversity by advertising in the national and local press and by approaching bodies such as the Register of Public Appointments to assist in this process. The **University of Durham** was an early adopter of national, local and regional advertising as a recruitment vehicle – with excellent results - and is now embarking on its third cycle of advertising. The diversity agenda is of importance to the University, so advertisements are also being placed on the web-sites of the Racial Equality Council and Disability Now.*

4.16 Practice in nomination and succession planning can be summarised as follows:

Good Practice	Innovative Institutional Practice
A nominations committee or equivalent oversees the identification and selection of governors and reviews membership needs	Systematic succession planning is undertaken
Governor characteristics are systematically identified through a skills' matrix or equivalent profiling tool	
Institutions are actively seeking to widen their range of membership taking account of equity and diversity principles	
Nominations are sought from a range of sources including staff, students, existing governing body members and local organisations; vacancies are publicised on institutional web sites	A wide trawl for members is undertaken using local, regional and national advertising; the web sites of key national bodies are used to broaden the range and diversity of candidates

C) SELECTION AND CONFIRMATION OF GOVERNING BODY MEMBERS

4.17 The process of selecting governors varies across the sector. Sometimes this is because a trawl has not identified more than one or two likely candidates, in other cases it is because the selection process has not yet become as formalised and objective as it arguably needs to be. **Leeds Metropolitan University** provides an example of a systematic approach to selecting and appointing governors:

***Leeds Metropolitan University** having identified the skills needed and the places available in the next few years operates a rolling programme of recruitment. Advertisements are placed in the regional press; from 2004-2006, specific contributions are being sought in estates, communications and marketing and from ethnic minorities. Applications and CVs are reviewed by a panel established by the Nominations Committee, against the agreed criteria. A shortlist is drawn up and individuals are interviewed by a panel made up of the Chair, Deputy Chair, Vice-Chancellor, University Secretary as well as student and staff members. The names of recommended candidates go forward for approval to the Nominations Committee and subsequently to the Board.*

4.18 Institutional processes for confirming governors are similar across the sector: typically the nominations committee (or equivalent) agrees that a candidate is suitable and the full governing body (or the independent members alone) subsequently formally approves the nomination. In addition, the governing body may have had an earlier sight of potential nominees through receiving a regular updating report on the activities of the nominations committee. Relevant practice includes:

Good Practice	Innovative Institutional Practice
Names of potential candidates are received and sifted by a nominations committee	Candidates are invited to submit CVs and letters of application. A special sub-committee scrutinises these and matches them against the criteria previously identified by a nominations committee
Candidates are sent a variety of relevant information about the institution and the role of governors	
Potential candidates are invited to meet the chair, VC and secretary to discuss their interest in becoming a governor and associated responsibilities	Candidates are invited to meet and discuss their application and interests with a panel including student and staff representatives who assess the applications
Nominations are sent for approval from a nominations committee to the full governing body or the relevant sub-set of this body	

D) ORIENTATION, BRIEFING AND INDUCTION

4.19 New CUC guidance outlines the kind of induction and information that new governors are entitled to expect. Surveys reveal that all HEIs provide information and offer an orientation process, but the precise forms vary. Some HEIs rely on the CUC for the provision of a more generalised and formal induction process. Several institutions now provide useful information for governors on an intranet; the **University of Warwick**, for example, presents a simple introduction to 'how the University is governed' as well as a more formal 'Code of Practice on Corporate Governance'. The example below from **Leeds Metropolitan University** illustrates a staged and comprehensive process of induction:

Leeds Metropolitan University operates a comprehensive 3-stage approach to induction. The first stage involves a briefing from the Vice-Chancellor, University Secretary and the Chair of the Governing Body. This introduces the University and its direction, identifies the formal responsibilities and personal liabilities of governors, provides formal information from the CUC and the University and describes the Board's membership, its role and the University's expectations of governors. A follow-on meeting with the three Deputy Vice-Chancellors provides more detailed information about the core activities of the University. The second stage of the process involves attendance at the CUC's induction seminar and the third stage involves the allocation of a mentor from among the experienced Board members. Governors are also provided with information about the full CUC programme of training and events and the Chair of Governors follows this up by discussing with individuals their ability to access and gain benefit from this programme.

4.20 In reports of effectiveness reviews, it is clear that induction processes have generally been scrutinised by HEIs and many changes have been made as a consequence. In a majority of institutions, such reviews are regular and improvements appear to be ongoing. A survey by HESDA for the CUC in 2002⁴¹ provides detailed information on the kinds of briefing and training that universities provide and the information that governors found useful from their induction processes and what else they might require.

Good Practice	Innovative Institutional Practice
Relevant information is supplied to new members in the form of induction packs, guides and codes	Clear and useful information is given to new governors including material posted on dedicated web-sites for governors
Orientation and briefing arrangements exist	Induction processes are systematic, staged and varied in format and timing
	Clear information supplied about delegated powers, liabilities and mutual expectations

E) TRAINING AND DEVELOPMENT

4.21 New CUC guidance recommends that training and development is provided for governors and suggests participation in CUC/Leadership Foundation programmes. All HEIs for which we have data provide access for governors to CUC induction programmes (or equivalent). Many also run internal events on an on-going basis for new governors or as refreshers for existing governors. In addition, some institutions publicise and pay for formal training available from organisations such as legal firms, charities, the funding bodies and the representative agencies.

4.22 In Wales, a regional approach to induction and training has been developed which particularly benefits smaller institutions. The University of Glamorgan organises an all-Wales induction programme for governors of 13 institutions on behalf of the Welsh Secretaries Group. Each HEI supplies its own briefing material and specific institutional orientation, while the generic programme of two three-hour sessions covers key issues in Welsh higher education, the key responsibilities of governors and provides an introduction to HEFCW and the audit regime.

4.23 The surveys reveal that some HEIs are continually improving their approach to development. Improvements include adopting a needs analysis approach, offering targeted training (for example, tailored for particular individual needs, particular types of governor, for governors with specific responsibilities, and occasionally linking training to the outcomes of performance review), provision of ongoing support and information, and measures to build relationships such as awaydays and social events. This topic is considered further in Chapter 5 below.

⁴¹ HESDA (2002) "Training and Development for Chairs and Members of University Governing Bodies: A Report prepared for the Committee of University Chairmen (CUC)" Sheffield, HESDA

Good Practice	Innovative Institutional Practice
Access to internal and external training is provided	A varied menu of internal and external training and development is offered and supported by the institution
	Analysis of individual training and development needs is undertaken
	On-going support and Continuing Professional Development (CPD) is systematic and provided in a variety of forms
	Specialist interests and expertise are supported and developed
	Access to and take-up of training and development opportunities is regularly monitored and reviewed

4.24 The HESDA Report provides detailed information about the kinds of ongoing training and development opportunities that institutions provide which range from general topics such as corporate governance and strategy to specific areas such as human resources, finance and estates, student and academic matters. The report also provides detail about CUC provision with recommendations for the future that are now being incorporated into revised programmes to be mounted under the banner of the Leadership Foundation.

ISSUES ARISING IN RELATION TO SELECTION, RECRUITMENT, INDUCTION AND DEVELOPMENT

4.25 As can be seen from the above, practice in the selection, recruitment and appointment of governors varies somewhat across the higher education sector. In many cases, such variety is legitimate in the sense that it is dictated by differences in institutional mission, size, geography or position in the sector. Some institutions find it easier than others to recruit high calibre individuals that meet their specific needs. In addition, institutions are divided as to whether traditional views of the role and responsibilities of governors can be sustained as institutions and their contexts change. There is a lively debate about the remuneration of governors and concern about competition from other organizations such as the NHS that are seeking similar individuals for governance roles. Institutions are actively seeking a wider and more diverse range of governors, but again, are not always finding this easy to achieve in practice. The CUC and other agencies might be able to offer some central assistance and advice to institutions.

4.26 Many HEIs make considerable efforts to offer access to, or to provide, focused training, development and CPD. Given the variety of knowledge, skills, expertise and time available from governors, there are mixed reports on the take-up of opportunities and the value of different approaches, although both clerks and governors themselves have reported favourably on CUC provision. An important consideration is to tailor the opportunities to the particular needs and requirements of the individual as well as the institution.

4.27 Other sectors also offer training for governors; there may be benefits in some joint provision and in benchmarking experience across sectors, which will be one of the tasks that the Leadership Foundation is well placed to undertake.

4.28 Our data suggest that there may be gaps in coverage of training provision, for example, in relation to discussions of culture, the special organisational and constitutional features of HEIs, the balance of power and authority between different roles and functions and group dynamics and relationships within the Board. There may also be a need for a greater emphasis on specialist training, particularly in relation to the recruitment and selection of senior staff including the Vice-Chancellor/Principal. It is not clear that all institutions link training provision to an analysis of needs and this may become a more significant issue as institutions seek to widen the membership of their governing body.

4.29 While most governors perceive training and development to be useful to them, many are experienced practitioners or experienced as governors in other sectors. The extent to which they require or desire training will vary. In addition, since their role is voluntary, there is a limit to what institutions can press upon them.

4.30 Beyond the issue of training and development, as noted in Chapter 2, a more fundamental need has emerged in the course of our study. This is for a wider debate among governors, the executive and managers about the changing roles, relationships and expectations of each group. Such changes are emerging from different quarters: the significant new challenges facing the sector and different parts of the sector as well as new expectations of governance in higher education and beyond. It is clear from this and earlier surveys – as well as from evidence supplied to the Lambert Review – that the majority of institutions regularly review and update their approaches to selection, recruitment and training. However, this may prove to be a necessary but not sufficient activity when deeper structural changes are required. A debate about changing aspects of governance (and leadership and management) should be taken forward as part of new approaches to the development of governance as a whole and agreement on the roles and contributions of individual governors.

5

Good Practice in Involving the Governing Body

5.1 In this Chapter we consider the 'involvement' of the governing body from three aspects: the first concerns its role in an institution's key decision making processes; the second the provision of information; and the third how members themselves are involved in the activities of the institution in order to increase their awareness of the key issues and its culture. This latter is closely linked to the issues of induction and development discussed above.

5.2 Chapter 2 considered the roles of a governor and a governing body, and how an HEI defines and shapes these roles inevitably drives the way that it decides to involve and inform its governors. Accordingly, we have found that individual governors carry out a wide range of functions as well as participating in formal governance activities. This range of these roles depends on both the personal skills and interests of governors and also on the culture and governance systems of institutions. The 'extra' roles include:

- A specialist adviser or consultant, in technical matters (such as human resources, property or commercialisation).
- A neutral chair in appeals or disciplinary cases.
- An external ambassador or fund raiser.
- A representative (or watchdog) on subsidiary company boards.

In fulfilling some of the above roles the governor can come close to operating as an executive manager which inevitably raises the issues about the separation of governance from management that were discussed in Chapter 2.

5.3 The relationship between the chair of the governing body and the head of the institution is a key to effective governance. It sets the tone for the role and style of operation of the governing body, and it often operates at an informal level. "It is the unscheduled but regular meetings [*between the chair and the head of the institution*] which are clearly most important both in terms of the personal accountability of the vice-chancellor and in setting the general direction of the university"⁴² was the verdict of a recent study of the role of the chief executive. This relationship also influences what part governors as a whole play in policy review and supervision. Funding councils' financial memoranda hold the governing body accountable for institutional performance, and they in turn delegate responsibility for management to the chief executive as the "designated officer". In this context the chair is then responsible for the leadership of the governing body and its effectiveness. How he or she achieves this is the key influence in how members of the governing body are involved. A passive, retiring chair could lead to a rubber stamping approach where the executive takes all the initiatives, while an active

⁴² Bargh, C. Bocoock, J. Scott, P and Smith, D. (2000) *University Leadership: the Role of the Chief Executive*. SRHE/Open University Press.

and reforming chair could (if the chief executive agrees) provide a challenging and productive environment.

5.4 There are still some HEIs where the prevailing culture is to limit the governors' role to the formal rubber stamping of decisions by the executive. The head of the institution is usually responsible for defining this approach. Several governors referred to this in their responses to our questionnaire, and among them there was an acceptance that such a limited role did not enable them to fulfil their responsibilities fully. We also found examples where governors told us they had taken the lead in strengthening their role as a result of discussions in effectiveness reviews, which led to improving the quality of information they received.

INVOLVEMENT IN KEY FORMAL PROCESSES

5.5 A key issue which every institution has to address is how its governance processes are to be structured and arranged so as to enable the governing body to fulfil its legal responsibilities. As such responsibilities increase individual governors will want to be involved with specific strategic or policy processes, and receive specific reports relating to their formal responsibilities. To take a small example, the wealth of recent legislation on human resource and equity issues will involve the governing body in receiving several annual reports if it is to be satisfied that it has fulfilled its statutory duties.

5.6 In trying to assess the extent of governing body involvement in formal processes the 2003 CUC questionnaire, and our own survey, asked about involvement in three key areas: overall strategic planning, the estates strategy and the human resources strategy. Our findings as regards strategic planning are that there is an almost universal acceptance of the need for governors to be involved in the creation and development of the strategic plan. In many cases this is done by using 'awaydays' to bring governors and senior management together to discuss strategy. Some institutions who do not yet involve governors in the first stages of strategic planning have told us that this is being considered. However, there are a few instances where only a selection of governors (the chairs or the more senior members) are involved in the formative stages of strategic planning, and some examples of the involvement being centred on membership of a joint governing body/senate or academic board planning and resources committee.

5.7 The exact timing of these strategic awaydays in the planning process is important; it needs to be early enough for governors to be able to bring their experience and outside knowledge to bear, but possibly not so early that their time is wasted with wild untested ideas. In all cases the final version of the strategic plan is brought before the governing body for approval before it is agreed or sent to the funding body. However, in most institutions this will be the second or third time that governors have seen the document.

5.8 When we asked about the governing body involvement in the development and creation of the estates or human resources strategies, there was an almost universal response to the effect that this was the work of specialist estates or human resources sub committees of the governing body. Governors with specialist skills in these areas had been selected for those committees and were able to contribute to the development of the

strategies throughout the relevant planning process. To date, we have found no examples of the governing body being involved at an early stage, except where there was radical change such as the disposal of an old campus or a move to a new one. It is normal however for the final drafts of the estates and human resources strategies to come before the governing body for approval.

