

Chapter 2

Friend or Foe? Governors and Governance in Higher Education



Quintin McKellar

Abstract This chapter provides an overview of the governance of universities in the UK and considers the strengths and frailties of the systems which have developed. Before considering universities, some examples of corporate governance failure are given since they exemplify universal issues relating to self-interest, poor integrity, lack of accountability and honesty, and external interference by government from which important lessons can be learned. The affairs and policies of universities are embraced in the stewardship of their governing bodies. The diversity of governance models in the UK higher education is a reflection of the age, complexity, and ethos of the universities we have. Good governance has been articulated by codes by which universities operate and which provide many safeguards against failure. The relationship between these governing bodies and the agent of state, the Office for Students, which operates as a regulator, is developing. It is hoped that one of the OfS's guiding principles, which relates to institutional autonomy will survive the pressures of public scrutiny and political avarice, and that the OfS will refrain from institutional interference beyond its regulatory duties.

Keyword Governance · Universities · Transparency · Effectiveness · Management · Trust

2.1 Introduction

To govern derives its meaning from the Greek, *kubernāo*, which means to steer, and is broadly taken to describe the mechanism by which organisations conduct their affairs and decide their policies. Indeed, the government of a country constitutes its governing body, the policies of which materialise as laws. Governments have influence over the establishment and function of governing bodies of private and public organisations, and while pressure by government to ensure good governance has undoubtedly had a positive impact on organisational transparency and effectiveness,

Q. McKellar (✉)
University of Hertfordshire, Hatfield, England
e-mail: q.mckellar@herts.ac.uk

© The Editor(s) (if applicable) and The Author(s), under exclusive license to Springer Nature Switzerland AG 2020
A. Badran et al. (eds.), *Higher Education in the Arab World*,
https://doi.org/10.1007/978-3-030-58153-4_2

it has also been perceived to be, if not actively intrusive, then certainly burdensome and stultifying for organisations which require flexibility and speed.

2.2 History of Governance

This is no new thing. At its zenith, the British East India Company was responsible for half of all world trade and had an army twice the size of the national British Army. It governed most of the Indian sub-continent. Its power evolved from a mercantile operation to an occupying force under whose authority it traded, in amongst other things, opium and directly levied taxes. While the company officials and shareholders grew rich, the local populations suffered famine, to the extent that there was no longer the manpower to service the economy on which the company depended. As income declined, there was a run on company shares, pushing the business towards bankruptcy. The British Government eventually took action, passing the East India Company Act in 1773 to wrestle control, and indeed government, back from the company in India. In the same year, and to offset the bailout of the company, the Government passed the “Tea Act”, giving the British East India Company preferential trading rights with the American colonies. This act of taxation without representation incited the Boston Tea Party and the American War of Independence.

The East India Company failures exemplify the issues of poor governance, including lack of legitimacy, unethical activity, substantial self-interest, poor accountability, questionable integrity, and ineffective leadership. The subsequent interference by Government was no more effective; indeed the Government’s attempts to reduce the cost of its bail-out ultimately resulted in American independence, and while in the long-term it could be argued that this was a good thing, it was not perceived so at the time. Indeed, a less harmonious transition to independence is hard to imagine.

The Anglo-Persian Oil Company, which became the Anglo-Iranian Oil Company, the predecessor of British Petroleum (BP) was founded in 1908 after the discovery of oil in what was Persia. The exploration was supported by the millionaire William Knox D’Arcy, and subsequently, the Burma Oil Company (based in Glasgow) and exploitation was abetted by a ludicrously favourable concession that D’Arcy negotiated with Mozaffar al-Din Shah Qajar of Persia in return for essential exclusivity, Persia (now Iran) would receive only 16% of future profits. In 1913, Winston Churchill secured oil supply from the Anglo-Persian Oil Company for the Royal Navy and coincidentally acquired a controlling investment in the company for the British Government. There followed many years of irritation on behalf of Persia over the D’Arcy concessions and obfuscation on the part of Britain and the oil company over unfulfilled promises of aid and infrastructure. This came to a head in 1951 when the Iranian Parliament voted to nationalise the Anglo-Iranian Oil Company and Britain closed its major refinery in Abadan. The British Government’s attempts to settle the dispute through the International Court of Justice were thwarted when the Court established that the dispute was between the Iranian Government and a foreign corporation (not the British Government) and was therefore subject to Iranian domestic law. A compromise was

