Governance Leadership

A Report for the Cultural Leadership Programme

By

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1   Introduction

The Cultural Leadership Programme has identified the role of Governance as one of its key strands. Certainly, there is currently considerable interest in this topic across the public, private and voluntary sectors. This has resulted in a number of investigative initiatives, codes of conduct and implementation propositions across all sectors. In particular, it should be noted that much excellent work has been done - by, amongst others, The National Hub of Expertise in Governance[1], which has set out clear guidelines on a range of important topics such as the role of a governing body and its relationship with the Executive; membership and committee structures; accountabilities; and issues such as proper procedures and conflicts of interest.

In light of all this extremely valuable work, the present document consciously avoids re-inventing wheels that have been successfully wrought elsewhere; rather, it draws on that material and seeks to apply it to the needs of the cultural sector.

In parallel with this study, Caroline Felton has been developing a Governance Delivery Framework which should be read in conjunction with this report.

Also, for the avoidance of any perception of an undeclared conflict of interest, I should note that my wife is the Deputy Director of the Clore Leadership Programme to which I refer specifically in Section 11

2   Context

In the private sector, the need to address issues of governance has been recognised as a result of a number of high-profile high-cost scandals such as Enron, Global Crossing and WorldCom. The voluntary sector has – thankfully - been far less susceptible to such malfeasance with cultural organisations remarkably trouble free in terms of fraudulence (although the recent allegations around the Getty Trust in the United States and Italy demonstrate that any complacency in this area may be dangerous). Perhaps because of this, some cultural organisations are diffident, if not agnostic, about the need for formal measures of good governance and procedures for ensuring their enforcement.

Many, however, do recognise the importance of this issue and the need for a strengthening of systems. Adrian Babbidge of Egeria Consulting, for example, was quoted in the Museums Journal in Feb 2006 on the role of trustees which he observed "*remains one of the weakest aspects of modern museum*

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[1] A group of voluntary and community sector support organisations, working to improve the governance of voluntary and community organisations in England; referred to hereafter as The Governance Hub or GH

management…….most [trustees] understand their supervisory role in the museum to be conscious of management and accountability. What they aren't always doing is the strategic role, looking forward on behalf of the museum." Whilst these comments were specifically focused on the museums sector, they were, to a large degree, recognised by contributors to this research as being reflected across the whole cultural landscape.

In this context, the present paper considers a number of current concerns and challenges around cultural governance and explores some ways to address them. It has been developed through:

a.   Desk-based research, reviewing a number of existing governance codes and publication
b.   Interviews with – and submissions from - a range of contributors, including board and executive members of cultural organisations, stakeholders and writers on the subject
c.   Drawing on personal experience as a senior executive and board member of cultural organisations over thirty years.

Whilst drawing on the (sometimes conflicting) opinions of many contributors, therefore, this paper ultimately represents a personal opinion.

3   The Issues Identified

Most interviewees acknowledged that there are some governance deficits in the cultural sector. Overall, the following key deficiencies and challenges were identified:

➢   Understanding Governance;
➢   The Nature of Corporate Structures
➢   Board Composition
➢   Board/Executive relationships & behaviour

In order to address these and other issues, consultees were asked whether they believed there should be a governance code for the cultural sector: a significant majority believed there should. This report, therefore, considers that question before dealing with the particular issues identified above. It then goes on to consider what such a code might contain, how the sector can best be persuaded of its value; how governing bodies and senior staff can be supported and developed to address its requirements; and how best to deal with organisations in difficulty.

4   The Need for a Governance Code

Since the Higgs report in 2003, a large number of reports and codes have been issued across the corporate and not-for profit sector, both in this and other countries. According to one survey of the literature, there are currently some 273 such codes operating.

In general, however, cultural organisations do not seem particularly aware of this *zeitgeist*. Even very relevant work in collateral fields remains largely unknown, including the extensive and excellent work of the Governance Hub. In order to address this lack of knowledge and help the sector take maximum advantage of the work that has been – and continues to be – done, the cultural funding bodies should consider becoming partners in the Hub

A review of some of the existing codes indicates that essentially, they are all (whether in the commercial or public sectors) very similar. Those differences that do exist arise from the legal or regulatory framework which governs the particular industry or sphere of activity. In some cases (e.g. the London Stock Exchange), certain particularised conditions or guidance are added to a core of transferable good practice In this quite crowded field, it would be otiose for the cultural sector to re-invent the wheel. Instead, it should adopt and supplement an appropriate existing code; given the easy transferability of its content (and the volume of ancillary implementation work currently being developed around it), I would propose that the model adopted be the GH document:**Good governance – a code for the voluntary and community sector[2].**

Whilst this code would meet a very large proportion of the governance needs of all cultural organisations, it will not address a few highly sector-specific issues; it should, therefore, be supplemented with a Cultural Annexe.

