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The Quality of Board Decision Making Processes in UK and EU Higher Education Institutions.

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Abstract

We review governance practices in Higher Educational Institutions (HEIs) in the UK and in selected European Union countries with a focus on the quality of strategic decision-making processes at the level of university governing boards. To this end, we interviewed key players in HEI governance, supported by board observations, discussions with board members, and secondary data analysis. With direct insights gained from over 30 semi-structured interviews with board level individuals of six UK and five EU HEIs, supported by passive observations of board meetings, we examine factors affecting the quality of strategic decision-making, with a particular focus on board member awareness of the impact of heuristics and cognitive biases on their judgement.

In a context of increasing challenges, uncertainties and expectations facing the UK and the EU HEI sector, we sought to establish whether boards regularly adopt active processes to mitigate bias in reviewing or approving plans set out by executive university management. After reviewing the evidence collected, we conclude that instances of reflection on ways to arrive at better decisions, constructive reflections on past outcomes, learning from past mistakes, and awareness of the importance of bias mitigation procedures during deliberations appear haphazard in nature, isolated in occurrence, and almost exclusively accidental.

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Introduction

UK Higher Education is in the midst of challenging times both financially and in policy terms, amidst further bouts of reforms (Review of Post-18 Education and Funding, 2019). Exceptional, and to some extent overlapping challenges arrive from a wide range of directions, and include the UK's departure from the European Union, the increasing commercialisation of university education, repercussions of the Higher Education and Research Bill and the Stern Review, a problematically high reliance on international students, and an increasing recourse to and reliance on debt financing with an associated decrease in reserves. These uncertainties and challenges facing the UK HE sector would at the very least warrant careful review of risks, reflection on academic priorities, and enhancing financial resilience, which in turn requires a quality of governance at the highest level.

The exercise of governance places great importance on the clarity of roles and responsibilities, on institutional accountability and transparency, as emphasised in prior HEI-related work in the UK (e.g. Schofield, 2009, Copland, 2014, Greatbatch, 2014; Soobaroyen et al., 2014; Ntim et al., 2016, Ntim, 2018). Although the development (and reform) of best practices can foster good governance e.g. the recently revised HE Code of Governance; Committee of University Chairs (CUC, 2018), such efforts will not be sufficient on their own. Instead, it has become increasingly clear that university governing boards² need to reflect deeply about the way in which they carry out their role and the behaviours that they display during decision-making, and boards are encouraged to consider how the way in which decisions are taken might affect the quality of those decisions (Financial Reporting Council - FRC, 2018b).

A number of publicised cases have recently emerged where strategic decisions at UK HEIs do not appear to have been underpinned by effective due diligence or monitoring at the governing board level (Morgan, 2013, 2014; Matthews, 2014; Baker, 2015; Healy, 2015). They include cases of failed overseas adventures, falsifying financial and educational attainment accounts, a breakdown of trust and confidence between the governing board and the executive, destructive leadership, excessive debt loading, material conflicts of interest by selling assets held in trust. Furthermore, there is some, limited, awareness of the challenges and barriers to good decision-making presented by bias in the

² The term "board" or "governing board" is used in this article to refer to the apex decision-making body of an HEI (also known as "council" or "board" in England and Wales and in some European countries or "court" in Scotland) tasked with the oversight of the management and organisational aspects of the institution. This is to be contrasted with the supreme academic body within an HEI, often referred to as the "senate" or "academic board". Similarly, we use the term "independent or lay or co-opted" to refer to members of committees or governing boards who are appointed from outside the HEI (i.e. not being an employee, student or member of senior management of the institution).

context of the equality and diversity agenda, (e.g. the Leadership Foundation and the Equality Challenge Unit, Unconscious Bias workshops for governing bodies, December 2015). Yet, there is considerable appreciation in the corporate governance literature that flawed decisions by boards and other gatekeepers can be made with the best of intentions, with competent and well-intentioned individuals believing passionately that they are making a sound judgment, when they are not (Prentice, 2000; Coffee, 2001, 2002; FRC, 2018b). In this regard however, empirical research in the UK HEI sector and internationally focusing on the quality of strategic decision-making processes and the impact of bias on them remains virtually non-existent.