ultimately achieved with BP becoming part of a consortium of oil companies that shared the profit on extracted oil 50:50 with Iran. The original D'Arcy concessions and company governance contributed in a large way to the tensions which developed between the Anglo-Persian/Iranian oil company and Persia/Iran but British Government intervention did nothing to relieve the belligerence between the parties and must bear responsibility for the deteriorating relationship that subsequently developed between Iran and the West. Although the original negotiations may have been carried out in good faith, they were clearly ludicrously one-sided and their legitimacy ought to have been tested by the governors of the company and its overseer the British Government. More effective governance with a modicum of selflessness and integrity could have resulted in a very different outcome for the Anglo-Iranian oil company and for future relationships between Britain and Iran.

Governance of business has more recently been criticised for failure to pick up fraud or simply for not controlling the incompetent exuberance of senior executives. Arthur Anderson, a one-time highly reputable auditing firm with a turnover of more than \$9 billion, was implicated in the misstatements of the giant energy company Enron and subsequently the shredding of documents related to its audit of Enron. The US Securities and Exchange Commission will not accept audits from parties with criminal convictions, effectively sealing the future fate of Arthur Anderson. It did not end well for Enron either. Its stock price fell from \$90 to less than \$1 leading to what was at the time the largest bankruptcy in US history. It also catalysed a US Senator and a US House representative to sponsor a bill named in their honour the Sarbanes-Oxley Act. Prior to the Bill, US auditing firms were essentially self-regulated, the Bill introduced specific responsibilities of the Boards of Directors of corporations, proposed that the Securities and Exchange Commission create regulations for corporate compliance, and enforced criminal penalties for misconduct such as the wilful destruction of evidence. The Act has been praised for the transparency and confidence it has brought to the financial industries and to investors.

By 2008, Lehman Brothers, the fourth largest investment bank in America, had invested heavily in what became known as sub-prime mortgages. Sub-prime mortgages are issued to borrowers who have a higher than average risk of defaulting. By this time, Lehman had assets of \$680 billion, which were supported by only \$22.5 billion of firm capital. A small negative change in the value of its real estate assets would wipe out all its firm capital. Furthermore, Lehman apparently boosted the appearance of its financial statements by temporarily exchanging up to \$50 billion of assets into cash immediately before reporting. Lehman began to make huge losses on its sub-prime assets in 2008 at which time it appears, perhaps unsurprisingly, to have been unable to sell them. Losses in its stock were followed by an exodus of its clients and down-rating by credit agencies, and the spiral continued until 15 September 2008 when it filed for bankruptcy protection. This now became the largest bankruptcy in American history and was followed by a precipitous drop in global markets and an ensuing global recession. As the 2008 recession began to develop, other organisations whose governance arrangements had allowed them to become exposed were affected.

The Royal Bank of Scotland, which was established in 1724, had seen a period of unprecedented growth under the stewardship of the mercurial Chief Executive Officer Fred Godwin. By 2008, it was the world's largest company by assets (£1.9 trillion) and its stock value made it the fifth largest bank. It had achieved this extraordinary scale by aggressive acquisitions. However, ambitious acquisitions stretched the bank's capital position and as the recession unfolded, it transpired that several of the US banks that RBS had acquired were substantially exposed to the sub-prime mortgage market. While Godwin was at the helm, the share price of RBS rose from £4.42 to £18 and then fell to 65.7p. At this point, the bank recorded a loss of £24.1 billion, the largest in UK corporate history. The UK Government bailed the Royal Bank of Scotland to the tune of £42 billion, purchasing 82% of the Bank's shares at 50p per share. The company, which invented the overdraft, had to utilise something of the equivalent from the nation for its survival.