5.9 The main way governors become genuinely 'involved' in decision making is through membership of sub committees. Many governors commented that this was the best way they could feel engaged and part of the institution. Being in a relatively small group rather than the larger more formalised governing body helped to develop understanding and commitment. One governor told us "of necessity proposals when they reach Council are well debated and options are therefore limited. Control and influence really take place in the committees where lay members can gain the depth of knowledge and continuity really to contribute". The same impact was found even when the involvement was more informal. One clerk summed this up as follows "involving members in short-term projects and working parties leads to a greater engagement with the University. There is often a steep learning curve in relation to the specific project, but the effect is to engender an ongoing sense of involvement which has benefits beyond the immediate project outcome. Although the project itself might be narrowly focused in comparison with the strategic role of the Council, the increased level of understanding, albeit about a small area of the University's business, seems to increase the member's effectiveness overall".

5.10 The scope for making governors members of sub committees is obviously linked to the committee structure. When there is a trend to reducing the numbers of committees or to creating joint committees (which is noted in Chapter 6), there will be fewer available seats on such committees and this could lead to some members feeling disengaged (if, for example, they do not sit on the influential planning and resources committee). Where this happens, it may be good practice to find other ways of involving members in less formal working parties and ad hoc groups etc.

5.11 There are many opportunities for governors with specialist skills to become involved in executive actions and management. If a property specialist is sitting on a building project working party, some of his or her actions and decisions may stray into management territory. In the pre-1992 institutions some of the functions traditionally fulfilled by the treasurer were built in to the operational financial procedures of the institution. In some Scottish universities the two or three senior lay members regularly attend meetings of the senior management team as observers. Do these 'incursions' matter? Are they exceeding the 'proper' independent role of the governor? Or are they simply mechanisms for letting governors contribute their technical advice when needed and become aware of the issues lurking below the surface of the agenda?

5.12 There are no standard answers to these questions, since the way that governors are used in governance will be part of the culture of each institution. A simple test of the style of the involvement is for the governor concerned to assess whether he or she is now able to evaluate impartially the activity with which they have been involved. Good practice means keeping an open mind on the issue, ensuring that the position is clearly identified and that any risks of management involvement are considered and reviewed as part of each institution's effectiveness reviews of its governance.

5.13 Governors can be involved in institutional affairs in two ways: through formal timetabled events and through informal activities. The following table notes the various aspects of formal governor involvement and, based on survey evidence, suggests some areas of possible good practice.

	Good Practice	Innovative institutional practice
Strategic planning	Participation at an awayday in an early stage of the planning process to debate key guidelines or issues	Where they have expertise governors asked to present papers at awaydays or before governing body meetings,
	Final approval of the plan by the governing body	
	Individual governors sit as members of a joint planning committee with senate/academic board (eg PRC)	Small groups of lay members discuss policy at intervals with the senior management team
Estates and human resource strategies	Governor's involvement in specialist sub committees that develop the strategies	Estates committee co-opts specialist lay members who are not on the governing body
	Final approval of the strategies by the governing body	
Senior staff appointments	Governors are members of panels for senior appointments	Governors decide what values a new VC should hold as part of a brief for head hunters.
Working parties, technical committees, subsidiary company boards	Governors asked to join ad hoc working parties or boards where their skills are relevant (particularly in estates/buildings and commercial areas). Every governor is a member of one sub committee.	
Joint committees with senate/academic board	Governors as members of 'traditional' joint committees such as planning and resources	Governors as members of joint committees covering topics such as student recruitment or teaching and learning.
Open Fora		Governors attend an annual open meeting and answer questions from staff and students or the external community.
Disciplinary appeals	Governors with suitable skills are willing to serve – often as chair.	

5.14 The responses that we have received hinted that there are still a few institutions where the role of governors might be influenced by an attitude from senior management that wished to involve them as little as possible. One governor of a large Russell Group institution stated this nicely "we have made big strides in developing a strong governance environment, but the starting point of the Council being a group of the great and good rubber stamping the actions and plans of the academic and management interests has not been totally eradicated". Another governor's complaint related to the governing body's relative inertia "our main area of weakness is that we are fully involved at the time of decisions, but relatively uninvolved in the development process. Council is largely responsive to officers". This comment brings us back to the role of chair, since if he or she is unwilling to take the lead, there are unlikely to be many executives or secretariats that will move on their own to strengthen the role of the governing body.

*At the **University of East London** there is a longstanding annual event when staff and students have an opportunity to meet governors and ask them questions. The executives are also in attendance, but do not take the lead in replying. Participation has ranged from a normal level of about 30 people to a high of 200 when major issues were on the table. Up to half the governors usually attend and they believe that it helps them to get the temperature of the institution and know what the community is thinking. At **Canterbury Christ Church University College** a similar Annual Meeting is held but with stakeholders from the city and region. Governors take the lead in introducing major topics arising from the College's Annual Report. Over 150 are invited and the event allows the governors to meet some of their customers in the external community.*

5.15 It is increasingly important to create a working partnership between governors and the executive. The ideal was described by a governor of a post-1992 HEI "the key is having the right mix of governors with the time, experience and commitment to making the institution work effectively. The chemistry of the board is critical along with an open and honest relationship between the executive and the independent governors". This echoes the American research reported earlier and confirms that, when reviewing effectiveness, it is important to review how governors interact personally with each other and their executive, rather than focussing purely on formal systems and processes.

INFORMATION

5.16 The effectiveness of a governing body member is largely dependent on the extent to which he or she understands the institution and its culture. This in turn depends partly on the information the governor is able to obtain.

5.17 This raises two questions: how much do governors need to know, and how does the HEI get the right balance between drowning a governor in information and starving him or her? Almost every clerk admitted that this issue was getting more acute and very hard to resolve, leading to frustration if the balance is not correct. Giving too little information is obviously undesirable, but too much can lead to governors micromanaging and also runs the risk of drowning them in detail so that they do not focus on the major strategic issues. As one respondent observed, governing body papers need to be full of analysis and discussion of strategic options rather than pages of data.

One useful distinction from the corporate world is between 'decision information', 'performance monitoring information' and 'incidental information'.⁴³

5.18 At the level of procedure, many governing bodies and their committees adopt straightforward - but valuable - devices to assist governors in finding information in committee papers as rapidly as possible, using devices like colour coding. Such approaches are so commonplace that they hardly need stating as being basic good practice. In other HEIs more novel approaches are being tried, for example we came across several that were proposing to use a traffic lights system for indicating urgent matters, and another is considering the use of 'dashboard' reports (see Chapter 8).

5.19 Many clerks seem to adopt the approach of asking governors to decide for themselves how much information they want to receive and in what form, and how much they want to access electronically at their leisure. This question has become one of the issues examined in many effectiveness reviews, and there are signs that changes are being made to provide information in different formats. Increasingly, the approach adopted is to make a wide range of material available on a confidential web site to those who want to access it, and to distribute a small number of concise policy-orientated papers for the meetings. Good practice therefore is regularly asking governors if they are getting the information that they need to do their job in the format that best suits them. Answers will differ according to governors' disposition, time and technical enthusiasm. In parallel, there has been a widespread drive to present issues in board papers in a concise way, limiting the discussion where possible to the policy and strategic implications.

5.20 The provision of independent advice to the governing body is another important topic, and some public sector organisations provide the governing body with its own staff resources to support its specific remit. The clerk to a governing body in an HEI operates similarly to other sectors in the provision of advice on the powers and responsibilities of governing bodies, and guidance on constitutional and procedural matters. However, they also tend to carry important executive responsibilities within an institution (although this is not always true in the SCOP sector where a number of independent clerks exist). Thus, in many HEIs, clerks are accountable in two directions, to the chief executive and to the governing body, having particularly close relations with the chair of the governing body and the committees. This situation may raise practical difficulties, but, as importantly, also raises two governance issues.

5.21 First, there can potentially be a conflict of interest in providing 'independent' advice both to the executive and to the governors. The Registrar and Secretary model runs the risk of placing the hard pressed officer in a difficult position by expecting him or her to provide impartial briefings to governors which may not agree with the executive's stance. Against this, the benefits of an independent (and usually part time) clerk to the governors can be limited by him or her not being sufficiently aware of issues within an institution.

5.22 The second issue is that the dual accountabilities in the role of the clerk arguably privilege the governing body and the executive over academic decision makers. The traditional form of tripartite governance in higher education (which sought a balance

⁴³ Carver, J and Oliver C., *Corporate Boards That Create Value*. Jossey Bass, 2002.

between the governing body, the executive and the academic community – including students) has been eroded over time, but given the responsibilities of the governing body in post-1992 institutions for 'determining the educational character' of the institution, it may be worth considering whether it receives sufficient independent advice on academic and educational matters to carry out this function.

INVOLVEMENT IN INFORMAL ACTIVITIES

5.23 There appears to be a trend for clerks to the governing body to become more active in providing briefing sessions and events that increase governors' understanding of both the general higher education scene and also key institutional issues. There also appears to be a general acceptance of the need for the clerk to be proactive in helping governors to master the intricacies of institutional life. It is for example now almost universal for there to be a preliminary briefing event of some kind before all governors' meetings. However the onus need not always be on the clerk to ensure that governors are well informed. At **Sheffield Hallam University** the briefing papers for governors state quite clearly that "there is an onus on members to keep themselves informed so that they can engage constructively in debate and play an active role on the Board of Governors".

At Oxford Brookes University before each of the six meetings a year of the small (16 member) Governing Body members either receive a one hour briefing on some aspect of academic activity including developments in learning and teaching and areas of research or go on a two hour visit to a School or support department. Governors are also invited to the University's annual conference on teaching and learning. In order to help members understand their role better, as well as producing a substantial Governors Handbook, the Clerk prepares briefing notes describing their responsibilities in relation to specific issues such as equality and diversity legislation. New governors are told when they join that their time commitment is expected to be 15 days per annum.

5.24 However, there is the danger of being too prescriptive, and what works in one HEI may not in another. For example, many HEIs are introducing partnering/twinning arrangements between individual governors and schools or faculties, while at the same time others are abandoning them. On the one hand it is argued that personal linkage with a school or faculty helps the governors to get under the skin of the institution and meet students and staff face to face; but on the other hand some HEIs have found that governors find it hard not to be partial in favour of their partner or discover that the department concerned has expectations of support and sponsorship which the governor cannot deliver. Some institutions seek to avoid this by ensuring that link arrangements are rotated so that attachments cannot be too strong.

5.25 It is not just lay governors who can benefit from such opportunities. Discussions between lay members, senior managers and other staff can contribute to wider institutional learning. An example from the **University of Brighton** illustrates this point:

Ensuring that governors are sufficiently knowledgeable about and up-to-date with an HEI's core activities and the wider higher education context is a key concern of institutions. At the University of Brighton opportunities for mutual learning between lay members and the senior management team have involved the development of termly seminars on topics chosen either by governors or the Senior Management Team. One of the most successful involved a wide range of

staff from all parts of the University where everyone gained insight into a new policy area and how it was developing on the ground. The seminars are popular with a 75% attendance rate as the norm. A briefing pack is sent in advance and a record is created for those who could not attend. Recent topics have included tuition fees post-2006, risk management, services to business and student finance.

5.26 The interpretations of individual governors of how much time they should spend in getting to know the institution also differ. One governor reported that he had held over 50 face to face meetings with academic staff during his tenure, but most others will be unable to match this degree of commitment - or may not believe they need to do so.

5.27 In summary, we have found the following examples of good and innovative practice in informal activity related to briefing and informing members:

	Good Practice	Innovative Institutional Practice
Faculty or schools liaison		Governors with commercial or industrial experience sit on faculty advisory boards.
		Governors link with an academic or administrative function for a two year period and are then rotated (but see para 5.23).
Informal presentations and workshops	Governors attend frequent special events with senior academic colleagues.	Regular presentations to the governing body by students on aspects of the student experience.
	Programme of briefings on the strategy or visits to faculties before meetings.	Informal evening briefing meetings for lay governors (as well as pre meeting briefings).
	Social events (dinners etc) used to help lay members to meet academic colleagues.	Governors invited to annual management conferences and learning and teaching days.
VC's briefing of lay members	Briefings at the start of each session on key policy issues. Updated at each governing body meeting.	Informal lunches or dinners of lay members with the VC throughout the year.
Information flows	Web site hosting papers supporting governing body/committee agenda.	Web site has a facility for governors to exchange ideas and messages.
	Governors have full access to the institutional intranet.	Governors receive minutes of SMT/executive meetings and two senior governors attend SMT meetings at intervals.
	Regular flows of newsletters from the institution, CUC, HEFCE etc (monitored by regular surveys of governors asking them what they want).	Free subscription to THES is provided. Clerk produces a monthly digest of information for governing body members.

	Onus is on governors to keep themselves informed	
Formal events	Governors invited as of right to all ceremonies and formal HEI events (inaugural lectures etc).	

6 Good Practice in Governing Body Relationships with Senate/Academic Board and Committees

6.1 In this Chapter two topics are covered which are central to effective governance: good practice in the relationship between an HEI's two main bodies concerned with governance - the governing body and senate/academic board; and the organisation and role of committees in decision making.

THE RELATIONSHIP BETWEEN THE GOVERNING BODY AND SENATE/ACADEMIC BOARD

6.2 Lambert has reported the results of CUC surveys which showed that almost all governing bodies consider that they have "unambiguous control" over the affairs of their institution. The charters and statutes of most pre-1992 institutions set out very clearly the powers and duties of senate, and usually state its pre-eminence on all matters of academic governance. But these documents also make it clear that in the last resort senate is accountable to the governing body, although it would be a rash body that continued to ignore the measured academic advice of its senate on purely academic activities. Most clerks therefore regard it as one of their roles to ensure that lay members of the governing body are informed about academic issues and have as many opportunities as possible to get to know and understand the institutional culture so that they can appreciate the nature of academic governance.

6.3 The position is, of course, somewhat clearer in post-1992 HEIs because of the responsibility of the governing body for determining "the educational character and mission of the institution". However, it does not necessarily follow that post-1992 governing bodies have any better ways of informing themselves about the operations of their academic boards. The small representation of academic staff on their governing bodies can mean that academic issues and opinions are not fully heard, and this puts a greater onus on the executive to find ways of ensuring that their lay governors are properly informed in order to make decisions about the educational character and mission of the institution.

6.4 In collecting data for this study we found that, in practice, the role and responsibilities of both senates and academic boards vary considerably between HEIs. On the one hand, examples can be found where these bodies continue to have very significant responsibilities covering a wide area of academic policy, whilst on the other hand there are cases where their role is narrower and centres on the core functions of academic quality, course approval and assessment. These differences have been exacerbated in some HEIs by significant devolution of financial and academic policy responsibilities to faculties or departments. In such circumstances the academic board/senate almost inevitably finds itself squeezed between the enlarged scope of

corporate governance through the governing body and the pressures for devolved decision making on academic issues. This is happening at a time when other pressures are suggesting the need for central control over issues such as the maintenance of quality and approval of new academic developments.