In this paper, we therefore raise the following questions: What decision-making processes are adopted with regard to strategic decisions in HEIs? How do HEI boards assure themselves that their adopted decision making processes are fit for purpose? Are there any reflections on these decision making processes in light of subsequent outcomes, and finally, do they adopt any bias mitigation measures such as those suggested by the UK's Financial Reporting Council (FRC, 2018b). In this respect, we are less focused on the quality of outcomes, although these are relevant in an ex-post evaluation of the processes that led to particular decisions. Instead, our primary concern is about the quality of the decision making process that led to these particular decisions. Hence, in terms of the objective of the present research, we seek to establish the processes and procedures adopted by HEI boards to assure good quality decision-making³ during board deliberations.

Empirically, we rely on evidence gathered from UK institutions and those from a selected number of European Union countries (Italy, Cyprus and Netherlands) to enable comparisons of practices at the governing board level. Whilst we are aware of the different institutional settings in Europe (e.g. Capano, 2011) and recent policy attempts to shift European HEIs towards more 'Anglo-Saxon' forms of governance, the emphasis of our comparison is on the decision-making 'work' of the HEI governing board. We draw our empirical material from semi-structured interviews of governing board members (non-executive and executive), board observations, and documentary evidence. Methodologically, we adopt an interpretive approach in developing an appreciation of the phenomenon as it operates (i.e. how is & what is going on). Although the analysis of our findings is not bound by one specific theoretical underpinning, it is acknowledged that the mainstream perspectives underpinning organisational 'regimes' of board oversight and monitoring are

³ Measurements and definitions of the 'quality of decision making' are perhaps as contentious as measurements of (let alone agreement on) the 'quality of audit', a frequently utilised proxy for the contribution of external audit to the corporate governance in listed companies. We hope to be forgiven if we avoid limiting our discussion to a particular measurement or interpretation of the quality of decision making or decision effectiveness, and at this point refer the interested reader to seminal reviews of decision analysis for more detailed insights to making complex and important decisions (Howard, 1984; Raiffa, 2002).

traditionally rooted in an agency theory and/or stakeholder theory (Ntim et al., 2017). Yet, empirical findings often highlight the multi-layered and complex nature of governance and board arrangements (e.g. Christopher, 2012; Soobaroyen et. al. 2019) and how the exercise of arrangements challenge the original assumptions underlying agency and stakeholder perspectives. In this paper, we therefore seek to allow for a theoretical ‘headroom’ that is beyond these mainstream notions, and specifically the effects of heuristics and boardroom bias, which we discuss in more detail in the literature review section.

The paper contributes to the governance literature by providing qualitative in-depth evidence of experiences of UK HEI governing boards relative to selected countries in continental Europe. To date, and whilst there has been a well-established and largely critical literature assessing the policy-level implications of governance reforms in HEIs (e.g. Shattock, 2013a; Parker, 2013), there has been little study of the realities on the ground or how governance-led policies actually become implemented at the institutional level. Problematically, we reveal contrasting examples of good practice with examples of rather poorer practice, particularly with regard to issues related to dominant leadership, heuristics and bias, dominant leaders, weak boards, and the consequence of UK managerialism in UK HEIs. The implications are rather stark. Reports (and guidance) by the Committee of University Chairs (e.g., CUC, 2018) and UK Funding Councils have highlighted the crucial role of governing boards in ensuring effective risk management, control, and value for money (VFM). The sustainability of these goals is dependent on sound decision-making at the strategic level. Given the findings, we suggest that good intentions and faith in the reputation or past performance of executive managers or institutions and simplistic tick-box approaches to best practice guidelines may be insufficient to successfully chart the rough seas that lie ahead for HEIs in the UK and further afield.

The remainder of the paper is as follows: a review of the extant literature and the implications of heuristics and bias in governance is provided followed by a brief explanation of the methodology. Thereafter, the key empirical findings are set out and discussed, followed by the conclusion and implications.

This paper does not seek to adopt or articulate any particular epistemological or theoretical perspective to explain or underpin its findings. Neither do we at this point seek to propose specific research hypotheses. In terms of methodology our approach might perhaps be categorised as interpretative, interview and archival based case study research. The advantages and disadvantages of such a research approach have been extensively reviewed and it is not the aim of this paper to rehearse them in any detail. The paper reviews the inner workings of decision making procedures at

the highest governance level of HEIs. Through this review, the paper seeks to add to knowledge as to the strengths and limitations of actual practice.