Arthur Anderson, Lehman, and The Royal Bank of Scotland variously exhibited lack of integrity if not dishonesty, poor accountability and objectivity, clear lack of selflessness and poor leadership in both their Governors and Executive. As we shall see later, addressing these deficiencies from the basis of the Nolan Principles designed to create a code of personal conduct would have of itself prevented many failures in collective governance. It could be argued that for commercial for-profit companies, selflessness is less important than for public sector organisations. Nevertheless, personal or corporate greed clearly contribute to poor governance in many of the examples of corporate failure.

Each of the examples given represents instances where companies or businesses, which were at one time seemingly indestructible, have floundered or have caused national catastrophe as a result of poor governance, in two cases abetted by government and in one case rescued by government.

2.3 Failures in University Governance

Within the global higher education sector there have been several instances of institutional failure attributed to poor governance. On review these most often fall into two categories, the first is where the institution has become financially unstable or unsustainable as a result of mismanagement, often attributable to issues of both governance and executive management. In some cases, the institutions have experienced financial instability as a result of external factors such as changes in government-funding policies or simply a changing market in student numbers. Nevertheless, in most circumstances highly effective governance and consequent good management could have implemented different models of size and delivery, thus adapting to the new environment and where this has not happened, governance must bear responsibility.

The second major category of governance failure has been where there has been a breakdown in trust, confidence, and working relationship between governors and the senior management of the organisation, or when the governance oversight has

failed to pick up weaknesses or malfeasance in management or ineffective process in the university.

In the UK, the most notable failure in governance resulting in financial shortcoming was in 2009 at London Metropolitan University, which apparently claimed £36 million worth of government funds for students who had not completed end-of-year assessments [7]. At the time, the chair and members of the governing body, deemed ultimately responsible, resigned and a new set of governors were appointed and a new Vice-Chancellor also took charge. It is perhaps a measure of the deep-seated frailties of the processes in place throughout the University that in 2012, London Metropolitan also lost its authority to take students from outwith the European Union when an audit found that almost 25% of its international students had no leave to remain in the UK. At the time, international students accounted for £30 million of London Metropolitan revenue. In relation to the failures in governance at London Metropolitan, the then Chief Executive of the UK's Higher Education Funding Council (HEFCE) said "The scale of governance, management and operational failures at London Metropolitan University is unprecedented in higher education in this country" [2].

A breakdown in governance of the second type whereby the fracture was between independent governors and executive occurred at the University of Plymouth. The exact cause of the dispute is unclear although several reports suggested excessive expenditure on travel and on the trappings of office of the Vice-Chancellor. It is understood that following her suspension the Vice-Chancellor took out a grievance based on sexual harassment against the then Chair of the Board of Governors, who despite refuting the claims, promptly resigned. Clearly, getting into the mess that Plymouth found itself in was a direct result of poor governance, and getting out of it seemed little better. The now former Vice-Chancellor was appointed "President" for an unseemly short period and both the former Vice-Chancellor and former Chair of Governors were reputed to have received monetary compensation for loss of office. Plymouth subsequently commissioned an independent review of its governance and although it did not comment on the reasons for the breakdown in governance, it did submit resolving principles which hint at where there may have been concerns. They point out that "No one individual is greater than the institution they serve", that individuals should instinctively "do the proper thing", that staff should be treated "fairly and with dignity", and that everyone in the institution had a "duty of candour". Of the 15 major recommendations in the report, two are specifically targeted at the breakdown in trust and confidence between the Chair of the Board of Governors and the Vice-Chancellor. The first is the appointment of a Registrar (Plymouth did not have one) who would become the "conscience of governance" and might act to prevent breakdown in relationships. The second was to appoint a senior Independent Governor who might act to resolve issues, were they to arise, between Chairman and Vice-Chancellor, or which could not be resolved through the "normal channels of Chairman, Vice-Chancellor, or University Secretary/Academic Registrar" (Good Governance Institute [3]).

Examples of breakdown in governance within universities in the United Kingdom should be considered in the context that of the 140 higher-education institutions with

university status; none has ever been declared bankrupt. Indeed, in most instances where mismanagement has been claimed the governance processes of the organisation have been sufficiently robust to resolve the situation. Nevertheless, changes in the relationship between universities and government, with greater autonomy and responsibility of governing bodies, may be causing inadequacies in governance to become more apparent or to have greater impact on their institutions. There have been recent reports of governance failures at Swansea, De Montfort, and Reading Universities, and at Christ Church College, Oxford, and as financial pressures increase on UK universities, it is likely that others will emerge.