6.5 In the face of such developments there are different views within the sector on what steps should be taken, and therefore how good practice should be identified. Some universities express a strong continuing commitment to the idea of a senate/academic board as central to the collegial values of governance in higher education. Others find such bodies increasingly irrelevant and are asking if the time has not come for them to be abolished, although this would - of course - need a fundamental change in the charter and statutes/instruments and articles of institutions. It follows that many developments that are reported in this Chapter will be considered contentious, and what some HEIs find good practice others may regard as fundamentally flawed.

6.6 In the USA the debate over the roles of the board and 'faculty senates' has been very lively. "I feel about them the way I feel about the student newspaper" one president is reported as saying, "they're pesky, but you need them desperately. They provide a useful source of criticism and a group of people who are frequently contrary, but they keep you honest".⁴⁴ A recent survey of 2000 staff in 760 US institutions found a substantial difference in the esteem with which senates were regarded and in views as to their role in decision making. The lack of a statutory base in the US to the relationship between the board and the senate also confuses matters. Although most considered that senates shared some governance functions with the board, definitions of what this meant were varied, and apathy and lack of trust were major barriers to effective joint working.⁴⁵

6.7 The term 'shared governance' does not translate easily to the UK scene, even though the statutes of most pre-1992 institutions set out quite clearly the role of the senate in a bicameral structure. The key senate roles are those of the custodian of academic standards for both teaching and research, and setter of academic policy. This means that the governing body with its overall responsibility must find a way of working closely with the senate in those many areas where strategy, funding and academic issues overlap. Thus, under current arrangements the way that the governing body and senate/academic board work together is an indicator of healthy governance, but it can have its difficult moments. One clerk suggested to us that "the council does not or should not compromise the senate's powers. It is not competent in senate matters. How this is achieved is down to careful management of business and planning of decision making processes and the tension inherent in this is an integral part of university governance". Another clerk stressed the need for care in the relationship "it is unlikely to be beneficial if the council uses the control of resources coercively to dominate the senate; that is why policies and plans are discussed in joint fora, so that the potential for serious dispute is as far as possible reduced." This conclusion is supported by the evidence we report below of a growth in the number of joint committees of council and senate. Bringing key decision makers together from both environments ensures that all the relevant interests are represented and may make decision cycles speedier and more efficient.

⁴⁴ Jordan R, *The Faculty Senate Minuet. In Trusteeship Sept/Oct 2001. AGB.*

⁴⁵ Centre for Higher Education Policy Analysis, *Challenges for Governance: a National Report. Rossier School of Education. University of Southern California, 2003.*

6.8 In terms of formal reporting, in many pre-1992s the proceedings of senate are brought to the attention of the governing body either through their minutes, reports by the vice-chancellor about each senate meeting or formal written reports. As governing bodies shrink in size, so the number of representatives from senate will fall and therefore the voice of senate is likely to be less well heard. The number of senate/academic board representatives on governing bodies ranged from eight to one in our survey. Assuming current arrangements remain, the mechanisms for communicating the views of senate may therefore need to be extended in such cases. This lack of contact is being overcome in some institutions through encouraging lay members of the governing body to attend senate/academic board meetings and its sub committees as observers.

*While it is usual for each meeting of the governing body to receive a report on the events and decisions of the preceding meeting of senate, some institutions have taken to formalizing the reporting arrangements. At **Kings College London** each meeting of the Council receives a written report on what has happened in the preceding meetings of Academic Board, which is then elaborated upon by the Principal who is the Chair of the Academic Board. This categorises topics into those where the Academic Board is advising Council, where it is making recommendations to Council and general academic items that it thinks Council should note. At the end of each year an Annual Report is submitted to Council by Academic Board.*

6.9 In the following table we suggest what might be regarded as good or innovative practice as regards the flow of information between the governing body and senate/academic board. However, the differences in the formal responsibilities of governing bodies in this area between pre and post-1992 HEIs means that considerable care needs to be exercised in interpreting and implementing such activities.

	Good Practice	Innovative Institutional Practice
Reporting	Governing body receives a report on senate/academic board at every meeting (either as minutes or as an oral report)	Senate/academic board presents governing body with an annual report including KPIs on those areas of activity under its remit
		A explicit scheme of delegation holds the vice-chancellor to account for the effectiveness of the academic board
Membership	The governing body contains enough academic members from senate/academic board to allow it to understand academic issues and concerns	Lay members can attend senate/ academic board meetings as observers whenever they wish
Joint working between governing body and senate/academic board	Common workshops and forums are held on key strategic issues (eg: QAA reviews)	Lay members participate as panel members in any periodic reviews of departments or schools.

JOINT COMMITTEES OF THE GOVERNING BODY AND SENATE/ACADEMIC BOARD

6.10 It is clear from survey responses that having a joint committee of senate/academic board and the governing body is a widely used way of ensuring that the potentially conflicting perspectives of both parties are brought into balance in arriving at policy recommendations for the governing body. It also helps to streamline decision making by cutting out duplications in agendas. From our data it appears that there is a growing trend for more such committees to be created. The convention of having one central joint committee for planning and resources (PRC) dates back to the Jarratt Committee Report of 1985 and it was widely implemented thereafter. This principle is now being applied more extensively with two similar trends: the creation of more joint committees, and the widening of the scope of the traditional PRC to include performance review and strategy. A common result is the emergence of one extremely powerful committee; one institution calls it the strategy, performance and resources committee, and another simply – the executive committee.

*The model of a strong joint committee of Governing Body and the key academic body has been followed at **Queens University Belfast**. As a result the core committee structure is very simple. The Governing Body and the Academic Council have a joint Planning and Finance Committee which has nine sub committees: Research, Academic Planning, Regional and Communications, Student Services, Information Services, Human Resources, Safety, Investment and Estates. The Academic Council has only one core sub committee (on Teaching) that is not joint with the Governing Body.*

6.11 Another university has created three key joint committees covering finance and planning, staff and students, and has complemented this by ensuring that its governing body has lay members sitting on some of the main sub committees of senate covering teaching and learning and student recruitment and admissions. These areas frequently occur in the list of the most important risks in any risk analysis exercise, and in this way the governing body can be sure that it knows enough about these academic areas from the risk management point of view.

*Many institutions have joint committees of Senate and Governing Body that cover the central functions of planning and resource allocation. However some institutions have gone further and widened the areas covered by joint membership. At the **University of Aberdeen**, for example, a major review of committees two years ago reduced their overall number by 40% and greatly increased the links between the Court and Senate. Now there are joint committees covering planning finance and estates, student affairs, staffing and development and research, income generation and commercialisation. In addition two of the 12 members of Senate sub committees on teaching and learning and student recruitment and admissions are from the University Court. There is said to be little or no friction between the two bodies since each respects and recognises the valid interests and responsibilities of the other.*

6.12 Our survey has identified some interesting examples of attempts to bring together the activities of senates/academic boards and the governing body. Only two of these could be considered basic good practice, although some of the other ideas in the following table might have wider application.

	Good Practice	Innovative Institutional Practice
Joint committees of the governing body and senate/academic board	A joint planning and strategy committee bringing together academic and financial factors in a common strategy	Other joint committees cover key areas of HEI strategy or risk (eg: student recruitment, teaching and learning, research)
		Joint committee monitors institutional performance against targets
		Joint committees on staffing and health and safety
		Joint risk management committee with senate/academic board
		Joint academic enterprise committee sets commercialisation strategies (see below)
Joint awaydays		Informal governing body and senate/academic board awaydays on purely academic matters
Lay member participation in academic activities.		Lay members sit on strategically important senate/academic board sub committees

OTHER CHANGES IN COMMITTEE STRUCTURES AND THE ROLE OF COMMITTEES

6.13 Two major trends have been revealed by recent CUC surveys; a shrinkage in the size of the governing body and a similar reduction in the size of the sub committee structure underneath it. The 2003 CUC survey of its members found that 36 had reduced the size of their governing body in the preceding three years and many of these reductions had been significant. Only two institutions had governing bodies with more than 40 members and in each case they felt this to be justified. As a result, in its revised Guide the CUC felt able to suggest that "a governing body of no more than 25 members represents a benchmark of good practice".

6.14 However, not all pre-1992 institutions are happy with the trend to reducing their governing body size. Several feel that it limits their ability to promote their institution in the community and to draw in a wide range of ambassadors. One extreme version of this is the governance model adopted by MIT with a governing body of 75 members and a small executive committee of ten. An adaptation of the MIT approach is currently being considered by at least one UK university. Some might argue however that a properly constituted court could in the pre-1992 institutions meet some of the objectives of the MIT Corporation.

*One English university is discussing the adoption of the model of governance found at the **Massachusetts Institute of Technology (MIT)**. MIT is governed by a Board of Trustees known as the Corporation with approximately 75 members who include leaders from education, science, engineering and other professions as well as 30 emeritus members, four corporate officers ex officio (the MIT chair, President, treasurer and secretary) and three representatives from the Commonwealth of Massachusetts. This Board meets four times a year and receives reports from its committees.*

The principal one of these is an Executive Committee of ten members that meets ten times a year. Five of its members are elected from the Corporation and serve for five years. The Executive Committee, which is chaired by the President, covers all the key management issues including planning, budget setting, student recruitment, campus planning, external relations, research sponsorship and student affairs. Its activities are supervised by the Corporation. The President also chairs an Academic Council of 22 members which meets weekly during term time.

6.15 Two related trends are evident in relation to committees from the responses to our survey: a reduction in their number (which is usually based on the creation of fewer but more powerful new committees), and a move to giving more authority to executive management. However, this does not necessarily mean the end of the committee since some executives still use them to assist in their decision making.

6.16 Our survey has shown that more HEIs are reducing the numbers of their committees than are increasing them. There have been, or are currently, major reviews of structure at Aberdeen, Exeter, Central Lancashire, Manchester and Southampton, that have all led to fewer committees. We only found one instance of more committees being created and that was in a post-1992 institution with very small numbers in the first place.

6.17 The pre/post-1992 distinction is very evident in committee structures, and some large post-1992 HEIs still retain a very slim structure which is almost the same as that outlined in 1989 on their independence from local authority control. There are several examples where, aside from the audit, nominations and remuneration committees governing bodies have no more than four or five committees. This contrasts with some pre-1992 structures where the numbers of sub committees can be as many as 16.

6.18 The common features of the restructuring have already been referred to – the development of a central committee that plans and monitors all resources and the emergence of more joint committees of the governing body and senate/academic board. At the **University of Exeter** for example the strengthening of the existing Planning and Resources Committee allowed three major committees to be disbanded (Finance, Student Affairs and Academic Policy).

*As part of a strategic overhaul of its organisation and governance the **University of Southampton** has reviewed the structure of the committees reporting to Council and Senate with the creation of a number of joint committees of them both. The new simplified structure has not affected the existing Council of 37 members, but has created an influential Policy and Resources Committee with six permanent “policy” sub committees, which cover Research, Teaching, Enterprise and Innovation, Finance, Estates, and Human Resources.*

The PRC has 16 members who are the Vice-Chancellor, the Chair and Vice-Chair of Council, the Treasurer, one lay member of Council, the 3 Deputy Vice-Chancellors, the 3 Deans, the Secretary and Registrar, the Director of Finance, two Heads of Schools appointed by the Vice-Chancellor and the President of the Students Union. Its sub committees have the power to co-opt specialist lay members from outside the Council (which is currently being used in respect of the Enterprise Committee). The sub committees are chaired by ProVice-Chancellors, the Treasurer or the Registrar and the Vice-Chancellor is a member of each of them; other members are drawn from Senate and Council, as appropriate.

The PRC is virtually an Executive Committee of Council as it meets ten times a year, while its sub committees meet between four or five times. Some of the policy sub committees pass their decisions to Senate for comment and review before they reach Council. This means that the Senate of 140 members is playing a consultative role.

6.19 There are both advantages and drawbacks reported with the reduction in the number of committees. The former focus on an increase in the efficiency and effectiveness of decision making, and include: the integration and coordination of decision making; the removal of duplication in agendas; the reduction in the length of decision processes; and less staff time overall spent in committees. On the other hand, there are several risks reported in this development: that the agendas of the new strong committee might become too full to provide for effective challenge and debate of all the issues; that individual lay members and senior academic staff not sitting on the central committee might feel disengaged from decision making; and that there might not be adequate supporting systems feeding in advice and information on key issues.

6.20 A crucial point concerning good practice in this area is that the reasons for a decision to either reduce or maintain the number of committees need to be explicit, and the implications of this for the delegated responsibilities and reporting lines of individuals must be clearly spelt out. A good example of this is the substantial scheme of delegation that has recently been developed at the **University of Central Lancashire**. This major exercise has taken a holistic view of the University's governance, and has produced a simplified structure that links the University Board, the Vice-Chancellor and a small number of committees in an integrated scheme of delegation linked to reviewing the performance by the institution of its strategic goals. This is described further in Chapter 8 below.

6.21 One consequence of a reduction in the number of committees could be that some lay members do not have a place on any committee other than the governing body, which may not be a desirable situation, if the institution wants all its lay members to feel that they are involved. However, if a review of committees is undertaken at the same time as a reduction in the size of the governing body this problem should not arise, as a reduced number of lay members would match the reduced numbers of places for lay persons on sub committees.

6.22 The second trend referred to, as a way of reducing the number of governing body committees, is to let the committees report to members of the executive management team. The committees are still used to involve relevant members of the community in decision making, but they no longer require independent or external members from the

governing body. This approach is being adopted in several institutions, as the following examples show:

- At the **University of Bath** committees of the Executive report to the Executive Team on topics such as research, space management and health and safety.
- At the **University of Strathclyde** the Ethics and Library Committees report to the University Management Group.
- At the **University of Plymouth** a large number of committees and groups report to an individual member of the Chancellery and periodically report by exception to the Chancellery meetings. The sub committees of Chancellery in 2003-04 included: Estates and Infrastructure, Human Resources, and Equal Opportunities as well as groups covering academic planning and resources.

6.23 Other changes in structure which may be innovative to some are:

- Several universities have created 'chair's committees' comprising the chairs of the key committees as a forum for senior lay members to meet and discuss common issues. (Two examples are at the **University of Glamorgan** and **Imperial College**.)
- A Vacation Powers Committee has been created to enable key decisions requiring governing body approval to be taken during vacations (**Imperial College**).
- A Student Affairs Committee is a joint committee of Senate and the governing body (**Aston University, Brighton University** and **Paisley University**).
- A Research Ethics Committee is a joint committee of the governing body and the Academic Board (**Birkbeck College, University of Stirling**).
- An Education Strategy Committee reports to the governing body (**Leeds Metropolitan University**).