Most not-for-profit cultural organisations are currently constituted as registered charities. For those, the Charity Commission's publication, **The Essential Trustee – what you need to know,** will remain a very valuable adjunct to the code. However, it should be noted that any code for the cultural sector should, insofar as is practicable, be appropriate for use by both commercial and not-for-profit organisations.

Later sections of this document question the appropriateness of one-size-fits-all approaches to corporate structures; however, the bulk of the GH code should be applicable to the majority of formally constituted organisations working in the cultural field, whatever the details of their legal structure. For those that operate outside of any regulatory or funding apparatus, such a code would be purely voluntary; for those in receipt of funding or belonging to membership associations, it could/should be applicable on a *comply or explain basis,* probably as a condition of the appropriate funding agreement

In addition to the documents mentioned above, much other complementary work has been done in this area to develop toolkits and training packages to help implement a code (e.g. the trustee training materials developed for museums by Adrian Babbidge of Egeria and Jane Walton of YMLAC or the training days designed and delivered by Sue Harrison and David Bryan based on the work of David Fishel).

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[2] Produced by ACEVO, Charity Trustee Networks, ICSA and NCVO on behalf of the Governance Hub

These are likely to be relevant to the implementation of any governance initiatives arising from this project (see Section 13)

Having proposed that the cultural sector takes on and supplements the GH code, this report will, in its next sections, address the issues identified in Section 3 above before returning to the detail of how such a code might be customised for the sector and implemented.

5   Understanding Governance

A number of contributors to this study observed that they believe that many involved in the cultural sector do not really understand what governance is with, at one end of the spectrum, boards tending to micro-manage and, at the other, some executives seeking to use non-executive directors as a rubber stamp. More than one contributor pointed out forcefully that good governance depends on the concept of individual responsibility within a framework of collective authority and that this requires clarity – of purpose, information, procedures and responsibilities.

Perhaps the most fundamental of these requirements is the need for the organisation to have a clarity of purpose (including its strategic responsibilities and direction) which is informed by and linked to its values and shared by all parts of the corporate body. Several observers commented that this felicitous state does not always exist and that there can be an incongruence between theory and practice.

Most contributors observed that good governance has two principal constituent parts
   (i)   ensuring probity and prudence and holding the executive to account; and
   (ii)   supporting, carrying forward and advocating for the company's work.

Clearly, the balance between accountability and support is critical for any governing body – and this is becoming increasingly important as cash regimes and legal or regulatory requirements tighten. Many, however, believe that in too many cases, the balance between these two elements is out of kilter and that too much emphasis is put on the former at the expense of the latter with the result that a board can act as "*a brake rather than as a set of gears*".

It was also noted that the not-for-profit sector in many ways lags behind the private with governing bodies often being over-large, relationships between them and executives being unclear (and sometimes combative) and decision-making processes and responsibilities being hazy.

The above observations suggest that there is a need for an education/advocacy campaign to ensure that those working in the cultural sector (whether on a paid or voluntary basis) have a clear, shared understanding of the nature and requirements of good governance[3].

In many cases, too, organisations feel they are operating in a relatively inflexible corporate model which is not totally suitable for their purposes and thus hinders their ability to create appropriate and transparent governance structures. The next section deals with the need to be prepared to entertain different structural models in order to achieve comparable cultural ends.

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[3] This is discussed in more detail in Section 10

6   The Nature of Corporate Structures

Across the cultural sector (subsidised and commercial), there are a number of different corporate models, including sole traders, unincorporated partnerships, family businesses, companies with share capital, Industrial Provident Societies (sometimes as an exempt charity), Co-operatives (including, effectively, such constructs as the self-governing London orchestras), charitable trusts and, most recently, Community Interest Companies. Some exceptional cases have yet other models: the National Archive, for example, is a Government department.

Despite this plethora of possible models – and the wide range of scale and the variety of activities undertaken in this sector - the majority of independent cultural organisations in the subsidised field have historically tended to be registered charities, limited by guarantee. A number of contributors to this review suggested, however, that the desirability of this one-size-nearly-fits-all model should be reconsidered. This view is stimulated by two areas of concern:

1. Small companies may not always need the full panoply of board structures and processes required by limited company status. Many small organisations (perhaps especially those that are led by an artist or another creative) can operate very comfortably at the kitchen-table level. In some such cases, the creation of a board to meet external requirements can be more of a device than a genuine attempt to create a useful governance structure. Funding and regulatory systems should be flexible enough to allow cultural organisations to operate the most appropriate governance system for their purpose. Although in many cases, financial growth will eventually mean that formal corporate structures will, at some point, become necessary, it should be recognised that the full range of possible models, including IPSs or CICs should be considered to be legitimately available.