2.4 Governance in a Crisis

Crisis of personality and crisis of finance are generally of their own making. The extraordinary crisis of pandemic is truly external. The Covid-19 coronavirus pandemic has been global in nature and transforming in character. Has university governance responded well? It will be easier to accurately tell in retrospect, however at present (in May 2020), the resilience and responsiveness of UK universities has been broadly effective. Yet even now some important questions arise. The disease emerged in late December 2019 in China and it is fair to say that universities in the UK were still coming to terms with its potential consequences in February 2020, mostly imagining that it would behave rather like previous severe acute respiratory syndrome (SARS) coronaviruses with limited global reach and impact. As the death toll mounted and other European countries like Italy and Spain began to impose lockdown policies on their citizens, it became apparent that this was different. Lockdown in the UK began on 23 March 2020. Some universities in the UK had begun to take action before this date, but it is fair to say that from that time action has been electric in pace and profound in depth. In a period of two weeks (some starting before lockdown) almost all universities have succeeded in converting all their remaining semester B and C teaching content into online delivery and have put in place assessment processes which ensure integrity while acknowledging disruption to student learning. This, of course, begs the question, why did the evolution of online material not happen before Covid-19 when many university teaching and learning institutes or centres were encouraging just such production? How did governing bodies respond to the emergency? And did their response make any difference to the executive teams which were responding at the chalk face or, as it happened, on the computer screen.

At the University of Hertfordshire, the Board of Governors met on 26 March 2020 and was able to consider what its response might be to the event of lockdown and immediately establish an emergency subgroup of six governors. This group subsequently met weekly for eight weeks until the rhythm of the crisis steadied and high-level decisions could be taken in a more timely fashion by the regular board, or its finance or audit committees. It proved most helpful since the executive board had to make very rapid decisions with profound financial consequences for which governor approval was reassuring if not legally essential. For example, at this point

some universities were considering converting conditional study offers for Semester A into unconditional offers, which would have had a positive impact on recruitment but would have raised the ire of the Office for Students (OfS) who were trying to support sector stability [8]. Governors were deeply engaged in this debate, weighing the possible short-term benefits of improved recruitment against possible long-term reputational damage. Over the course of a very busy weekend the decision was taken to hold our conditional offers, which in retrospect seems to have been the correct choice as the OfS considered back-dated powers to sanction those universities whose action could have destabilised the sector. A decision with more immediate financial implications had to be made on our student accommodation. In Hertfordshire at this point we took the decision to release students from their accommodation contracts, costing the University about £6 m but supporting students who would otherwise be paying for unoccupied halls of residence which was felt to be morally indefensible. The activation of the emergency board group allowed the immediacy of decision making essential at that time; however, it is apparent that not all boards responded with such speed and flexibility. It has been rumoured that at least one university's governing body had apparently not met during that first eight-week period and it is interesting to speculate whether the governors of that institution were discharging adequately their responsibilities.

As we move from response to recovery, the University of Hertfordshire has been considering the more fundamental and long-term implications of the lockdown on the way we might wish to work in the future and how we can embrace effectively the practices which have been shown to work and which may be utilised to enhance learning in the future. In this regard, governors are being encouraged to think creatively about what the future might look like and how our university can exploit opportunities for the best learning experience for our students.

At the outset of the crisis, governors embraced an almost universally cooperative and supporting role. As the crisis evolved and new working practices and approaches became embedded and when it became apparent that the university had responded well, governors rightly became more challenging and their approach was directed towards recovery and sustainability. The crisis meant that board agendas were stripped down to essentials and meetings were shorter and more functional. One consequence of the crisis has been renewed recognition of the importance of auditors. Future audit plans have been adjusted with registers updated and remits expanded. The financial impact of Covid-19 has begun with accommodation refunds, food outlet declines, and sports village closures. It will no doubt increase substantially with potential student deferrals or overseas students choosing not to travel. The real mettle of governing bodies will be tested as we move through the winter and cash reserves deplete.