6.24 One conclusion to be drawn is that the sector is grasping the need to simplify and shorten lines of decision making. The trend is to fewer governing body committees, more joint committees with senate and the emergence of some structures in which the executives take more responsibility for decision making. All these remove detail from the governing body agenda, but sharpen the need to exercise effective monitoring over the performance of managers and to obtain reliable evidence of overall institutional effectiveness.

7

Good Practice in Overseeing Commercial and Third Leg Activities

7.1 Although the Lambert Report focused on commercial activities in HEIs, it did not discuss how governors supervised them in its discussion on governance. We therefore explored this in some detail in our two surveys aimed at clerks and governors, and asked questions about three areas: what was meant by commercialisation within an institutional setting; what were the key issues; and how were governors involved in the overall supervision of these activities?

7.2 The oversight of third stream activities is becoming more important for at least two reasons: the growing reliance of institutions on the flow of income it produces (and the difficulties that would arise if it ceased); and the likely interest of the Charity Commission and its agents in activities that go beyond the core functions of learning, teaching and research.

7.3 In any ranking of the risks facing institutions it is very likely that those with a large number of commercial activities place failure or losses in this area high up the list. For example, in Australia a series of high profile losses by universities on their commercial trading activity has influenced the AVCC and the government to give the topic of oversight of commercial activity greater emphasis in defining the responsibilities of governors.

WHAT ARE THE MAIN COMMERCIAL ACTIVITIES AND THE IMPLICATIONS FOR GOVERNANCE?

7.4 From the data collected it is clear that there is a considerable difference between HEIs in deciding what is meant by commercial activities. On the one hand there are institutions like the **University of Warwick** and **Kings College London** where the institution either has large numbers of different commercial enterprises or is at the frontier of commercializing their intellectual property. On the other hand most post-1992 institutions and colleges will undertake little technology transfer, but will generate many contract teaching and training projects, and consultancy and conference income.

7.5 In our survey commercial activities were variously defined as including:

- Overseas collaborative ventures in delivery of an institution's courses.
- Hotels and conference centres.
- Income from short courses and consultancies.
- Establishment of spin out companies to develop intellectual property of academic staff.
- Financing arrangements with external venture capital providers to support the development of spin out subsidiaries.
- Regional development initiatives for industrial partnership or collaboration funded by regional development agencies.

7.6 For some, making any definition was not easy. One university active in the field noted that "defining the boundaries of this activity is somewhat difficult particularly for an institution which badges itself as an 'enterprising university' and thus seeks to bring enterprise in the broadest sense into all its activities". Another university, making the same point, thought that it was misleading to conceive of commercial activities as being separate from all other activity.

7.7 The governance concerns of HEIs can be placed on a broad spectrum depending upon the extent of commercialisation. At one end of the scale the main issue is reported as being to encourage academic staff to be entrepreneurial at all or to contemplate engaging in third leg activities, while at the other the main concern is related to the management and financing of commercialization of intellectual property. Clearly, the role of governors varies according to where an institution fits in that spectrum. For the majority of individual governors responding to our survey commercialisation as an issue scarcely affected them at all; in terms of policy they simply saw it as one of the concerns of the finance and possibly audit committees, and in relation to management as the preserve of the executive. Only a few respondents noted technical issues such as identifying and controlling intellectual property or, further downstream, the strategic and investment questions when deciding to capitalize on IPR and exploit it commercially. The majority surprisingly did not feel the need to be informed about commercial activities, as they regarded them as the preserve of management.

7.8 Several governors saw establishing the right culture as a key issue, "the main challenge" said one in a large civic institution "is the need to change custom, practice, attitude and understanding within the academic establishment".

7.9 At the highly active end of the spectrum a clerk listed the issues that had recently involved the governing body. They were:

- Decisions on the institution's policy on licensing versus the formation of spin-out companies.
- The funding of spin-out companies.
- Monitoring the performance of spin-out companies in which the institution has significant equity.
- Handling potential conflicts of interest.
- Sale of future IPR rights to venture capitalists to raise finance to further the institution's activities in this area.
- Procedures for authorising the sale of part of the institution's equity in a successful spin-out company.
- The formulation and approval of the borrowing policy and the establishment of an endowment fund to service the debt thus incurred.

7.10 Another institution saw agreement on its 'risk appetite' as the key issue, implying that it alone would be funding any investment in commercial activities. Yet another found that tensions arose when one of the university's investments was sold making large capital gains. There was no clear understanding as to who should receive the spoils. In only one case did an institution in their responses to us mention the phrase 'ethical issues' in relation to investments.

HOW SHOULD GOVERNORS BE INVOLVED?

7.11 Where the scale of commercial operations was significant, our survey showed that governor involvement was likely to be in the following roles:

- Involvement in setting strategy and policies in this area (for at least all those topics listed in 7.9 above).
- Approval of any use of institutional funds in commercial activities through reviewing business plans or projections at an enterprise or finance committee.
- Approval of any significant financial joint ventures with providers of risk capital.
- Reviews of the risk in investing institutional funds in commercial projects in the audit or risk management committees.
- Membership of the oversight and monitoring committees which have responsibility for monitoring all subsidiary companies and enterprises.
- Membership as a non executive of subsidiary boards of enterprises.

In some cases executive management carried out all the monitoring and review activities and reported on them to the governing body at intervals.

*At the **University of Leeds** the range of commercial activities is very wide, embracing the commercialisation of intellectual property, delivery of learning to corporate customers, a hotel/conference centre, University farms and regeneration projects developed with the local community. The University's current strategic plan includes the activity of promoting knowledge transfer and a strategy has been developed for this, which will cover activities such as international R&D collaborations, support to local SMEs and support for innovation in the NHS.*

Governing body involvement in overseeing these commercial activities is through a Committee on University Companies to which the Council has delegated powers to approve contracts under £1million. The Council itself approves all projects over that figure. This committee reports to the University's Planning and Resources Committee in the first instance and is responsible for the oversight of all subsidiaries and for reviewing their annual and five year plans. A Financial Monitoring sub committee of the Planning and Resources Committee receives regular reports from the Enterprise Accountant on the trading performance of the companies concerned. The Nominated Officer attends a number of meetings of subsidiary companies and receives their monthly management accounts. He also presents an annual report to the Committee on University Companies on trading performance and company governance.

7.12 The question of whether governors should be non-executive members of subsidiary company boards has the potential to generate a lively debate. On the one hand it is suggested that this is an ideal use of the skills and experience of external lay governors in a commercial environment with which most are very familiar; on the other hand many clerks feel that it is risky in that it can give rise to a conflict of interest between a governor's duty under company law as a director of a subsidiary company board and the prime duty to the governing body. In one HEI a governor had resigned from a subsidiary board because of such a conflict and this had led the institution to adopt a policy that governors should never be directors. It is safer - some argue - to

appoint experienced lay people who are not governors to company boards, and this also would open up a wider range of skills.

7.13 The following table summarises what might be called core good practice, and represents what most of those with active commercial portfolios are currently doing. While the majority of HEIs already have, or are developing, a strategy for commercial activities, in only a few cases was this stated as being fully integrated with the overall strategy of the institution.

	Good Practice	Innovative Institutional Practice
Strategy and policies for commercial activities	Having a clear definition of what activities are covered by the commercial brief.	
	A strategy for commercial activities that is integrated with overall institutional strategy.	
	Approving key policies on creation, operation and oversight of commercial subsidiaries.	
Monitoring and reporting on commercial activities	Oversight by a committee that reviews financial and performance monitoring reports on all subsidiary companies and enterprises.	Business plans and financial projections for subsidiaries reviewed by a specialist enterprise unit before reaching the governing body.
	All enterprise proposals requiring investment are subject to the internal risk assessment and review processes.	Small sub group of governors acts as an independent monitor of major investment decisions by management (eg new campus acquisition).
	External lay persons appointed to the board of subsidiaries (not governors).	Lay members of governing body barred from sitting on subsidiary boards as this gives rise to a conflict of interest.
	Production of an annual report to the governing body on the performance of all commercial activities.	A powerful committee of the governing body meets every six weeks to decide on commercial issues.

7.14 There appears to be no common approach to fitting the oversight of the commercial activities into the governing body and committee structures, and the present picture follows the spectrum outlined above. In most of the least active institutions

commercial activities have no special status and fit in with the existing frameworks for risk assessment and financial control; the enterprise activities are treated as profit centres and report to appropriate officers who then may or may not report on them to committees and the governing body. However their financial results will appear in the institution's annual accounts.

7.15 Within the most active institutions a more sophisticated policy and monitoring approach is required and this may require the formation of an enterprise committee (or similar title) that reports either to the finance committee or to the policy and resources committee. In some cases, when the monitoring burden on this committee becomes too great, it has been found that this limits the time to discuss policy matters such as IPR, profit sharing and capital investment criteria. A separate commercialisation policy committee is then required and in some cases the issues on its agenda require inputs from senate/academic board. In this case it would probably be desirable for such a policy body to be created as a joint committee of senate/academic board and the governing body, as the example below illustrates. Conversely, there are other HEIs who regard commercialisation activities as entirely a matter for the governing body and consider that senate participation would not be appropriate.

*The **University of Salford** has established an Academic Enterprise arm which is a major support service of the institution. Its overall policy and strategy is governed by an Academic Enterprise Committee which is a joint committee of Senate and Council. A separate company (University of Salford Enterprises) oversees a range of spin out companies and all licensing and IPR activities. It has an independent Chair and has other external lay members with specialist expertise as well as some members of the governing body. The Academic Enterprise Committee reports to Council four times a year and the company Board submits a report via Finance Committee on an annual basis.*

7.16 In some institutions the need for speedy decisions on some commercial enterprises has encouraged the creation of a high powered committee that meets frequently. The Business Ventures Group described below is a striking example of this.

*The importance given to commercial ventures at the **University of Strathclyde** is confirmed by the status of the Business Ventures Group as a committee of Court, the governing body. In the current strategic plan the University sets itself a target of five successful research spin outs each year and a 20% increase in royalty income over four years. The Business Ventures Group contains senior officers, lay members of Court and up to five co-opted members and meets every six weeks to review the business plans of new ventures before recommending the investment of University funds. It reports formally to the Court each year with a comprehensive review of all commercialisation activities and helps to develop policies and strategies in this area.*

7.17 Three or four respondents to the survey were involved in partnerships with private sector investors or venture capital providers. Institutional funds will never be able to provide development finance for taking innovations to the market place, and it is questionable whether they have powers to do so. The solution favoured by these HEIs is to negotiate a supply of development funding with external specialists on the basis of sharing future profits from the portfolio (whether income from license, royalties or capital proceeds from flotation). In such situations governors who can advise on such financing arrangements and the sale of intellectual property are a precious resource.

Two universities, the University of Southampton and Kings College London, have made arrangements with a private venture capital company to provide the funding for their spin out companies. In the case of Southampton this is one of three sources of finance, the other two being the University's own Enterprise Development Fund and SULIS, a consortium set up with the universities of Bath and Bristol. In both cases the venture capital company has created a fund that can be drawn on by the universities to finance ventures that have passed the scrutiny of the company and the University's own enterprise accountants. In return the company will receive an agreed percentage of the ventures' profits or capital proceeds on flotation. At Kings a policy has been agreed that risk will be minimised by investing only intellectual property and no cash in spin out ventures. In Southampton members of Council are involved as members on all the key committees relating to commercial activities and the Council itself receives summary reports three times a year as well as an annual report on technical developments from the Centre for Enterprise and Innovation.

CONCLUSION

7.18 The current position in the UK appears to be similar to the current discussions about commercialisation in Australian universities, and a workshop on governance run by the Australian Vice-Chancellors Committee recorded the following recommendations concerning commercialization:⁴⁶

Recommendations from the AVCC Workshop in 2002

1. Define commercialization
2. Have an agreed process (approved by Council) for oversight of commercialization
3. Have an agreed process (approved by Council) for approving new commercial operations, changing existing arrangements and exiting existing ones. Include legal and other due diligence.
4. Ensure the risk exposure (for the institution and the company) is within acceptable levels and is managed.
5. Report to Council at least annually and at least with high level information on activities and performance of commercial operations.
6. Include some independent directors in boards of commercial operations.
7. Council should approve the constitution of the company and any amendments to it.
8. Council should consider the following issues and develop policy on them: changes to the constitution, appointments process for directors, payments to directors (including employees), reserve powers on asset sales and borrowings, the legal and board structure, the relationship with the institution including control of assets, the governance framework including conflict of interest, appointment of external auditors, any indemnity given.
9. Include in the framework an obligation on the council to ensure the protection of public assets.
10. Provide training for directors of companies.

⁴⁶ Source: Australian Vice Chancellors Committee workshop on university governance, organised by Professor Geoffrey Kiel, the University of Queensland, Douglas Porter, Secretary and Registrar, University of Queensland and Competitive Dynamics Pty Ltd. November 2002.

7.19 These recommendations are all endorsed by a recent consultant's report in Australia that sought to identify the key drivers of effective commercialisation and set out some guidelines of good practice.⁴⁷ The same report also suggested that, while university councils must be committed to developing a culture that encourages commercialisation activity, they must not be involved in "micro oversight" of it.

7.20 Third leg activities are certain to increase in scale, and the question of how governors exercise oversight over them will grow in importance. However, our survey has showed a range of approaches and proven experience for institutions to draw upon. The combination of the survey findings and the messages from Australia provides some ideas and benchmarks for those developing strategies and procedures in this area.

⁴⁷ Allen Consulting Group (2004). *Building Effective Systems for the Commercialisation of University Research*. Published by the Business Council of Australia and the Australian Vice Chancellor's Committee.

8

Good Practice in Measuring Institutional Performance

8.1 The explicit recognition of the role of the governing body in *measuring* the performance of HEIs is relatively new.⁴⁸ So far as CUC is concerned, no reference to performance exists in the first Guide for Members of Governing Bodies (1995), and the need to 'monitor' (not measure) performance is mentioned for the first time in the revised 1998 Guide. This picks up a theme of the Dearing Review in noting that "the governing body should regularly monitor the performance of the institution against its planned strategies and operational targets".⁴⁹ However, in practice many HEIs have undertaken monitoring for some time (not least in order to meet the requirements of the funding bodies and other stakeholders), and it could be argued that such a responsibility is in any case part of the widely recognised role of a governing body for ensuring effective institutional management.