    This more flexible attitude might also facilitate a new approach to the long-standing issue of succession in independent organisations which are shaped in the image of the visionary creatives who founded them . Whilst there is a strong case for careful succession planning in many institutions, it is far from axiomatic that companies which exist to express the passion and creativity of an individual leader should automatically continue beyond that individual's departure. Current practice, however, tends to encourage the governing bodies of such organisations to self-perpetuate, whether or not this is objectively desirable.

2   Perhaps even more fundamentally, it is also argued that some organisations may find charitable status itself undesirable in a world where creatives are increasingly working across the commercial and subsidised sectors. For example, an independent dance company led by a successful choreographer with commercial potential may be inhibited from being genuinely entrepreneurial if its charitable objectives inhibit it from undertaking certain sorts of work. At present, the solution to this sort of dilemma would be for the artist to pursue an independent career outside her/his company. This however could raise issues of intellectual property and/or brand identification and certainly could make it more difficult for the 'charitable' company to exploit fully the benefits gained from the 'independent' activity. Squaring this circle in current circumstances can easily lead to mission creep or programme compromise.

In these circumstances, funders and regulators should not seek to impose a one-size-fits-all model but should recognise that the scale and objectives of, say, a major museum, a middle-scale touring dance company and an individual visual artist (who is unlikely to want to be non-profit-making) are likely to require different constitutional arrangements and that, consequently a flexible approach to governance models is desirable. For these instances, the CLP partners should seek to persuade other stakeholders of the need to be equally flexible and to allow organisations to choose on an individual basis what structure is most appropriate for them and whether or not they should be charities.

These fundamental questions about the appropriateness or otherwise of 'traditional' corporate structures are probably relevant only to a minority (albeit a substantial minority) of cultural organisations (mainly in the arts sector). The remainder of this document focuses on the needs and practices of the rest – those for whom a version of the company limited by guarantee may indeed be the most suitable vehicle.

7   The Composition of Governing Bodies

Many contributors to this study noted that, for a variety of reasons, the composition of governing bodies in the cultural sector is often unsatisfactory. Caroline Felton' s **Governance Delivery Framework** study, developed alongside this paper, quotes John Carver's comment that "*Boards tend to be... incompetent groups of competent people*"

On the one hand, the governing bodies of small companies are frequently composed of less experienced individuals who have not been properly inducted or trained in the responsibilities of 'trusteeship'. On the other, those of large organisations sometimes contain senior figures from outside the cultural sector who either fail to observe the proper distinction between executive and non-executive functions or, '*leaving their brains at the door'*, fail to bring the level of scrutiny and attention to the organisation's business that they would to their day job. Whilst there are undoubtedly many exceptions to these generalisations – and some contributors noted an improvement in the general standard of non-executive directors in recent years – the interview process revealed a widespread recognition of the need for further board development and trustee training.

The issue of diversity was another deep concern for a majority of interviewees who noted that *"behaviours are not yet following policies"* with one going so far as to say that *"boards are generally class-ridden".* As well as stressing the need for boards to properly reflect a range of ethnic and other backgrounds, contributors highlighted the need to involve more young people in governance (and to induct and empower them in their roles in order to engage them fully) and also the desirability of encouraging front-line cultural practitioners (artist, curators etc.) to take on such roles. It was also pointed out that this process would be greatly facilitated by a truthful agreement about the nature and volume of commitment at the outset (rather than *"it's only one meeting a quarter, honest")*, regular feedback (particularly positive) during tenure and an exit strategy which acknowledges members' contributions and smoothes the refreshment process.

Several suggestions were made as to how this situation could be addressed, including (from the museums sector) *"the DCMS should be more active and set targets on age, gender and ethnicity"*, an advocacy campaign targeted at under-represented communities and a more consistent approach to the advertising of board and chairmanship vacancies.

It is widely acknowledged that the cultural sector must make strenuous efforts to develop a considered approach to the recruitment and development of board members with a particular attention being paid to diversity. All organisations should, therefore, be required to address this issue as part of their adherence to the Governance Code. This commitment should not, however, be seen as being formulaically linked to national norms (e.g. meeting a quota of BME members). In some situations (e.g. remote rural areas), the appointment of a black person 'for the sake of it' might be inappropriately tokenistic. The organization should, however, be able to explain why it was deviating from recommended practice and demonstrate how it is addressing diversity in other ways (e.g. by broadening class, gender or geographical representation).