2.5 Evolution of University Governance

The oldest universities in the UK are more than 800 years old and have had time to evolve systems that suit their structures, complexities, resources, and academic ethos. Thus, the official governing body of the University of Cambridge is “The Regent House” comprising around 5,500 university academics, officers, and senior college members. It also has a council, which is the principle executive and policy-making body of the University. Unlike most more-recently established universities, the Council has only four external members and 19 elected members from the University community [9]. The University of Oxford’s sovereign body is its congregation, which like Cambridge has over 5,000 members, and like Cambridge it has a council of 28 members of which only up to four are externals [11]. Most other universities in the UK have membership of between 15 and 35 members of which the majority are independent and external to the university. Most governing bodies also have student and staff members, the latter group often representing both academic and professional staff. A peculiarity of the ancient Scottish universities was that their courts or governing bodies were chaired by a rector who was elected by the student body. More recently, Scottish universities have been required by statute to appoint union representatives to their board and to hold an election among internal and external stakeholders for the appointment of a senior lay member who will chair the governing body. The appointment of trades-union representatives calls into question the nature of governance whereby governors might be expected to act in the best interests of the university rather than in the interests of what are often a minority of staff members.

The evolution of governance within British universities has seen their governing bodies becoming smaller (typically fewer than 20 members), less “representative” or “democratically elected”, and more selected and appointed through processes designed to fulfil skills requirements, and there has been a move to ensure that the majority of governors are independent or co-opted. Most governing bodies undertake their duties on a voluntary unpaid basis, although as the responsibilities of governance become more arduous and the potential for liability increases there are more demands from governors for payment and more universities embracing remunerated non-executive appointment. In this regard, it is interesting to note that one of the universities subject to public scrutiny for a failure in governance, De Montfort University, was one which had most actively embraced the paid role of some of its governors.

2.6 What Are Governing Bodies For?

If governing bodies operate as the mechanism by which organisations conduct their affairs and decide their policies, they clearly have a wide remit and broad responsibilities. Taken to its extreme, this could be interpreted that they should have oversight responsibilities, should decide and implement strategy, and should direct operational

activity. This confuses governance and management and could lead to internal conflict if the same organ of responsibility was both instructing and enacting operational activity and having oversight to see that it was being done properly. It is unlikely that a voluntary group of independent governors would have the time or expertise to effectively engage at an operational level. Furthermore, if they have the duty of oversight inferred by governance they would be conflicted to do so. Governors would be expected to engage in the creation or at the very least the approval of the strategic direction of the institution. It would be wasteful of the expertise of governors, who are likely to have been leaders in their fields of activity, not to use that expertise, experience, and wisdom in the creation of strategy. Nevertheless, they should be mindful that the community of scholars and professionals within a university will have much greater subject-specific expertise than they have, and that the institutional expertise should be harnessed in the formulation of strategy. The approval of the strategy should be the responsibility of the governors and separating formulation from oversight has the potential advantage of removing self-interest from the process.

Governors should certainly have oversight of all major activities of the university and this is now more clearly articulated by the OfS, the new regulator of higher education in the UK. But the role of Governors should be to assure themselves that the processes are efficient and effective and that the outputs and outcomes are of appropriate size and quality, rather than becoming involved in the processes themselves. Of course, all aspects of governance should be nuanced according to the relative expertise of the governors and the relationships and trust between governors and executive. The greater the expertise, the more mature the relationship and greater the trust between the governors and the executive, and the more likely the institution is to function effectively. Furthermore, the level of challenge and support as a critical friend of the executive that the governors can impart, the more likely the organisation is to remain compliant with the law and the regulations within which it must operate. There is undoubtedly a balance to be sought whereby governors implicitly trust the executive but remain sufficiently dispassionate to take appropriate action should oversight demonstrate impropriety or simple incompetence.

Given that breakdown of governance is often associated with breakdown of the relationship between the Chair of the Board of Governors and the Vice-Chancellor, that relationship is vitally important. Strains in the relationship are perhaps unsurprising since those achieving senior positions, which might deem them suitable as Chairs of Governing bodies, and those achieving the position of Vice-Chancellor are likely to have high levels of expertise and self-belief and to consider themselves to be the leaders in their fields. They may also possess significant egos, which could make a partnership approach more difficult. In these circumstances, a Secretary-Registrar with the courage and ability to temper and manage the partnership is vital! It is also wise for a governing body to appoint from their membership a senior independent governor whose role would be to resolve dispute should it occur between Chair and Vice-Chancellor.