8.2 In 2002 CUC published a report on reviewing institutional performance⁵⁰ which, with other factors⁵¹, appears to have contributed to considerable activity within HEIs. It concluded that systems for governing bodies to measure performance were not yet widespread. In contrast, in the October 2003 CUC survey on governance more than 80% of institutions reported having some systems in place, although these varied considerably. A sample of these approaches is summarised below. The new statement of the primary responsibilities of governing bodies produced by CUC now clearly defines the responsibility of the governors to "ensure processes are in place to monitor and evaluate the performance and effectiveness of the institution against plan and approved KPIs which should be, where possible and appropriate, benchmarked against other comparable institutions".

8.3 The work of the CUC in this area mirrors interest elsewhere, for example the Combined Code is explicit in noting that "non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives, and monitor the reporting of performance".⁵² As noted in Chapter 3, such concerns are also international, for example in Australia a paper by Bain written for the 2003 National Conference on University Governance⁵³ observes that "there has been a shift in emphasis from conformance to performance roles for university councils: a greater emphasis on

⁴⁸ One implication of this newness is that although much developmental activity is reported in this Chapter, sufficient time has not yet elapsed to enable definitive core good practice to be identified which is broadly in place across the sector as a whole. Accordingly this Chapter does not adopt the convention used in Chapters 4 - 7 of summarising good practice in a tabular form. The same issue also applies to Chapter 9.

⁴⁹ *Higher Education in the Learning Society: the Report of the National Committee ('The Dearing Review')* HMSO 1997 paragraph 1.7

⁵⁰ CUC, *Interim Report of the Working Party on the Review of Institutional Performance*, see www.sheffield.ac.uk/cuc

⁵¹ For example, some of the HEFCE Good Management Practice studies (see www.hefce.ac.uk/goodprac/fgmp/) and the guidance on aspects of governance in some HEFCE documents.

⁵² *The Combined Code on Corporate Governance*, July 2003, paragraph A1 page 4.

⁵³ See Bain A, *How Governing Bodies Can Add Value to the University*, in *Conference Materials for the National Conference on University Governance, Melbourne 2003*, see www.governance.canberra.edu.au/the_institute/uni_governance.html

oversight of how the university is performing (often against KPIs), on risk management, on oversight of commercial entities, and on performance objectives for the university and for vice-chancellors".

8.4 However, acceptance of the need to enhance further the role of the governing body in performance measurement does not appear to be uniform within HEIs. Thus when asked in our survey whether they could suggest ways that their institution could improve its monitoring of performance, whilst approximately 20% of chairs of governing bodies specifically mentioned the need to obtain better data (particularly comparative), a majority thought that no major improvements were required, and some observed that institutional practice compared well with that of other organisations outside higher education with which they were familiar. One implication of this is that the case for strengthening performance measurement cannot be assumed, and some HEIs will require convincing that the time and effort involved is proportionate to the resulting value.

8.5 Currently not all HEIs in the UK explicitly identify that the governing body has an important role in measuring institutional performance. However, some do; for example in its organisational regulations **Robert Gordon University** notes explicitly that governors are "active players in securing the optimum performance of the University as a whole of which they form a part. They themselves are expected to contribute to performance and share responsibility for success and failure". This distinguishes between two roles: the responsibility of the governing body for measuring performance, and its own contribution to enhancing performance, and the experience of Robert Gordon suggests that the responsibilities of governors in this area might usefully be made explicit so as to avoid any confusion of role within the institution as a whole.

8.6 The responses to the 2003 CUC survey show significant differences in how HEIs measure institutional performance and, in particular, whether this is the same as monitoring performance. The distinctions here are subtle (and as far as we are aware have not been defined formally), but most senior managers and governors consulted for this study saw measurement as being a stronger and more proactive activity than monitoring. However, clearly there is some confusion in terminology, for example the following measures identified in Australia⁵⁴ as constituting good practice in monitoring performance might equally well apply to measuring performance:

- Should be measured against the key strategy/targets set out in the strategic plan approved by the governing body.
- Measures should be top-level and few in number.
- Where possible, measures should be reported over time, benchmarked and effectively communicated.
- Measures should be both financial and non-financial and include measures of organisational health.
- The role of performance monitoring needs to be built into the annual timetable of governing body activity.

⁵⁴ *Produced at a workshop on university governance run by the Australian Vice-Chancellors Committee (AVCC) in 2002, and cited in Bain A, How To Be an Effective Body, in Conference Materials for the National Conference on University Governance, Melbourne 2003, see www.governance.canberra.edu.au/the_institute/uni_governance.html*

- Measures should be accompanied by a brief strategic commentary ('no surprises').
- Council reporting should be part of an integrated strategic planning, budgeting and monitoring process.
- The senior management team and the governing body should engage in a constructive discussion of the issues and problems which were raised by the performance monitoring system.

As reported below, there are examples of almost all of these practices in some UK HEIs, and the list could perfectly well serve as the basis for core good practice in the area.

TYPES OF PERFORMANCE MEASUREMENT

8.7 The six most common types of practice currently involving the governing body in measuring performance in UK HEIs are briefly described below.

a) Provision of Basic Monitoring Data on Institutional Performance to the Governing Body

8.8 This is the 'traditional' approach adopted by many HEIs which has enabled them all to report to the funding bodies that basic systems are in place to monitor institutional performance. One university replying to the 2003 CUC survey typically describes this approach as monitoring by the governing body through "the annual report, annual accounts, internal audit reports, and senate monitoring of student numbers and performance, and research performance". However, this is a relatively reactive approach to monitoring which provides no necessary linkage to the strategic planning process, and it may be overly reliant on the senate/academic board in reviewing performance in the key areas of research performance and teaching quality. In the light of the new and explicit requirements for governing bodies to measure performance, it is unlikely that this approach could in future be said to represent anything other than minimum acceptable practice, and even this might be questioned. This is not to say that receiving such information is not important, but rather that by itself it is an inadequate approach.

8.9 Several HEIs report supplementing the information presented in approach (a) with regular reports given to each governing body meeting from the vice-chancellor or chief executive on issues concerning institutional performance. In addition, in other HEIs the vice-chancellor presents an annual review of performance to the governing body. However, although useful, such an approach does not operate within a clear system designed to ensure the independence of information necessary for effective performance measurement to take place.

b) The Use of KPIs by the Governing Body

8.10 The 2003 CUC survey found that many HEIs have found the need to go well beyond the 'traditional' approach in (a) and have introduced the use of KPIs. How such indicators are used varies between institutions, as the following three examples show:

Oxford Brookes University are introducing the practice of measuring a range of KPIs for each of eight core strategic institutional objectives. Performance against up to 43 of these indicators is then regularly reported to the governing body. In order to ensure a suitable linkage to service delivery, there is a further process to ensure that the five year plans of all academic schools and support directorates are strategically aligned with the eight institutional objectives, and that the KPIs are applied to the measurement of these plans.

At the **University of Strathclyde** the strategic plan is based on three main development themes: innovative learning; research excellence; and personal and professional development. For each one the plan identifies just five key targets, and the Court (governing body) measures performance on each one through a range of processes including benchmarking.

As part of a major review of governance the **University of Central Lancashire** has introduced a detailed framework of delegation which identifies what each body or officer is responsible for and how successful performance is defined. As part of this, critical success factors (CSFs) have been agreed associated with each of the main responsibilities of its University Board (governing body). These factors enable the Board to monitor the performance of the University against agreed criteria, and may also serve as indicators of the performance of the Board itself. New and explicit reporting mechanisms are also being introduced to ensure that the Board has the necessary information to determine the extent to which the CSFs are being achieved.

8.11 The way that the use of KPIs relates to other aspects of the strategic planning process varies in HEIs. On the one hand all three universities cited above try to integrate KPIs into a strategically driven review process which links annual and longer term performance measurement to strategic aims. In other cases the introduction of KPI-based annual performance reviews has itself been an important stimulus in bringing about changes to institutional planning systems. On the other hand, many HEIs have been more cautious and introduced KPIs in an incremental way thus providing additional information for the governing body and planning committee, whilst not changing the basic approach to planning itself. This approach risks under-utilising the data as a way of encouraging changes in performance.

As part of a major review the **University of Exeter** proposes to create a new Strategy, Performance and Resources Committee (our emphasis) part of whose role will be specifically to review performance within an integrated framework. Amongst other measures it will produce four publications: a strategic statement (reviewed periodically); a corporate plan (reviewed annually); an annual operating statement; and an annual performance review. The Committee will report to both Council and Senate with Council being the body to approve actions related to strategy and resources.

8.12 Among the issues arising from these examples and the work of other HEIs on the use of KPIs are:

- At what level of detail is it useful to identify performance indicators? **Strathclyde** has chosen a small number that it regards as absolutely key, whereas **Oxford Brookes** has identified a larger number in an attempt to get a more comprehensive approach. **Central Lancashire** has avoided the use of KPIs at all,

regarding them as appropriate for managers but too detailed for the governing body, and has preferred the idea of critical success factors which it regards as a higher level and more strategic approach.

- All three examples avoid relying too narrowly on financial measures of performance, and seek rather to identify a balanced range of key indicators.
- Some HEIs report a danger of turning KPIs into targets and thereby encouraging a compliance approach by departments and units.
- All the examples above have sought - in different ways - to embed their approach to performance measurement within a highly active role for the governing body in the strategic development of the institution. This contrasts with some other HEIs which, although starting to collect KPIs, are merely reporting them to the governing body rather than involving them fully in a strategic planning, measuring and evaluation cycle.
- Some of the most developed approaches to using performance indicators produce them as trend data rather than just on an annual basis.

8.13 Although the use of KPIs is becoming more widespread it is not currently uniform, and several respondents to the 2003 CUC survey noted that action was currently being taken to strengthen performance measurement in this regard.

c) All Governing Body Meetings Consider Institutional Performance

8.14 Although most HEIs appear to undertake their performance measuring role on an annual cycle, there are some who explicitly ensure that each governing body meeting considers performance measurement through having a standing item on the agenda, thus ensuring that the issue is kept in the forefront of strategic development. Two examples illustrate this approach:

*At the **University of Leeds** each council (governing body) agenda has a section on monitoring performance which includes such items as: reports on RAE performance and QAA assessments; receiving reports on student experience at Leeds based on its UNIQoLL (University Quality of Life and Learning) project; benchmarking data; etc.*

*Since 2001-2 each meeting of the Court (governing body) of the **University of Strathclyde** has received presentations and reports on the performance of two or three of the main academic and administrative functions. Each involves a short presentation by the head of the function concerned with associated performance-based documentation followed by questions and discussion. The outcomes of such presentations together with other performance data are considered at an annual residential weekend of Court members.*

8.15 Those HEIs using this approach stress that such reporting cannot be the only method of measuring performance, rather that the opportunity for governing bodies to consider specific issues during the year complements an annual approach. Although time consuming for governing bodies, both HEIs consider it to be worth the effort.

d) The Use of Comparative Statistics and Benchmarking

8.16 The use of comparative statistics in measuring institutional performance has become increasingly commonplace, and some examples are presented below where the governing body receives such information. This analysis is frequently referred to as 'benchmarking', although the term may be more usefully reserved for an explicit process designed to enhance quality and performance through adopting practices from elsewhere. Thus only one aspect of benchmarking is the collection of comparative statistics, and of much more importance is an analysis of the business processes underpinning statistical performance data.⁵⁵

8.17 Many HEIs responding to the 2003 CUC survey reported on the value of RAE scores and the outcomes of QAA assessments of teaching as being key statistical measures of performance. Others noted the importance of national league tables appearing in the press (for example in the Times). However, as with the use of KPIs, not all HEIs necessarily link such public indicators to the strategic imperatives of the governing body.

8.18 A number of institutions are actively collecting comparative statistics in order to try and compare performance, and two interesting examples are:

*As part of its use of a balanced scorecard approach (see below) the **University of Edinburgh** compares its performance on key indicators against data collected about other Russell Group universities. It also produces a Russell Group average and a Russell Group Upper Quartile for comparative purposes. (For more information see www.planning.ed.ac.uk/BSC/RG_0203.htm)*

*Since 2000 the **University of Exeter** has produced an annual report to its Council (governing body) on institutional effectiveness. This provides KPIs and identifies progress against a succinct set of targets agreed previously by Council; where relevant the report provides both the mean and upper quartile statistical performances for the 94 Group of which it is a member. The report also provides a commentary identifying why University performance varies from 94 Group comparators.*

8.19 A full analysis of the use of comparative statistics to measure performance is beyond the scope of this report, and includes well recognised issues such as timeliness, robustness of data, preferences for trend information, the feasibility of collection, and so forth. More specific issues emerging to date include:

- When making performance comparisons HEIs need to consider carefully which institutions they compare themselves with, and there is a wide range of different practice. For example, in addition to the two examples cited above, within the federal University of London some colleges regularly compare their performance with others that they consider broadly comparable.

⁵⁵ For useful discussions of the concept of benchmarking and its application to measuring performance in higher education see: (a) Schofield A (ed), *Benchmarking in Higher Education: an International Review*, UNESCO/ACU, 1998 see www.acu.ac.uk/publications; (b) Consortium for Excellence in Higher Education, *Benchmarking Methods and Experiences*, 2003 produced as part of the HEFCE good management project 143 see www.excellence.shu.ac.uk/publications; (c) Materials produced by the English Universities Benchmarking Programme produced as part of the HEFCE good management practice project 127 see www.eubc.bhan.ac.uk

- There is a tendency to rely on HESA data because it exists and is easily available, rather than because it is always what is required.
- Similarly there tends to be a reliance on input data rather than performance data, which in addition to the problems of data production might in any case be regarded as commercially sensitive.

8.20 Although the use of comparative statistics is reasonably well advanced, we could find little by way of real benchmarking as a tool to enhance governance. We recommend to CUC that more work might be undertaken in this area, drawing upon the experience of the HEFCE good management practice project 127 and also the international benchmarking programme run by the Association of Commonwealth Universities. Using methods widely practised in commercial benchmarking and quality assessment programmes, this latter initiative has found ways of encouraging benchmarking whilst at the same time dealing with some of the commercial sensitivities involved.

e) Using Specific Methodologies for Measuring Performance

8.21 One of the most innovative approaches to encouraging good practice in this area is the use by a small number of HEIs of specific methodologies drawn from the private sector to both enhance and measure performance⁵⁶. Two of the most interesting are summarised: the use of the Balanced Scorecard, and the European Foundation for Quality Management (EFQM) Excellence Model.