Even allowing for a pro-active recruitment campaign, there remains a concern that would-be board members from outside the pool of usual suspects will still face challenging barriers. Some of these are to do with perception and stem from a belief that board membership is worthy but dull, involving a tedious amount of bureaucracy and an understanding of incomprehensible financial arcana. Whilst it is true – and must be admitted to prospective trustees - that the accountability requirements of governance do involve a certain amount of formal paper-work, it should also be made clear that not every member of the board has to take responsibility for every detail; it should be possible for such technical matters to be dealt with in a sub-committee or other forum, leaving board members from other, complementary backgrounds to contribute in more appropriate areas of the company's activities.

A further frequently identified barrier is financial. A substantial percentage of the current board-ocracy works in the public sector or in professions where taking time off for public service is tolerated or actively encouraged. By contrast, less affluent, working class people and those (such as artists) in freelance careers may be discouraged from joining boards by the fact that the time-demands of membership will inhibit their capacity to earn a living. Currently, almost all board members of not-for-profit cultural organisations are volunteers. Some observers believe that this convention presents an obstacle to membership by individuals who are economically disadvantaged (disproportionately from the young, the less well-off and people from marginalized communities). Conversely, others believe that the principle of volunteerism is, in itself, valuable and should not be undermined. Ultimately, some compromise is probably needed if the sector is to make real inroads into the diversity issue.

The issue of trustee remuneration is a thorny one. One approach might be to adapt governing documents (where appropriate, in consultation with the Charity Commission) so as to make it possible for trustees to be remunerated on a discretionary basis at a level comparable, say, to that paid to jurors. Such an arrangement should not result in an overwhelming take-up that would place an unwarranted call on the organisation's funds; it would, however, offer compensation to lower-paid people who might otherwise see board membership as a financial drain.

This question is actually related to a broader issue about board composition. Several respondents questioned whether or not the traditional concept of 'the public good' being best served by volunteer boards which govern the senior paid executives remains the best operating model for the 21st Century. One contributor somewhat acerbically asked: "*why a bunch of well-meaning amateurs who have only a vague idea of how the business works should be in charge of experienced professionals who know it backwards*"[4].

Whilst it may not be desirable for third sector companies wholly to embrace the private sector model of a significant number of executive directors on the board, it may be time to adopt a more flexible approach to the possibility of the most senior two or three having board seats (as has recently occurred at the RSC).

The consultation process raised a number of other issues about boards' composition., including:

> Size, with several people suggesting that the norm for cultural boards (10-12 members) is slightly too large and that on average a board of about eight would be more effective;
> A generally expressed preference for time-limited working groups over standing sub-committees;
> The appropriateness of local authority membership[5] of governing bodies (in particular of museum trusts), especially in an increasingly stringent financial environment;
> Issues of 'churn' and refreshment;
> Succession planning (in particular for Chairs and Chief Executives); and
> The possibility of 'customer' representation on boards (*cf.* schools' parent governors)

Section 9 alludes to several of these issues in its discussion of a Governance Code.

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[4] This question relates to issues raised by Caroline Felton in her study in which she refers to John Carver's Policy Governance Model for board leadership.
[5] As opposed to attendees with observer status

8   Board/Executive relationships and behaviour

The relationship between executives and their governing bodies - and, in particular that between the Chair and the Chief Executive - were much discussed by contributors. It was generally agreed that successful companies have respectful, clear and well understood relationships between the executive and non-executive arms and that most serious internal organisational failures are due, at least in part, to a breakdown in this relationship which was likened by one person to Doubles Tennis where both partners are playing on the same side, but take responsibility for different parts of the court. On occasion, one may stray into the other's area but only with permission or, if by unexpected necessity, with a '*sorry, partner'*.

As for Board/Executive relationships in general, so it is for the Chair and Chief Executive in particular. Although Chairmanship of a third sector body has no particular legal status (being effectively *primus inter pares* on the board), it is almost universally recognised as being of critical importance - as is the centrality of the Chair/Chief Executive relationship.

The work done by the GH referenced elsewhere in this paper offers much helpful guidance in this area especially with reference to issues such as:

➢ the need for open communication between Board and Executive;
➢ clear, negotiated and agreed protocols and practices tailored to organisations' particular characteristics;
➢ the nature of the remit of those standing committees that a board does have (especially the Audit Committee); and
➢ the demands of accountability on the executive

Some of these issues are revisited in Section 9

9   The Governance Code and the Cultural Annexe

The GH code covers a wide range of issues relevant to the governance of voluntary organisations, including legal, accountability, strategic and HR issues. As noted earlier, this paper does not seek to duplicate that work; rather it draws on it and identifies additional points that might be usefully included in a document designed for use by cultural organisations. The GH code, for example, does not deal with how a board should organise itself managerially (e.g. length and protocols of meetings) although a sister document, *Learning To Fly,* designed for smaller community organisations does touch on that. Any supplementary material designed for cultural organisations might usefully include guidance on this area.