Managing a Board of Governors effectively requires substantial interpersonal and communication skills, not least because some members (often, but not exclusively,

staff and students) may mistakenly see themselves as representatives. This is more likely if Union “representative” membership is embraced. The governing body are jointly and severally responsible for the functioning of the university. They should act in the best interest of the institution and not their “representative” group or in their own self-interest, which could manifest in overt support for research over education or vice versa, or for increased salaries over sustainable finances. Indeed, the Chair should also manage the lay governors whose personal expertise or interests may result in fixation or inappropriate descent into operational activity.

2.7 Good Governance

In some jurisdictions such as the USA, elements of good governance have been enacted in the law, the Sarbanes-Oxley Act perhaps being best known. Furthermore, there are many codes of good governance, which cover business (King IV), charities (Charity Governance Code), and education (The Higher Education Code of Governance) [1, 4, 6]. As codes of governance have evolved, they have come to embrace more tangibly the idea of citizenship, whereby good governance implies engagement with wider communities. Corporate governance has and should become more transparent and while the law prevails over codes it is likely that a well-crafted code should support a corporation or organisation to stay within the law. The King IV report proposes that governing bodies have the responsibilities to steer and set strategic direction, approve policy and planning, oversee and monitor, and ensure accountability; it lays out 17 principles which it suggests should be given effect by the practices of the organisation and which should contribute to four broad outcomes embracing ethical culture, good performance, effective control, and legitimacy. It is of relevance that the early examples of governance failure described at the beginning of this chapter for the East India Company and Anglo-Iranian Oil Company transgressed each of these. In establishing a governing body, King IV recommends in one of its guiding principles that it should “Comprise the appropriate balance of knowledge, skills, experience, diversity and independence to discharge its governance role and responsibilities objectively and effectively”.

The Higher Education Code of Governance has been prepared on behalf of the Committee of University Chairs. It begins by affirming the “Nolan” principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership by which governors should behave [9]. All the examples of governance failure given earlier demonstrate explicitly a failure of one if not many of the “Nolan” principles and these should always be paramount in those accepting governance responsibilities. The code then lays out some core values which apply to higher education and which underpins good governance for this sector. These include autonomy, academic freedom, the student-interest, accuracy and transparency, clarity for stakeholders, equality and diversity, availability to all who might benefit, and accountability for public funding. It then describes in more detail the elements of governance, which

underpin these values. It notes that the governing body is unambiguously and collectively accountable for all matters of fundamental concern and that these responsibilities apply also to staff and student governors who should not be routinely excluded from discussions. This implies that these members may occasionally be excluded, perhaps when topics of direct personal interest are being discussed. However, given their responsibilities this should only be in extreme circumstances.

Governing bodies should assure themselves that “clear regulations, policies and procedures which adhere to legislative and regulatory requirements are in place, ethical in nature and followed”. It is of particular interest to universities that the decision-making process is not influenced by donors or sponsors and that individual governors are impartial and declare interests when these arise. Governors should work with the executive to set the institutional strategy, which should deliver financial sustainability and should control risk. In order to affect appropriate controls, the governing body should establish an audit committee, which should be “small, well-informed and authoritative”. It should have the expertise and the time to undertake its duties diligently.