8.22 *The Balanced Scorecard*⁵⁷ is an increasingly widely used approach to measuring performance in both private and public sectors, and attempts to provide a 'balanced' perspective across four main elements: customer satisfaction; internal business processes; finance; and innovation, learning and growth. In each area institutionally specific key measures are defined which are critical to success, thus avoiding the danger of performance being measured just in financial terms.

At Edinburgh University the balanced scorecard methodology has been used to provide its Court (governing body) and managers with a range of strategy based indicators on which to measure success. Introduced for the year 2002-2003, it provides a suite of indicators linked to the nine main strategic goals of the University. To take account of the culture of the University the four main elements in the scorecard have been reworded slightly from the original and are: financial perspective, organisational development perspectives, internal business perspective, and stakeholder perspective. University performance on the key indicators is recorded as is that of comparable universities, and the indicators were chosen after an extensive period of consultation. Timeseries data are currently being assembled for previous years not initially covered by the scorecard. The University has decided to make much of its work in this area publicly available, and this can be viewed at www.planning.ed.ac.uk/BSC.htm

⁵⁶ For a useful summary of the various models available for measuring performance see: Consortium for Excellence in Higher Education, *Linking the EFQM Excellence Model to Other Management Models and Tools*, available at www.excellence.shu.ac.uk/publications/publications.asp

⁵⁷ See Kaplan RS and Norton DP, *Translating Strategy Into Action: The Balanced Scorecard*, Harvard Business School Press, 1996

8.23 The EFQM⁵⁸ is a self-evaluation tool designed to assist performance measurement and institutional management, and a number of HEIs are using it in some way although most are still at a relatively experimental stage.

Liverpool John Moores University has pioneered the adoption of a 'Business Excellence Programme' based on the EFQM approach, and this has included the appointment of a Director of Business Excellence at the Executive Board level. With strong support from the Vice-Chancellor, a cross institutional team undertook a self-assessment of the University's position in terms of the 9 dimensions and 32 sub-dimensions of the EFQM model which was followed by two workshops involving the senior management group. From this an action plan was produced concentrating initially on issues of: strategy, process, people, and measurement. There will be a further self-assessment in 2005 and every 18-24 months thereafter leading to a continuous cycle of development and improvement. The programme was commended in Lambert Report (December 2003) For more information on the Liverpool John Moores approach see the Leadership Foundation web site.

8.24 The use of such methodologies is attracting considerable interest (including from universities outside the UK), and greater dissemination of practice, processes, and results could usefully be made available by CUC to the sector.

f) Occasional 'Dearing' Style Reviews of Institutional Performance

8.25 The CUC review of institutional performance in 2002 noted that a strong case existed for occasional performance reviews along the lines proposed in the Dearing Report, and provided some guidelines for conducting them.⁵⁹ Our survey data indicated only a small number of institutions where it was reported that this had been undertaken, for example at the **University of Ulster**.

The University of Ulster undertook a major seven year of its development and performance and reported in 1999. A special review group was established consisting of distinguished figures external to the institution, with one co-opted member of the University Council. This group was established to meet a requirement of the Statutes of the University that such a review takes place every seven years in order to assess whether the University has fulfilled its objects under its Charter. The review group took extensive evidence from both within and outside the University.

8.26 There appear to be two main reasons why few HEIs have reported this type of review of performance. First, many institutions already have five yearly reviews built into their strategic planning process and have therefore not found the need for an additional process. Second, since Dearing the focus on performance measurement has shifted from an occasional review to continuous improvement through the processes described in sub section (e) above.

⁵⁸ For details of the EQFM see the website of the HEFCE good management programme 143 at www.excellence.shu.ac.uk

⁵⁹ Op cit

EMERGING ISSUES

8.27 This summary of developing practice in the measurement of performance raises a number of important issues, many of which need further work before formulating any explicit notion of what might be good practice. For this reason a tabular summary of good practice in the sector is not included in this Chapter (and for the same reason in the next). Indeed good practice in this area is not only concerned with an institutional commitment to enhance performance measurement, but also involves the mechanics of how this is done, for example: the degree of openness and transparency involved; the linkage of indicators to other aspects of the strategic planning process; the integration of measures of institutional performance with those of devolved units; and so on.

8.28 In general, it is too early for most institutions to have produced specific evidence of the benefits of more rigorous approaches to performance measurement, although in all the examples cited there is a belief at senior levels that introducing more explicit procedures and improving available information is laying the basis for more effective governance. The initial benefit is likely to be the strengthening of accountability to the governing body and the associated reduction of risk, but the longer term question that needs to be addressed is: will the introduction of more explicit performance measurement of itself improve performance? If this question can be answered positively, it would be an important step in convincing all HEIs and their governing bodies of the need to undertake more work in this area, and particularly those institutions who regard their current performance as of the highest international standard without having such performance management systems in place.

8.29 Other emerging issues include:

- The terminological confusion caused by the use of both 'monitoring' and 'measuring' to describe similar processes; this could usefully be clarified and resolved.
- The amount of information produced by some of the performance measurement systems summarised above is considerable, and care needs to be taken that the resulting data are presented in a way that is appropriate for purpose, and avoiding the dangers of overloading decision makers and governing bodies with detail (see Chapter 5). Interesting work on suitable presentational techniques is being undertaken by some HEIs using approaches such as 'traffic lights' in governing body reporting (red usually indicates results causing concern); and 'dashboard reports' presenting graphic information in a straightforward format⁶⁰. More work needs to be done and disseminated in this area.
- The extent to which an explicit responsibility of the governing body for measuring performance is perceived to weaken aspects of academic governance, particularly in some pre-1992 universities. For example, it may be significant that some of the universities which have made least progress in this area in the two surveys cited general satisfaction with existing arrangements under which the

⁶⁰ See Chait RP, Holland TP, and Taylor BE, *Improving the Performance of Governing Boards*, ACE/Oryx Press 1996, page 109 where the benefits of dashboards are described thus "of all the tools and techniques that we have introduced to boards of trustees across the not-for-profit sector, none has been more universally or more enthusiastically received as dashboards"

senate/academic board was (by precedent) responsible for reviewing performance in the key areas of teaching and research.

- As with the other areas of governance reviewed in this study, most progress in developing practice in performance measurement appears to have occurred in those HEIs where there is a close involvement of the governing body, and where the individuals involved (whether managers or lay members) have confidence in each other. Conversely, some of those institutions where the governing body is less engaged have been slower to identify the information needs required to measure performance effectively.
- The examples cited have all been introduced because of the interest, commitment and leadership of key figures, and in one sense are therefore like all other major innovations which need nurturing and their own 'champions'. With a few notable exceptions, in the face of significant cultural barriers in the past most UK HEIs have found it difficult to ensure the continued adoption of many of the private sector approaches to enhancing quality and performance, and it follows that the widespread adoption of approaches such as the EFQM model will not be easy without sustained institutional support and real evidence of success.
- Despite the encouragement of the CUC and others for HEIs to publish the results of performance reviews, few do. (The University of Edinburgh is a notable exception to this with its commitment to make as much information available as possible.) Partly such reluctance is because of the commercial sensitivities associated with some of the data, but it is also because many of the HEIs surveyed regard their activities in this area as 'work in progress'.

8.30 In summary, interesting and innovative work in enhancing performance measurement is being undertaken in an increasing number of HEIs, although much remains to be done in others. As a result there is much information that could be usefully disseminated to institutions. However, information about different practices is relatively low across the sector, and much needs to be done to provide better information to a broad audience including governors. Accordingly we recommend that CUC discuss with other interested parties (including the funding bodies and AHUA) the establishment of a specialist task force with a limited three year life, who would collect information on institutional practice in this area, and disseminate the results widely.

9

Good Practice in Reviewing the Effectiveness of Governance

9.1 The last few years have seen the issue of reviewing the effectiveness of governance and governing bodies grow in importance, and this is now a well recognised activity in most universities and higher education colleges in the UK. Large scale adoption of the practice followed the recommendations of the Dearing Review in 1997, which proposed that each governing body should systematically review its own effectiveness (at least once every five years), and that the outcomes of these reviews should be published in the annual report the year after the review had taken place. However, such reviews had been undertaken in some HEIs before Dearing, for example the Lambert Report⁶¹ notes a review undertaken in 1993 by the University of Southampton.

9.2 To support the implementation of effectiveness reviews the CUC set up a working party on the issue which produced a progress report in 1999 and then subsequently provided guidance to HEIs in 2000⁶². Much of that guidance remains relevant and there is no attempt to duplicate it in the text below. This Chapter should therefore be read alongside that CUC report. The CUC Statement on the Primary Responsibilities of governing bodies notes that there is a duty "to establish processes to monitor and evaluate the performance and effectiveness of the governing body itself". The new CUC code of practice elaborates on this and proposes that:

"The governing body shall keep its effectiveness under regular review. Not less than every five years it shall undertake a formal and rigorous evaluation of its own effectiveness, and that of its committees and ensure that a parallel review is undertaken of the senate/academic board and its committees. Effectiveness shall be measured both against the Statement of Primary Responsibilities and compliance with this code. The governing body shall revise its structure or processes accordingly.....The results of effectiveness reviews, as well as the institution's annual performance against KPIs, shall be published widely, including on the internet and in its annual report."

9.3 Since Dearing, other reports on governance have emphasised the importance of such an evaluation but have tended to broaden what is involved to include evaluation not only of governance but also of the performance of the board and individual members, and also to suggest a shorter period between reviews. Thus, for example, the Combined Code⁶³ recommends that:

As a main principle "the board should undertake a formal and rigorous *annual* evaluation of its own performance and that of its committees and individual directors."

⁶¹ See www.lambertreview.org.uk, 2003

⁶² See Annex 5 of CUC: Progress Report of the Working Party on the Effectiveness of University Governing Bodies at www.sheffield.ac.uk/cuc

⁶³ See The Combined Code on Corporate Governance, 2003, page 10 paragraph A6

As a supporting principle "individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors."

As a code provision "the board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors."

The Combined Code also endorses the good practice on conducting performance evaluations of governance developed in the Higgs Review. It is too long to reproduce here, but will be available as a working paper at the Leadership Foundation web site. It is interesting that the Combined Code goes much further than the CUC Code of Practice, and we report below on how some HEIs are moving towards implementing its recommendations.

9.4 Developments in reviewing the effectiveness of governance in higher education are also international. For example, in Australia the government has proposed that all university governing bodies should assess their performance at regular intervals⁶⁴, and in the USA university presidential, trustee and board evaluation has become commonplace.⁶⁵

9.5 In the private sector, in the face of the challenges to corporate governance noted in Chapter 2, tools for testing board effectiveness have also been drawn up by various providers, for example one produced by The Corporate Library⁶⁶ uses a seven category model to identify a high performing board which it defines as "most likely to enhance and preserve shareholder value". The similarity between private boards and governing bodies in higher education in relation to evaluating effectiveness is a matter of contention, and in particular the extent to which a governing body can add value to the organisation's performance in the same way. Although this is an area which requires more study, the CUC working party report noted that despite its reservations about drawing close parallels with private sector boards "governing bodies could learn some useful lessons in corporate governance from business and the reviews which had taken place there".

9.6 Overall, activity concerning reviewing the effectiveness of governance can be divided into several separate but related areas, and each is considered below, together with examples of good practice:

⁶⁴ See *'Backing Australia's Future'* at www.dest.gov.au

⁶⁵ See Ingram RT and Weary WA, *Presidential and Board Assessment in Higher Education*, Association of Governing Boards of Universities and Colleges, 2000

⁶⁶ See *The Corporate Library: Board Effective Ratings* at www.thecorporatelibrary.com

- The effectiveness of overall governance arrangements, including the governing body and its committees.
- The effectiveness of individual members of the governing body and committees.
- The effectiveness of key officer holders, including the chair of the governing body and the vice-chancellor or chief executive.

A SUMMARY OF CURRENT ACTIVITY IN EVALUATING EFFECTIVENESS

9.7 The most comprehensive data sources on the current state of institutional activity in evaluating the effectiveness of governance are the survey undertaken by CUC and SCOP in 2003 on changes to institutional governance, coupled with our own research. The main findings are briefly presented below and then examples of practice are supplied.

9.8 In October 2003 87% of universities responding to the CUC institutional governance survey reported conducting 'a Dearing style review of effectiveness' (82% were pre-1992s and 96% post-1992s). In addition, 20% of respondents were planning to undertake reviews in 2003-2004. In the SCOP sector 77% of colleges also reported undertaking reviews. When coupled with the requirements of the HEFCE Audit Service for all HEIs to have review mechanisms in place, it is possible to conclude that by the end of 2003-2004 almost all HEIs will have conducted at least one such review. In addition, the survey data reveals that a substantial number of HEIs have now conducted at least a second review (although no robust statistical data exists), and some have adopted an annual approach with one such being described below.

9.9 The CUC survey reports that within HEIs effectiveness reviews have been led in three main ways: by a specially appointed group of the governing body (in almost 50% of institutions); by the whole governing body (29%); and by an existing governing body committee (19%), usually either the finance committee or the remuneration committee. However, these figures disguise sector differences, and in pre-1992 HEIs the specially appointed group was the most popular approach, whereas in post-1992s most reviews were conducted by the whole governing body (usually a smaller number). In 33% of HEIs individuals outside the governing body were involved in the reviews in some way, most usually the secretary/clerk and the internal audit service. The use of independent external assistance was relatively rare, but there are examples of involvement of external auditors, members of the governing body of other institutions, and consultants. In approximately 70% of cases some type of questionnaire was involved, and two examples are provided below in the discussion on the use of such surveys.

9.10 In the majority of cases the outcomes of effectiveness reviews were considered at ordinary governing body meetings, but significant use was also made of special meetings (18% of HEIs) and 'awaydays' (14%). All but a small number of institutions chose to disseminate the results of reviews, most usually through governing body minutes, which are normally available in libraries, and in a small number of cases the intranet. However, the CUC study reports little use of annual reports to disseminate results, and - in general - the approach to dissemination by most HEIs has been relatively passive, with little

attempt to use effective reviews as a way of providing public reassurance on the quality and robustness of governance.

9.11 A crucial issue to consider is that of the benefits resulting from the effectiveness reviews undertaken to date, and the CUC survey suggests that a wide range of benefits has resulted, although these, of course, vary widely between institutions. The whole issue of benefits is related to the type of review that is undertaken, and the issue is explored in more detail below. However, in summary the CUC survey noted that the benefits most frequently claimed were:

- Clarification of the role and responsibilities of the governing body and its committees, including issues concerning membership, composition and size.
- Changes in the provision of information to members.
- Changes in the conduct of governing body and committee business.
- Enhancements in the induction, training and briefing of members.
- A reinforcement of the operation of the governing body in strategic issues.