As noted earlier, the GH model code would seem to be wholly applicable to cultural organisations. It should therefore be adopted by the sector and issued by companies to all existing and potential board members (and staff) as part of their induction pack. It is, however more than 50 pages long which may be off-putting to some (especially, perhaps, those who are not used to dealing with formal papers and attending meetings i.e. the non-usual suspects that should be targeted by the diversity-focused approach extolled in Section 7). In part to address this issue, the Hub has produced a three-page summary which should also be made widely available and accompanied by interpretive sessions as appropriate (see also Section 11). It may be that a yet shorter *aide-memoire* could usefully be provided in addition *(cf.* the Labour Party's 1997 Pledge card*).*

Given the suggestion that any 'cultural code' should be based on the GH code, the following paragraphs should be read as an addendum to that document.

Whilst the adoption of the GH code – on a *"comply or explain"* basis - would meet most of the governance needs of cultural organisations, both the sector and the context in which it works have certain particular characteristics which are likely to require some additional guidance. It should, for example, be acknowledged that:

- These organisations often operate for non-profit distributing purposes in a competitive marketplace, sometimes in partnership with highly commercial operations;
- The taking of risk is a core part of most cultural organisations' core purpose (indeed, it is often the *sine qua non* of an organisation and the reason it is funded); this must, however, be balanced with a degree of prudence and managed in a context where charities in general increasingly tend to be risk-averse. Boards and management must develop the financial and organisational capacity that gives them the ability to take creative and business risks in pursuit of their mission;
- Operationally, cultural organisations are usually driven by the vision of the creative leader (who may be called by a range of titles including artistic director, head of museum or managing director). This may lead to arrangements for the development and implementation of policy that are different from those in other sorts of organisations; the traditional split in responsibilities in the HE sector between 'main' and academic boards may be a useful analogy;

In this context, a 'Cultural Annexe' to the Governance Hub code might be expected to cover[6]:

- The need for clarity as to the respective roles and responsibilities of the board and executive with respect to the development and delivery of the company's mission and values (the non negotiable core of a company's being) and its artistic vision and policy (the outward manifestation). This should recognise that part of a board's responsibility is the regular testing of how the programme matches the mission;
- Guidance as to the management of – and protocols for - board meetings including firmer recommendations e.g.:
    - the board should be less than 12 and meet at least thrice a year;
    - individual board members should be expected to attend frequently with some sort of *three-strikes-and-you're-off* rule which could be mediated by recognising that board attendance can be by video and/or phone link;
    - trustees should meet on occasion without any members of the Executive present;
- More robust policies on board membership renewal (e.g. recommending that no-one should sit on a board for more than six years with the exception of a member who becomes chair, in which case s/he could serve nine) and on succession planning (for both Chair and Chief Executive);
- Proper disclosure procedures in cases where a major donor sits on the board to ensure that this individual does not overstep the proper demarcation line between executive and non-executive authorities by exerting unwonted influence in artistic or operational issues;
- The need to take artistic risks and the strategies for managing the consequent implications (e.g financial, political and reputational);
- A policy for approaches to collaborations and/or co-productions with other organisations;
- Guidance on the organisation's trading policy (i.e. on appropriateness and/or quality thresholds);
- Recognition and advice on the particular issues around founder directors and 'artistic ghosts' (i.e those who continue to haunt and influence an organisation after their departure);
- The desirability of statements in the annual accounts and/or annual report which describe the operation of the Board including the number of its meetings, individual membership of committees and their composition and terms of reference, together with records of attendance by individual Trustees;
- Acknowledgement of – and protection for – whistleblowing;
- Additional points about the role of individual trustees, covering:
    - Confidentiality
    - Performance assessment of the Executive
    - Advocacy on behalf of the organisation
    - Providing practical help and expertise when required;
    - Active engagement with the output and staff of the organisation (e.g. attendance at performances, exhibitions, launches etc.) – without overstepping the line between executive and non-executive functions;
- Guidance on potential conflicts of interest which might involve more than one trustee (e.g. several board members being appointed by a single nominating body such as a local authority or a University) to ensure that a sufficient number

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[6] in the case of privately owned for-profit cultural companies, some of these elements may not apply. These exceptions would, however, be covered through the application of the *comply or explain* principle.

of non-conflicted Trustees can form a quorum able to review the relationship with that external organisation free from any (real or perceived) conflict of interest;
- The need (and financial justification) for Trustee Liability Insurance;
- The implications of Volunteerism – not just in the membership of boards but also, in some instances, in staff;

10 Advocacy - Disseminating The Concept of Good Governance

Section 2 noted that not all cultural organisations 'buy' the Governance rubric. Small companies, in particular, sometimes see this issue as a hammer to crack an unimportant nut and begrudge the time and effort that they fear will be involved, especially as the onus falls on the unpaid volunteers who constitute the board.