Senior executive pay has become a matter of much public interest and criticism. In order to ensure that the reputation of the university is not damaged, a robust remuneration committee should be established which should include the chair of the board of governors and at least a majority of independent members. The Vice-Chancellor should not be a member of the remuneration committee that sets his or her pay. The remuneration committee should consider comparative data on pay and it would seem wise to seek such data from within the sector as well as with similar other public-sector bodies and private corporations. In setting salaries, the committee should consider the public interest and safeguard public funds. While the merits or wrongs of excessive base salaries will be a matter of concern dependent upon the perspectives of the individual considering them, it is of greater concern that excessive payments are made in the last year of a Vice-Chancellor’s employment. It may be charitable to assume that such payments are the result of retention clauses and that they go to leaders of great competence who have led their institutions with distinction and credit. It is more likely that they are pay-offs demanded by Vice-Chancellors forced from office as a result of poor performance or fractured relationships. In these instances, the governance relating to original contracts of employment and the backbone of the governors acquiescing to the outgoing Vice-Chancellor’s demands should be questioned. While no institution wants a murky industrial tribunal to accompany a change in command, it is important that governing bodies are prepared to resort to the law and are prepared to accept the scrutiny that this would demand in the best interests of their University and indeed to uphold the credibility of the governance process.

Governing bodies of universities will recognise that the expertise required to direct the educational and research activities of the organisation lie within the Academic Board or senate. Nevertheless, they must assure themselves that the requisite body is carrying out its duties in relation to academic matters in a diligent and effective way. Furthermore, it must respect the principles of academic freedom whereby academics have the duty, “within the law to question and test received wisdom and to put

forward new ideas and controversial or unpopular opinions”. While many boards assure themselves of academic activity by receiving reports and examining outcomes, The University of Hertfordshire has instituted an open invitation to all governors to attend Academic Board as observers whenever they wish. This invitation has been actively embraced with governors enjoying the high-octane debates that often accompany pedagogic innovation!

Many universities now establish subsidiary companies for a range of commercial and other activities for which a company model might be more appropriate. Some have also established substantial satellite and overseas operations to the extreme extent of establishing full overseas campuses. The governing body must work closely with the executive to ensure themselves that appropriate due diligence has been carried out, that local laws and regulations are complied with, and that the operation does not endanger the financial sustainability of the organisation.

The law requires that organisations comply with equality and diversity legislation. Furthermore, universities should promote board diversity, which is likely to enhance governance outcomes, and may more appropriately reflect the diversity of students now attending universities. Governing bodies need to have a facility to refresh their membership and to review their effectiveness. Normally, members should be appointed for maximum periods of two terms of four years or three terms of three years. A nominations committee is established to recommend new members on the basis of required skills and competencies. Effectiveness reviews should be carried out at least every four years with the board receiving regular reports on progress against the previous review recommendations. Effectiveness reviews are a somewhat thorny topic, old-style self-reflecting exercises where governors score themselves and their fellow governors full marks for a job well done are no longer acceptable, nor indeed is it likely that self-appointed governance experts offer the ideal answer. For them effectiveness reviews offer the ideal opportunity to create a new industry, whereby their recommendations inevitably embrace further and more extensive governance review. Furthermore, textbook governance is not always the answer; if it were, neither Oxford nor Cambridge would pass muster. It is of course easier to diagnose a problem in a patient with overt clinical signs of failure: financial deficits, substantial debt, poor and declining league table position, industrial dispute, and so on. In a well-run and well-governed institution, a review may well say very little and this should not be a litmus for the regulator to take action.

2.8 Government and Governance

Historically in the UK, the relationship between government and university governance was ostensibly more direct. Tuition fees formed only a relatively small component of the funding package for teaching that universities received. The remainder came from the taxpayer by way of top-ups delivered at different levels, depending on the cost of delivery of the subject. In order to protect the Treasury, universities operated within strict number caps to ensure affordability. The funding was distributed

by a relatively benign intermediary, the aforementioned HEFCE, which operated as a critical friend, addressing issues of poor governance where necessary but with a specific enhancement remit often delivered in a supportive relationship.

In this regime, it was obvious that universities were public sector bodies and their governing bodies responded to directives from government, albeit through their arm's-length agency, HEFCE. In 2012, substantially higher tuition fees at £9,000 were introduced for students and shortly afterwards the number caps were lifted. On the face of it, from that time universities could be considered in the private sector, receiving income directly from their customers to cover the full costs of the services rendered. In this world, universities became truly autonomous and governing bodies had all the responsibilities that brought with it. However, it was not quite so simple. Government offered loans to students in order to pay for their tuition on very generous terms. The return on these loans meant that the government would never recover all its debt. It also meant that the government considered that they, not the individual customer, were substantially funding universities who should therefore tangibly remain within their ambit of control. Furthermore, they perceived that a robust regulator should be imposed which would look after the best interests of the students, accordingly they established the OfS. As well as imposing a Teaching Excellence and Student Outcomes Framework (TEF), which was designed to measure the quality of teaching, it also required universities to write a Student Protection Plan to protect students in the event that the continuation of study by students came under risk. Furthermore, it imposed a raft of conditions with regard to consumer protection and provision of information.