9.12 Most of the benefits cited concerned enhancing the processes of governance, however, with a few exceptions, HEIs did not report major benefits in reviews leading to major enhancements in performance, still less in addressing fundamental questions concerning the value added to the institution of current governance arrangements. For the reasons set out below this is not surprising (particularly for those HEIs undertaking reviews for the first time), but in our data collection for this study we came across several institutions who intend to make future reviews more performance oriented.

9.13 A minority of HEIs conduct regular reviews of the effectiveness of individual members of governing bodies: an average of 29% in universities and 18% in colleges, although there was a significant difference between types of universities with only 22% of pre-1992s conducting such reviews compared to 43% of post-1992s. However, what counts as a review appears to vary between institutions, and may include only the monitoring of records of attendance. An example of such a review is provided below.

9.14 Overall, the sector can generally demonstrate that it has responded positively to the requirement to undertake effectiveness reviews. However, there has been little opportunity for institutions to share practice or to review the steps that could be taken to build on current activity, and the potential of such reviews significantly to strengthen institutional performance in governance has yet to be realised. There is, therefore, considerable scope for continuing to collect good practice information in this area, and to disseminate the innovations that are likely to continue to take place in the next few years. We recommend that CUC consider how this should best be done, for example by developing a mechanism for collecting and disseminating such data.

THE TYPES AND PURPOSES OF EFFECTIVENESS REVIEWS

9.15 Reviewing or evaluating any type of performance is almost always a contentious and difficult activity. For example, in many organisations (private sector as well as public) performance appraisals of staff often fail to achieve what is planned for them, and in many HEIs reviewing the effectiveness of teaching remains a minefield despite the national steps that have been taken in the past few years. Effectiveness reviews of governance have many similarities, and as several chairs of governing bodies said to us, few people (even at governing body level) find discussing their own performance and that of their colleagues easy to do. Moreover, the voluntary nature of governing body membership coupled with the absence of private sector drivers such as maximising shareholder returns means that many - although not all - governing bodies report finding reviewing their effectiveness a difficult task.

9.16 Amongst the key issues that reviews of governance effectiveness appear to share with other reviews of effectiveness are:

- The purposes of the review need to be explicit, consistent with each other, and broadly accepted by those involved.
- The aims of, and approach to, reviews need to be consistent with the culture of governance within the institution, for example where transparency and open discussion of issues is encouraged, then reviewing effectiveness is likely to be easier and felt by members to be more meaningful than where the participation of governors is at 'arms length'.
- The potential benefits of effectiveness reviews need to be recognised by those involved, however, all too often they are unknown or contested. By way of illustration the following two comments from respondents reveal very different perceptions of the value of reviews: "we gained a lot from the exercise, members replying frankly about their perceptions of the conduct of governing body meetings" contrasts with "a largely meaningless exercise which our governing body begrudgingly undertook and then moved on to more important matters". In which institution is an effectiveness review likely to be more successful?
- Those involved in governing bodies need to see suitable action resulting from the reviews, and where this does not happen their value may fall into disrepute.

Where such conditions are in place governing bodies may find it both easier and more beneficial to conduct effectiveness reviews than where they are not.

9.17 Such conditions may give rise to a paradox in conducting effectiveness reviews, namely that their value may be greatest in those institutions that are already well governed and where governance processes already command the confidence of governing body members and senior managers. In such circumstances the mutual trust and openness that exists may mean that evaluation is relatively straightforward. However, where it is needed most, the organisational circumstances may be precisely those where it is hardest to undertake successful effectiveness reviews which command the full confidence of those involved. There is no robust data to confirm or deny this

hypothesis, but observations during this study suggest some circumstantial evidence to support the idea.

9.18 We came across several universities where the nomination of governors of great personal distinction was felt to make an evaluation of effectiveness either inappropriate or difficult. Such interpersonal issues are understandable, but as a respondent in another university noted, the key issue is one of the overall effectiveness of governance which may be quite different from the personal standing of individual members.

9.19 Within this context we now turn to describing different types of effectiveness reviews and the varying purposes they serve.

a) The Use of Surveys To Review Effectiveness

9.20 In paragraph 9.9 it was noted that approximately 70% of HEIs used some type of survey to review the effectiveness of the governing body. There is no central data base of such surveys (although CUC might usefully create one) but there are a number of different types in use. To illustrate some of the issues resulting from the use of surveys, the experience of two universities is briefly summarised: **Brunel University** which has undertaken its first effectiveness review and **Glasgow Caledonian University** which undertakes an annual survey. For copies of the questionnaires used by both institutions see Appendix B.

*Like many universities, **Brunel University** has used a survey of its Council members as part of its effectiveness review process. The survey form (which was attractively designed and professionally produced) covered a range of areas on how governance could be made more effective, and also sought the views of individual governors on what should be the strategic priorities of the University for the next three to five years. A report was produced on the results of the survey, and the implications discussed at an 'awayday'. Numerous issues concerning the effectiveness of both the Council and the governance system as a whole were identified and Council processes are being redesigned. Substantial changes to University Statutes are also planned.*

*At **Glasgow Caledonian University** the performance of its Court is evaluated annually through a questionnaire completed anonymously by all members. The University introduced such an evaluation following a recommendation by an internal governance review group in 1999, and the surveys have now been undertaken on three occasions. The survey form is in two parts and may take up to an hour for members to complete, nonetheless the response rate is high. Part One asks 17 questions about the satisfaction of members on how the Court discharges its main responsibilities, and a short annex is provided which reminds members of the main elements of each responsibility.*

9.21 The approaches of the two universities have some similarities, for example both have considered the data which resulted from the surveys at subsequent awaydays, and neither has published the results of their reviews other than in the minutes of governing body meetings. However, in addition to the annual nature of the **Glasgow Caledonian** approach there are other differences, some of which reflect the varying ways in which surveys are used across the sector:

- The **Glasgow Caledonian** questionnaire is focused on testing governor satisfaction against defined responsibilities, whereas the **Brunel** survey is more broadly based with a range of different types of questions, and also seeks to collect data which goes beyond reviewing effectiveness. This issue of breadth or specificity is an important one in survey design.
- The **Glasgow Caledonian** survey has a separate element for self-evaluation by governors (see below) whereas **Brunel** does not.
- The **Glasgow Caledonian** instrument uses a 7 point rating scale (ranging from 6 = totally satisfied to 0 = totally dissatisfied), whereas the **Brunel** one is generally simpler with many questions being capable of 'yes' or 'no' answers.

9.22 At **Glasgow Caledonian** the annual nature of the evaluation means that some trend data are starting to emerge, although this needs to be interpreted with some care due to changes in Court membership. Over the three years of surveys it appears that there has been a consistency of opinion in relation to those responsibilities which the Court perceived to be carried out effectively and those where improvements could be made. A consistency of opinion also emerged in relation to those issues which Court suggested as being priorities for the university in the following two years. Specific benefits for governance arising from the review process have included: strengthening the strategic focus of the Court and its standing committees, providing a regular review of governance processes to ensure that these continue to reflect best practice within the sector, assisting the Court in establishing its priorities, and identifying training and development needs of members.

9.23 Other interesting issues to emerge include:

- The regular nature of the review process coupled with strong support for it by the Convenor (Chair) of Court means high levels of response by members, and a strong commitment to action.
- The survey explicitly asks about the satisfaction of members on the basis that this is the opinion that they can most easily provide. However, it is recognised that a satisfied board is not necessarily an effective board, and therefore in measuring overall institutional performance other factors need to be taken into account.
- Care needs to be taken in interpreting results in narrow statistical terms which take no account of the experience of members. In many ways the Court has found that it is the open comments rather than the statistical ratings that are becoming the most valuable element of the survey.
- The anonymity of survey returns is both helpful (in the sense of encouraging frank comments) and unhelpful since it is difficult to follow up critical comments other than in general terms.

9.24 Typically, neither University has yet sought to apply the surveys to other elements of governance, for example governing body committees or the academic

board/senate, but both are currently considering how their existing review activities can be taken forward into other areas.

b) Reviewing the Effectiveness of the Processes of Governing Body Meetings

9.25 There has been considerable research published in the management literature which has suggested that the effectiveness of meetings frequently depends on ensuring that appropriate processes take place which lead to effective decision making, participation, and so on. Coupled with this is the notion that it is the interpersonal interactions between governing body members that make for a high performing board, where trust, candour, and genuine disagreement are prized⁶⁷. Within collegial decision making structures such interactions are difficult to achieve, but several vice-chancellors/principals told us that they welcome constructive challenges from members, providing they come from an understanding of the role of the body and the issues concerned.

9.26 However, little work has been done in this area in relation to effective governance in HEIs, rather it generally appears to have been assumed that having a suitable person chairing meetings combined with appointing experienced governors and having appropriate administrative services will almost automatically ensure suitable processes and interaction between members. Of course, this is not necessarily the case and effectiveness surveys are frequently reported as identifying governors who feel that their own contribution in meetings is not as great as it should be, and who sometimes feel ill at ease. As a consequence several HEIs are reviewing and trying to strengthen the effectiveness of the processes in meetings.

Partly to address this issue, Harper Adams University College is piloting the use of a self-evaluation form to review the processes that actually take place in governing body meetings. Governors complete the short form during meetings, and the data are subsequently reviewed and fed back to members so that any changes in process can be quickly implemented. The scheme will be reviewed in 2004-2005 and a report produced.

c) Ensuring Compliance With Legal and Regulatory Requirements

9.27 An important element in effective governance is ensuring that all the main legal and regulatory requirements have been complied with. Whilst such compliance does not necessarily lead to effective outcomes, it does ensure that the main concerns of the funding bodies have been met, and that the requirements of any relevant codes have been addressed. There is no reliable data on how this is done across the sector, but in most institutions it is likely to rest with the secretary/clerk to the governing body to satisfy him or herself about the processes in place. However, we came across several HEIs with specific procedures in place to test for compliance on an annual basis, for example the **Southampton Institute**.

As one part of its approach to reviewing effectiveness at the Southampton Institute, the last item on the agenda of the summer term meeting of each committee and of the governing body asks members to evaluate the contribution made by the relevant committee over the past year. In addition to assessing basic 'hygiene' factors, such as attendance and quoracy; members also consider, the extent to which each of the committee's terms of reference has been addressed

⁶⁷ For example see Sonnenfeld JA, *What Makes Great Boards Great*, Harvard Business Review, September 2002

.Since the terms of reference mirror the governing body's statutory and other responsibilities, members are essentially considering the extent to which legal and regulatory duties have been properly discharged. Members also use the occasion to consider whether any need has emerged to propose an adjustment to the terms of reference, and to identify items for inclusion in the committee or the governing body's programme of business for the forthcoming year. A consolidated report is made to the Governance Committee, which advises the Board of any constitutional or performance issues that need to be addressed.

d) Effectiveness Reviews by Officers or Working Groups

9.28 A frequent approach to reviewing the effectiveness of governance arrangements is by officers, senior managers, or small working groups of governors. This type of activity is widespread, but CUC survey data suggest that at least three different types are common:

- Reviews by the Vice-Chancellor or Principal following consultations with key members of the governing body.
- Reviews by a small group of senior governing body members who collect evidence as appropriate.
- Reviews by the secretary/clerk to the board collecting evidence as appropriate. In at least one case this involved individual (and confidential) interviews with each governing body member.

9.29 It is difficult to generalise about the merits of such approaches as much depends upon specific institutional contexts. Undertaken as part of a broader approach to reviewing effectiveness they can make a useful contribution, but if adopted on a standalone basis they may lack the transparency implied in both new CUC guidance and also the Combined Code.

e) Effectiveness Reviews Using Externally Derived Approaches

9.30 As noted in paragraph 9.9 little use appears to have been made to date in adopting external approaches or resources in reviewing effectiveness. Indeed we came across several respondents who felt that this was generally inappropriate, with one observing that "external consultants are not the right people to involve in assessing the way governing body meetings are run. Much better to draw on the considerable experience of lay members, buttressed by information about best practice elsewhere". Despite such comments it is likely that the use of externally derived approaches to reviewing effectiveness will become more common, and one such approach is briefly summarised here - the **Association of Governing Boards of Universities and Colleges** in the USA. Although the AGB approach has not been used in the UK, it is of interest as the most widely used approach to reviewing institutional effectiveness in the USA.

For some years the AGB has run what it calls a 'self-study workshop' to enhance governance effectiveness, and more than 650 institutions in the USA have participated. The workshop takes at least eight hours of meeting time (preferably split over two days) and is run by a trained facilitator. Discussion is usually based around a self-study report, which surveys

individual governor responses to questions in 11 main areas of governing body responsibility plus a general assessment of strengths and weaknesses and an individual board member review. The programme can be tailored to suit the specific needs of institutions.

9.31 One of the most interesting aspects of the AGB approach is that it is based on the idea of self-improvement, and uses survey results as a way of exploring effectiveness in a workshop setting rather than as an end in themselves. In this way the process is not dissimilar from that of UK universities who use awaydays to consider the outcomes of effectiveness reviews, although employing an external facilitator is distinctive to the AGB approach.

f) Reviewing the Effectiveness of Governing Body Members

9.32 It was noted in paragraph 9.13 that although approximately a quarter of HEIs claimed to undertake some type of review of individual member effectiveness, practice varied and in some cases consisted of little more than monitoring attendance. Although some surveys used as part of effectiveness reviews have an element of individual evaluation, reviewing the effectiveness of governing body members remains contentious, and where undertaken it appears to be generally done through a process of self-review. Although we came across several HEIs that were considering the introduction of some form of automatic review of governing body members, relatively few appear to have made much progress to date (although one example is cited below). For example, the chair of the governing body of one research oriented university had hoped to use a performance oriented appraisal process that he had successfully used in other sectors for board member positions, but observed to us that "some of my colleagues are not altogether happy with this part of the process" - an observation reinforced by the voluntary nature of governing body membership.

9.33 As a consequence, most - not all - current approaches to reviewing individual effectiveness are based on self-review, partly because of the belief that this is an appropriate place to start within a broadly collegial governance environment and partly because any other approach would be difficult to enforce. Nonetheless the influence of organisational culture on the willingness of governors to undertake such appraisal is clear from the example of **Glasgow Caledonian University** where the annual nature of the practice has led to a position where it is reported that members are willing to participate actively.