If the cultural sector is to adopt and implement a governance code, therefore, such doubts must be assuaged and the uninterested persuaded that the proposition has intrinsic merit.

There are, of course, powerful arguments that can be deployed in this. Those about financial probity and prudence are, naturally, amongst the first that come to most people's minds. Whilst, however, the accountability and duty-of-care roles of trustees are, unquestionably, very important, good governance produces far more widely applicable benefits than the mere avoidance of hands in the till. It is designed to make businesses – both commercial and non-profit distributing – better run, more efficient and more accountable. Overall, it should result in a company's having – and being seen to have:

- a clear strategic direction;
- responsible leadership with appropriate skills and experience;
- transparent processes and clarity of roles;
- an approach to its business that enables and manages risk;
- a culture of equality and diversity;
- good financial management and controls; and
- systems to avoid wrong-doing and perceived conflicts of interest.

In general, most people would agree that these are all Good Things. However, the suspicion remains amongst some cultural organisations that the new emphasis on this area could be just another tick-box exercise designed by funders to make life more difficult for the poor bloody infantry.

The Cultural Leadership Programme should, accordingly, undertake an advocacy campaign to win doubting hearts and minds over to the active, rather than reluctant, adoption of a code of Good Governance based on the GH model.

Here too, it makes little sense to re-invent the wheel. Instead, CLP should work with MMM and others to build on existing initiatives such as road shows and publications. It should also seek to enlist high-profile credible champions and 'stories' that show the value of good governance in ways with which a range of organisation can identify.

11   Board Support and Development

Assuming the 'hearts and mind' exercise suggested earlier is effective, cultural organisations, their employees, their governing body members and other volunteer should all understand the need for good governance. However for this understanding to be successfully implemented across the whole gamut of cultural boards, it is likely that many board members will need to be 'skilled up'.

This will not be a once-and-for-all 'fix-it' exercise. The ongoing maintenance of good governance in a changing environment will be a substantial ongoing task requiring vigilance and refreshment and involving a range of mechanisms. This process should be delivered, developed and reinforced through a range of structured introduction, induction, training and masterclass initiatives e.g.;

- The Board appointment pool should be actively expanded, encouraging in the process candidates from diverse (especially BME) backgrounds and/or with professional arts experience;
- Organisations should agree with potential trustees their likely level of commitment and activity before appointment. Annual evaluations should, in part, use this agreement as a performance measure;
- Prior to appointment, potential new Trustees should carry out due diligence, both on the governing body and on the organisation, to satisfy themselves that they have the knowledge, skills, experience and time to make a positive contribution;
- Board recruitment should be managed by a nominations committee which includes the Chief Executive; when recruiting a new Chair, the incumbent should not be substantively involved in the recruitment process. The board should also have a remuneration committee made up solely of non-executive directors;
- A structured induction process should be provided for all new board members, involving the provision of documentation (including the Governance Code, the Cultural Annexe and, where appropriate, *The Essential Trustee),* meetings with key staff, exposure to the work of the organisation and sight of the National Occupational Standards for trustees and management committee members; this induction process might, usefully, be provided on a modular basis so that inductees are (a) allowed to focus on those areas which are of most relevance to them and (b) not overwhelmed with detail.
- The board should regularly review the development needs of its members and provide training opportunities in relevant areas, including developing social policy (e.g. disability, race awareness) and ongoing business competencies;
- Funding should be made available to ensure that board development (especially for Chairs) can be taken forward on a regular ongoing basis;
- Opportunities for the development of Chairs should take account of the work on mapping governance learning and support done for the GH by Peter Williams and Katia Herbst in January 2006;
- All Trustees should inform the Chairman should they be offered additional trustee or other appointments elsewhere before deciding whether to accept them;
- All retiring board members should have an exit interview, a summary of which should be made available to the board;

- Training programmes should address the frequently noted issue of the need for mutual respect between boards and staff and for increased confidence (both in terms of boards' 'professionalism' and of CEOs' mandate to lead the organisation without constant recourse to the board);

- There should be a variety of training methodologies, including:
  - Local networks;
  - Seminars;
  - Viral approaches, through which good practice is spread;
  - Action Learning Sets (for Chairs, CEOs and Chair/CEO pairings);
  - Information cascades through Chairs and Chief Executives to boards and staffs;
  - Peer group activity;
  - Facilitated board sessions and away-days; and
  - Case studies

There should also be a range of providers from which board development can be sourced. At present, no institution offers a structured approach to Governance development that could be deployed in a strategic manner. CLP should discuss with a number of potential partners the possibilities of developing programmes which address some of the issues outlined in this paper. In the first instance, it should meet the following which are listed in alphabetical order:
  - Arts & Business;
  - Centre for Charity Effectiveness (at Cass Business School);
  - Clore Leadership Programme;
  - Directory of Social Change;
  - Egeria Consulting/ YMLAC;
  - ITC;
  - Volunteering England;

At an operational level, many individuals currently offer board facilitation and/or development services. However, these are seen as varying in quality and effectiveness. A more strategic approach to the development of cultural governance might benefit from a structured system of accreditation designed to ensure quality assurance. Stakeholders should consider whether and how to address this question (which may be of relevance in other strands of the current project).