While these regulatory requirements do not necessarily challenge the independence and autonomy of the governing bodies of universities, they are directive at a very granular level, removing some of the flexibility which true autonomy should confer. Autonomy has been tested to the extreme by the OfS in some areas of controversy such as executive pay. This is, of course, a very emotive topic. Balancing the complexity and size of a Vice-Chancellor's job against the need to ensure that public and student income is being used wisely is something which university remuneration committees have wrestled with. Nevertheless, the facility to interfere by the OfS was clearly demonstrated when their Chief Executive appeared before an Education Select Committee of the House of Commons and said "Yes, we have the powers. Yes, I think there is a problem. Yes, I think at the OfS we have absolutely got to be prepared and deal with and tackle this" [5].

The OfS has already fined universities for failure in compliance, a sanction that seems somewhat perverse given that it is student tuition fees that are paying the fines and the OfS has an objective to enhance value for money for students. Having said that, it is difficult to imagine a robust sanction that is not monetary but which would still carry sufficient weight to be meaningful.

It is early days for the OfS and it is difficult to disagree with their aim to provide a student-focused, data-driven, risk-based approach to regulation of the sector. Their chair has also explicitly stated that the OfS will protect and promote institutional autonomy and academic freedom.

2.9 Conclusion

Higher education in the UK is acknowledged as high quality across the globe. We have some of the very best universities in the world and even those in the lower ranks of UK league tables compare well with international comparators. We have achieved this position with a somewhat diverse governance system but a system with principles of autonomy and responsibility, which have served our universities well. It is very clear that good governance is highly important for universities in ever increasingly complex political, technological, and policy environments. Codes of practice offer excellent frameworks and good points of reference. Nevertheless, good governance is fundamentally about people; the relationship between the Chair of the Board of Governors, the Vice-Chancellor, and the Secretary/Registrar is vital, as is the appointment of governors with the knowledge, skills, and wisdom essential to govern in an era of complexity, change, and scrutiny. But perhaps most important are the attributes of all those involved in the governance process by which they energetically embrace the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

References

1. Charity Governance Code (2017) <https://www.charitygovernancecode.org/en/front-page>
2. Curtis P (2009) London met governors forced out. The Guardian. <https://www.theguardian.com/education/2009/dec/17/london-met-governors-forced-out>
3. Good Governance Institute (March 2015) Review of Governance for Plymouth University: Final Report to the Board of Governors. <https://www.plymouth.ac.uk/uploads/production/document/path/3/3325/GGiPlymouthFinalReport180315.pdf>
4. Higher Education Code of Governance (2018) <https://www.universitychairs.ac.uk/wp-content/uploads/2018/06/HE-Code-of-Governance-Updated-2018.pdf>
5. House of Commons Education Committee (2018) Value for money in higher education. House of Commons (HC343) <https://publications.parliament.uk/pa/cm201719/cmselect/cmeduc/343/343.pdf>
6. King IV Report on Corporate Governance for South Africa (2015) <https://www.adams.africa/wp-content/uploads/2016/11/King-IV-Report.pdf>
7. Melville D (2010) London metropolitan university: An independent review into the circumstances and issues associated with the clawback of significant funds in 2009 <http://www.londonmetunion.org.uk/wp-content/uploads/2010/04/Independent-Review-David-Melville.pdf>
8. Office for Students (2020) <https://www.officeforstudents.org.uk/>
9. The 7 Principles of Public Life (1995) <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life-2>

10. University of Cambridge Website: How the University Works—Governance (2020) <https://www.cam.ac.uk/about-the-university/how-the-university-and-colleges-work/governance>
11. University of Oxford Website: Governance (2020) <https://www.ox.ac.uk/about/organisation/governance?wssl=1>