At Glasgow Caledonian University the second part of the annual questionnaire on the effectiveness of the Court (governing body) is a self-evaluation form completed by individual members. It asks 22 questions (using a 7 point rating scale), which cover a number of issues concentrating on the knowledge of members of key aspects of the work of the Court (for example, do they read and understand financial statements?), and their behaviour (for example, do they respect confidentiality?). The form does not explicitly ask members to reflect on the effectiveness of their performance as governors, although many of the answers would be relevant to such an assessment. A major outcome of the self-evaluation form is to guide the provision of training, briefing and support needs of Court members.

At Napier University, the Chairman conducts a series of private discussions with each of the lay members of Court on an annual basis; and he is himself reviewed by the Vice-Chairman. These meetings provide an exchange about the contribution of the governor and their existing or developing interests as these relate to future contributions to the work of Court committees. The process is expected to be supportive and developmental given that Court members make a valuable contribution and are of high calibre. The experience is seen as beneficial and the process is working well.

9.34 Where individual reviews are practised, one of the main benefits is reported to be providing better training, briefing and support for governors. However, there is little documented evidence of significant enhancements in governor performance as yet resulting from personal effectiveness reviews. As the roles and responsibilities of governors change in response to the pressures reported in Chapter 2, it is to be expected that the nature of the effectiveness reviews for individual governors will also change. Perhaps the most profound change would be the widespread introduction of remuneration for governors, as HEIs would then be likely to assess the resulting value for money in a way that they currently do not.

9.35 The review of the effectiveness of individual governors is complicated by the different levels of experience (and therefore potential performance) of members. This most obviously affects internal governors (and particularly student governors) whose membership rests on different criteria from those relating to lay members.

g) Reviewing the Effectiveness of Key Office Holders

9.36 One area of the recommendations of the Combined Code with significant implications for HEIs is the proposal for annual reviews of the effectiveness of key office holders, which would include the head of the institution and chair of the governing body. Existing CUC guidance contains no such provision, and there is no data on institutional practice. However, since appointing key office holders is one of the most important functions of a governing body, it follows that monitoring the effectiveness of their performance should not be far behind.

9.37 Currently, most HEIs will in some way review the effectiveness of the head of the institution, often through: the remuneration committee of the governing body in relation to salary decisions; discussions with the chair of the governing body; or through a small group of senior governors. Indeed, many universities have had some system for vice-chancellor/principal review in place since the late 1980s (when universities were first required to introduce staff appraisal), but details of such schemes and the extent to which governance factors are among the criteria is unknown. Possibly a typical approach is that undertaken in one HEI where the remuneration committee looks at strategic objectives set each year for the principal and assesses whether these have been achieved. This is the main factor in the salary recommendation, which then comes to a closed meeting of the governing body (without staff and students). The point is that the review of the principal is shared between the committee, the governing body, and its chair.

9.38 We get the impression that review of the effectiveness of chairs of governing bodies is much less frequent (although one example is cited above), and where it exists

may be based mainly on discussions with the head of the institution or the deputy chair. This is not to say that formal systems do not exist, but rather that information about them is not available.

9.39 Internationally the most useful source of comparative information is the AGB, which provides guidance information on annual presidential performance reviews⁶⁸. A survey of university presidents undertaken in 1997⁶⁹ indicates that two thirds of public universities in the USA have written policies requiring an assessment of presidential performance, and that approximately three-quarters of presidents reviewed were satisfied by the review and the way it was conducted.

9.40 Since this area is likely to grow in importance we recommend that the CUC should monitor the situation, and both collect and disseminate information about institutional practice in reviewing the performance of both the chair and the head of the institution.

EMERGING ISSUES

9.41 One of the clear issues to emerge from existing practice is that although - as noted above - all HEIs take some measures to review the effectiveness of governance, few appear to have comprehensive systems in place, partly because most institutions appear broadly satisfied with existing arrangements. They have largely met the requirements set out in previous CUC guidance, but still have some way to go in meeting the aspirations of Higgs and the Combined Code (where deemed to be relevant). However, one area in which CUC guidance has not been implemented by a substantial number of institutions is in the publication of the results of effectiveness reviews in annual reports and on the internet. There are genuine differences of view here: on the one hand the CUC and the funding bodies see this as an issue of public disclosure and also an opportunity for the sector to demonstrate its achievements. On the other hand many institutions see this as 'work in progress' where a developmental approach may not easily lend itself to meaningful publication.

9.42 Despite this, a small number of HEIs report having more comprehensive systems in place, for example:

The Southampton Institute has an established approach to the continuous review and evaluation of its governance arrangements. Four components are involved: an annual questionnaire to governors; an annual review of each governing body committee undertaken as an agenda item at the last meeting of the year (see above); a two yearly review of the performance of the governing body against a standard set of external requirements suggested by HEFCE; and a 'fundamental review of governance' conducted every four years and involving a review committee of the governing body supported by an independent external element. For a fuller description of the four elements of the Institute's approach see Appendix B.

⁶⁸ See Ingram RT and Weary WA, *Presidential and Board Assessment in Higher Education*, AGB, 2000

⁶⁹ See Schwartz MP, *Annual Presidential Reviews*, AGB, 2001 at www.agb.org

9.43 Perhaps the real challenge facing most HEIs is to move current practice in conducting effectiveness reviews from focusing on governing body processes and procedures to the overall contribution of governance arrangements in enhancing performance. This includes academic governance and the proposal in the Lambert review that effectiveness reviews of academic boards/senates should be conducted (now taken up in the new CUC guidance). However, this will not be an easy task, for as the chair of one governing body wrote to us "the difficulty with linking evaluation to the university's academic and/or financial performance is that there may be little or no connection between good governance and good performance".

9.44 The following are amongst the issues that will need to be addressed for such a change to happen:

- There will need to be a much clearer identification of the value of reviews in enhancing the effectiveness of performance. As noted above, currently many of the benefits identified by HEIs concern the processes of governance and providing better support to individual governing body members.
- More research will be required on what constitutes a high performing governing body in higher education; how key performance indicators for governance outcomes can be measured; and the whole question of how much value governing bodies add. The new set of primary responsibilities of governing bodies produced by the CUC is clearly the start of this process, but greater attention needs to be focused on outcome measures.
- In parts of the private sector the effective performance of boards is becoming synonymous with the effective performance of the companies concerned in adding shareholder value. More work is required in teasing out whether there is any measurable parallel in higher education, and, if so, how such effectiveness can be defined.
- In their responses to us, several chairs of governing bodies noted the barriers to implementing major changes which might result from effectiveness reviews, including those caused by legal or regulatory constraints, for example the requirements of charter and statutes/instruments and articles and in some cases the requirements of funding bodies. There is a real potential contradiction here in that it is quite possible that performance based effectiveness reviews for individual HEIs might indicate action which conflicts with aspects of CUC guidelines designed for general use.

9.45 Perhaps the major issues are two already identified in Chapter 2: the implications for the voluntary nature of governing body membership, and the likely consequences for the changing balance between corporate and academic governance. Several respondents to our surveys (including some chairs of governing bodies) noted that any move towards introducing explicit forms of performance review might challenge the voluntary nature of governing body membership and stimulate demand for payment for services. This, in turn, would be likely to lead to a greater focus on governing body performance, and therefore could change the existing balance (particularly in pre-1992 HEIs) with academic governance. There are different views about whether such changes are desirable, but

there is concern that they might happen as a consequence of an unplanned growth in performance management.

9.46 As noted earlier, very few HEIs have reviewed the effectiveness of their academic decision making structure, although this has now been recommended in the new CUC Code of Practice, where the governing body has to ensure that such a review is carried out. It will not be easy, because in addition to the issues raised above in assessing the effectiveness of corporate structures, fundamental questions have to be addressed about the role and nature of academic governance which go to the heart of the tradition of collegiality. Accordingly, this is another area where collaborative activity by CUC might be of benefit to institutions.

10

Dissemination and Next Steps

DISSEMINATION

10.1 In this final Chapter we discuss the second theme in our terms of reference – that of considering how the findings from this review should be disseminated. We also bring together our proposals for further work in a short section on the next steps for the CUC to consider.

10.2 Our surveys represent a snapshot of the position in early 2004, and it is clear that in all six areas the sector is not standing still; there is a considerable amount of experimentation and development of new approaches and ideas. However the speed of change varies and there is also a wide range in the degree of enthusiasm for initiatives in governance; some think there is no need to change significantly, some are not much interested or are indifferent; some are willing to be convinced by the enthusiasts; others will comply if they have to. Thus, it would be wrong to assume that all the sector is eager to learn about the messages in this report. This spectrum of enthusiasm also applies within institutions, and there is evidence in the surveys that many of the innovations and reforms have been driven by governors as well as by clerks or vice-chancellors/principals.

10.3 In considering options for dissemination the following table identifies the three main institutional audiences for the outputs of this study: the chairs of governing bodies, the members and the clerks (although the external stakeholders and the heads of institutions are also important audiences). The table then reviews a range of possible dissemination methods and comments briefly on each.

Mode of Dissemination of Study Outputs and an Estimate of their Effectiveness

Mode of Dissemination	For Chairs	For Governors	For Clerks
Printed report	Relatively effective as it likely to be read by most	Moderate as it may not be read by a sizeable number	Effective as most are likely to read the report
Regional seminars to disseminate and encourage discussion	Effective for those who attend	Effective for those few who attend but there will be limited numbers	Effective for those who attend
Special coverage in the CUC /SCOP newsletters and other publications	Moderately effective for flagging key issues	Moderately effective for flagging key issues	Not very effective for this group
Governance web	Effective for web	Effective for web	Very effective, for

site or web-based database of good practice ⁷⁰ to house further detailed information and working papers from this study.	oriented chairs, ineffective for others	oriented members, ineffective for others	those clerks with a specialist interest in a topic, but the information will require regular updating
Specialist working groups to follow up on some of the six topics.	Effectiveness depends on subsequent dissemination	Effectiveness depends on subsequent dissemination	Highly effective for some enthusiasts.
A web-based discussion group to encourage debate and discussion on the six topics (eg JISC Mail).	Very Limited	Very Limited	Might be a useful extra facility for CUC/LF to promote with a wider application than this study.

10.4 This analysis suggests the following dissemination programme after the national conference in November has launched this study:

- A series of regional workshops held to discuss the six topics in further details, and to promote debate on good practice in each case.
- Coverage of this report in the CUC/SCOP newsletters and other similar publications.
- Enhancement of the existing Leadership Foundation governance web site to include examples of good practice for use as a resource by clerks and interested governors.

10.5 Another approach mentioned in the table has a broader and more long term relevance than just to this report. In the course of the study we have identified enough people with an interest in developing governance practices to suggest that there might be benefit in setting up technical working groups to continue further work on some of the six topics (see Next Steps below). A discussion group on the web would a simple way of allowing these groups to share their ideas with others in the sector. It is assumed that the members of the group would be principally clerks or senior managers with functional responsibility for the areas concerned.

NEXT STEPS

10.6 Discussions in some of the preceding chapters have flagged issues relating to governance that we believe deserve to be followed up by CUC. In some cases these can be handled by short term actions or projects while some others are of a longer term nature.

⁷⁰ A model database is the AGB's Center for Public Higher Education Trusteeship and Governance. The UK web site at www.hegovernance.ac.uk is about to be extended cover UUK members as well as SCOP members for whom it was designed and will become the responsibility of the Leadership Foundation in due course. Working papers from this study will always continue to be accessible from both the CUC and Leadership Foundation web sites.

10.7 The most long term topic was identified in Chapter 2 and concerns the changing role of the governor and the questions raised in paragraphs 2.17 to 2.19 and 9.44. Among the questions to address are: what is the current role of the governor? how is it going to change? what constitutes an effective high performing governing body? and, how does a governing body add value to an institution?

10.8 The funding bodies are increasing the responsibilities and obligations on governing bodies, which are in many cases not wholly alert to the implications on their purpose and role. We suggest it would be well worthwhile if a serious study was made of these questions in order to provide a better base and rationale for developing realistic operational models.

10.9 This report contains several shorter term tasks for the CUC to consider, which include:

- Developing support for institutions wishing to benchmark their governance practices with each other (paragraph 8.20).
- Helping institutions to explore the application of EFQM models and other ways of developing frameworks for assessing institutional performance (paragraph 8.30).
- Facilitating the collection and dissemination of experience on effectiveness reviews (paragraph 9.14).
- Collecting information on the way that governing bodies review the performance of their chairs (paragraph 9.39).
- Considering how they can assist governing bodies in overseeing effectiveness reviews of senate/academic board and its committees (paragraph 9.46).

10.10 The main message that we believe this report has for the CUC is the value of studies such as this if institutions are to move their governance cultures towards a performance-based approach. Changes in governance are usually low down the priority list of most institutional managers, yet the funding bodies are expecting more and more from governing bodies. Only the CUC is in a position to stress the importance of effective governance, and it is well placed to lead the way in showing what works, and offering hard pressed clerks and governors menus of ideas for them to adapt and learn from.

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Appendix B: Further Materials

The following further materials are cited in the main report, and contain examples or comments on practice that may be of interest to readers. For reasons of space they cannot be included in the report but are available electronically either from the CUC website at www.sheffield.ac.uk/cuc or from the source below.

	Title of Item	Location in Report	Summary of Content
1	Queens University Belfast: Revised committee structure and a Code of Conduct for the Governing Body	Para 6.10	The Code of Conduct for Members of Senate (the Governing Body) and a chart showing the core committee structure
2	Exeter University: Strategy, Performance and Resources Committee (SPRC)	Para 6.18	The terms of reference of the SPRC and a diagram showing the overall committee system
3	University of Southampton: Policy and Resources Committee	Para 6.18	Terms of reference of the policy and Resources Committee and listing of its policy sub committees
4	Higgs Suggestions for Good Practice in Performance Evaluation of Boards	Para 9.3	Three pages on board evaluation taken from pages 77-79 of the Combined Code
5	Governing Body Evaluation at Glasgow Caledonian University	Para 9.20	A two page summary of the evaluation process plus the questionnaire completed by governing body members
6	Brunel University: Survey to Review the Effectiveness of the Governing Body	Para 9.20	The survey used by Brunel to review governing body effectiveness
7	Southampton Institute: Arrangements for the Review and Evaluation of Governance	Para 9.42	A two page summary of the four evaluation processes in use at Southampton Institute
8	Excellence in Delivery: A Synopsis of the Business Excellence Programme at John Moores University	Para 8.23	A four page summary of the use of the EFQM model to enhance university management and governance
9	Use of the Balanced Scorecard at the University of Edinburgh	Para 8.22	See www.planning.ed.ac.uk/BSC.htm
10	Oxford Brookes University: Key Performance Indicators (Preliminary)	Para 8.10	A two page summary of the proposed KPIs to be used at Oxford Brookes.