12   Organisations in Difficulty

Several contributors raised the question of what remedial or punitive steps could be taken when an organisation is '*in difficulty*', a term which they generally seemed to use as a euphemism for '*terminally dysfunctional*'. Most of such cases will, as was noted in section 8, have a core cause in malfunctioning governance. As the NCVO has observed: "*Inertia is an important factor in insolvency cases. Insolvency usually creeps up unnoticed on organisations because no-one is alert enough to stop the slide at the beginning, when it may be relatively simple; they wait till the signs are painfully obvious when it is too late.*"

In practice, there are a number of characteristics which can be taken as indicators of incipient trouble, including:

- The need for an overdraft or increasing overdraft levels
- Losing clients, projects or generally declining activity
- Management accounts being increasingly delayed
- The unexpected departure of staff
- Losing Board members
- The need for early payment of grant instalments
- Red reminders

Several of the mechanisms that can be used for addressing organisational dysfunction and achieving turnaround have been noted in earlier sections of this document (or in the other documents to which this one refers). They include:

- Re-defining the core business and vision
- an organisational analysis tool-kit and an organisational review of all areas (which may need external help);
- board profiling;
- case studies of comparable models and examples of good practice;
- skilled facilitation;
- financial re-structuring; and
- the managed evolution of personnel, both at executive and board levels

Other essential actions generally include:
- improved cash management & realistic cashflow forecasts
- Cost cutting
- Better management of debt and future commitments; and
- Improved communications

In many, indeed most, instances, these mechanisms should be sufficient to help an organisation to turn around its difficulties. However, in some cases, they will not.

In general, when a company (in any sector) 'goes bust' , there are a number of options including:

- Administration: Insolvency Practitioner (IP) appointed by the courts
- Administrative Receivership: IP appointed by a chargeholder to sell 'charged' assets
- A Company Voluntary Arrangement (CVA)
- Liquidation: Compulsory (via court order) or Voluntary (decided by shareholders/Board)

Although the above characteristics of crisis, turnaround and going bust exist across all sectors of business – commercial, charitable and voluntary - they are not always fully appreciated. The cultural sector, for example, has seen a number of instances in recent years where organisations have displayed a persistent inability (or unwillingness) to recognise the realities - and address the challenges - of a failing business and adopt good practice and sensible house-keeping. Too often, in those instances, the result is a geologically slow process of attritional change that further debilitates the organisation and costs very large sums of (usually public) money. In such cases, the only stick available to a funder is the suspension of grant-payment; but that almost inevitably has the consequence of exacerbating the company's problems.

It may be worth funders (having taken legal advice) exploring with the Charity Commissioners the possibility of a new protocol to avoid any of the 'go bust' options in which companies agree, as part of their funding agreement, that in extreme instances (to be carefully identified and adjudged), their governance could be put into a form of administration with independent turn-around specialists (drawn from both the arts and business worlds) put in to re-structure the dysfunctional part of the operation. Failure to adhere to this condition could lead to the withdrawal of funding.

13   Implementation

This report has argued for:
- Adopting and supplementing a Governance Code
- Making the case for its use to the sector on a *comply or explain* basis
- Monitoring its efficacy through funding agreements and a process of regular review

The effectiveness of this strategy will, however, be largely dependent on the mechanisms and materials through which it is implemented. Following paragraphs make some observations as to how that might be effected.

1. There is a mass of documentation already available, through which time-pressured arts organisations may need sign-posting. The general adoption of the GH code with a cultural annexe together with The Essential Trustee should go some way to simplifying this maze, as should the dissemination of summaries of them. However, these documents might be made more transparent and navigable by the creation of:
   - FAQ resources (printed and especially web-based) which might lead visitors to the relevant test from the code and annexe;
   - Relevant case studies and, if appropriate, a legal gloss;
   - Specific sections on practical advice (e.g. assessment procedures for Chairs and Chief Executives); and
   - A clear index of topics, susceptible to easy interrogation.

   Any explanatory or interpretative material should probably consider each question from the perspective of all likely interested parties (Chair, Chief Executive, Board and staff members)

2. Bearing in mind the principle of not re-inventing the wheel, it would be helpful for this information to be linked to the Governance Hub website with a recommendation that those in need of information visit that site as it is likely to have the most up-to-date information available.

3. The delivery of good governance in any organization is ultimately dependent on ownership of the principle by key individuals, in particular the Chair. Chairs range from senior members of the 'Great and Good'-ocracy (especially in the case of larger, more 'prestigious' cultural organisations) to far less experienced individuals who may have very little experience of leadership. All, however, have to be helped to understand that the willing adoption and implementation of such a code is desirable. It will not work if undertaken reluctantly or cynically. Special attention should, therefore, be paid to engaging Chairs with this process and on providing them with the tools they will need to implement it successfully. This may include group sessions with other Chairs (on a sectoral or geographical basis); whole board away-days or partner sessions in which Chair/CEO combinations work with peers.

4. The executive leadership of cultural organisations should also be the subject of care and attention; certain organisations in the arts, for example, have traditions about the sort of person who should lead them: in some cases, it is axiomatic that the chief executive must be a creative (e.g. the major national theatre companies); in others, it is presumed that the leader will be an Executive Director (or similar). This can sometimes create a false hierarchy and

unnecessary tension. Organisations and funders should try to escape such historical constraints and seek to appoint the individual most able to provide the best, most dynamic leadership for an organisation at its present stage of evolution, no matter what his/her background.

5.   A governance code is essentially a self-regulatory mechanism. Many cultural organisations are commercial, belonging to no authoritative membership body or trade association and beholden to no funding agency. It is difficult to see how they can be enjoined to apply a code, other than by persuasion. Publicly-funded bodies are a different matter. The NDPBs and other distributors of public funds should make acceptance of – and adherence to – the governance code (on the basis of *comply or explain)* a condition of funding. Compliance could then be monitored as part of the annual review process.

6.   This process of review will depend on the quality and commitment of the officers undertaking the reviews; many of them will need additional training to enable them to assess arts organisations' performance in meeting the Code.

7.   It should also be noted that, if cultural organisations are to regard this process as credible, they must have confidence in the bodies (funding and/or regulatory) that are leading it. It will be necessary for those bodies (ACE, MLA etc.) to sign up to the code and demonstrate transparently that they too are observing it.

14 Summary of Recommendations

1 The cultural funding bodies should consider becoming part of the Governance Hub (GH) and linking their websites to its. Other material (examples of which are suggested in Section 13 of this report) could be posted online to assist organisations

2 The cultural sector should adopt the GH code (**Good Governance – a code for the voluntary and community sector)** and develop a supplementary Cultural Annexe; suggestions for topics for inclusion in the annexe can be found in Section 9 of this report.

3 Registered Charities should also be aware of the Charity Commission's publication, **The Essential Trustee**

4 Adherence to the code (and Annexe) – on a comply or explain basis – should be a condition of funding; officers of funding bodies may need training to ensure that they have the necessary competencies to assess adherence to this condition

5 The CLP should, in conjunction with others (e.g. MMM), undertake an advocacy campaign to persuade the sector of the importance of good governance;

6 An advocacy exercise should also aim to diversify the range of individuals prepared to undertake governance responsibilities; organisations should also be required to address this issue as part of their adherence to the code.

7 The CLP partners should adopt a flexible, more inclusive attitude to the type of corporate structures that they are prepared to support; they should be prepared to countenance a range of governance models, including those that are not registered charities and to argue for similar flexibility in other stakeholders

8 CLP should encourage organisations (in consultation with the Charity Commissioners, where appropriate) to adapt governing documents to allow for the remuneration of trustees on a discretionary basis (at, say, a level comparable to jurors)

9 A flexible approach should be taken to the possibility of a small number of senior executives having seats on the governing body of an organisation

10 There is a need for better induction and development for members of governing bodies; suggestions for ways of meeting this need can be found in Section 11 of this report.

11 There should be a variety of methodologies employed for board training and development and a range of providers involved; CLP should discuss with a number of potential partners (some of whom are suggested in Sections 11 and 13) the possibility of developing appropriate programmes

12 CLP and other stakeholders should consider whether an accreditation system should be introduced for 'trainers' working in the field of board development

13 The CLP partners should consider developing a funding condition that authorises them, in the case of organisational failure, to put in an independent turnaround team, drawn from the arts and business.

14 The funding and/or regulatory bodies leading this process must all sign up to the code and demonstrate transparently that they are observing it

15 CLP (and subsequently individual funding and regulatory bodies) should make funds available to enable this upgrading of cultural governance to continue on an ongoing basis rather than being seen as a once-and-for-all-time fix.