Literature review

Over the last three decades or so, one crucial element of the reforms pertaining to HE governance (and corporate governance more generally) has been the involvement of non-executive (or lay) members of the board (de Boer et al., 2010; Soobaroyen et al., 2014); purportedly to strengthen the oversight and concurrently support executive management and strategic decision-making. In this respect, members of the board are normally expected to possess a minimum level of competence, knowledge and power to investigate matters of concern if they are to fulfil their duties appropriately. Specifically, there is a perceived need for board members, particularly the independent or outside ones, to possess an adequate knowledge base, whether pre-existing or as a result of search and evidential inquiry, to allow the formation of an independent opinion on various aspects ranging from the quality of financial reporting, compliance with regulatory requirements, strategic analysis managerial performance. An emphasis on the appointment of a majority of independent non-executive members in formal governance processes and boards is embodied in the UK Corporate Governance Code (FRC, 2018a) and has been gradually adopted by UK HEIs; but to a lesser extent in relation to boards in European HEIs. For example, governing board reforms in 2010 have led to the inclusion of outsider board members in Italian HEIs, but proportionally on a relatively very small basis (e.g. Capano, 2011). Many other EU countries have also recognised the issue of relying on large unwieldy governing boards (e.g. the Netherlands and Cyprus; De Boer et al., 2010). On the basis of very few quantitative-based analysis of the influence of governing board characteristics on HEI outcomes, there is for instance support for the association between the level of board independence and board diversity on HEI levels of accountability (Ntim et al. 2017). A prior study in the US context (Brown, 2001) similarly alludes to the potentially beneficial role of outsiders on university decision-making and performance compared to the case of insiders (i.e. faculty participation).

To a large extent, the potential of the independent or outside board member to be an effective governance mechanism is based on a widespread presumption that such individuals can make decisions without being affected by their own preferences, motivations, heuristics and social ties, or that members acting in good faith are capable of overcoming their cognitive biases. However, behavioural research shows that claims of immunity to individual and group biases in perception and judgement, or the ability to sufficiently adjust for these, are ill founded (Marnet, 2008). Gillies (2011) suggested that university alumni appointed on governing boards may be better positioned to act decisively in the best interests of their institution, compared to independent “unconnected” board

members. Yet, at face value, it seems that such an approach would merely replace one form of bias with another. Bias arising from social, psychological and situational factors typically weakens the quality of decision-making and monitoring by governing boards. Bias-inducing factors include the presence of dominant decision-makers, insufficient attention to risk, complacent or intransigent attitudes, conflicts of interest, emotional attachments, inappropriate reliance on previous experience and beliefs, responsibilities for prior decisions, and groupthink (Kahneman, Tversky and Slovic, 1982; Janis, 1989; Bazerman and Watkins, 2004; Bazerman and Malhotra, 2006). Without a consistently critical approach to managerial monitoring and an awareness of bias in decision-making, a board's deliberations may degenerate into no more than a routine acceptance of management representations and decisions.

Some of these issues are highlighted by Greatbatch (2014) – e.g. a concern with not “rocking the boat” – but we would contend that there has been insufficient examination of the decision-making process in HEI boards. In a worst case scenario, instead of being champions of rigorous review, where important decisions are open to comprehensive analysis, careful review, critical questioning and challenge, and a thorough search for alternatives, boards may become dominated by a tight-knit congregation, unified by a deference to dominant senior managers and an (over) concern about the protection of institutional reputation; where rubber stamping replaces accountability and board loyalties trump effective governance challenge. In effect, a form of “board capture” ensues.

Studies on leadership qualities in education question an over-reliance on prominent leaders, their reputation and past track records (for e.g., see Centre for High Performance (CHP), 2016), adding to: concerns about publicised cases where strategic decisions do not appear to have been underpinned by substantial due diligence (Morgan, 2013, 2014; Matthews, 2014; Baker, 2015; Healy, 2015); concerns as to the limits of strategic planning in UK HEIs (Buckland, 2009); and warnings *re* unintended consequences from the obsessive pursuit of the performative university (Parker, 2014; Alvesson and Spicer, 2016; Visser, 2016; Geppert and Hollinshead, 2017).

To some extent, these issues have also emerged in other European countries, with some notable work examining the extent to which formal governance arrangements in the UK operate in comparison to Germany, Italy and Netherlands (Dobbins et al., 2011; Capano, 2011), but less so regarding the process of decision-making and the impact of heuristics and bias on the quality of judgement and decision-making. An understanding of governance processes in other countries, particularly in light of the increased internationalisation of the HE sector and harmonisation of practices in the EU context, reveals new insights of use to the UK context.

Without a crystal ball, it is difficult to ascertain the ultimate effects of these challenges, individually or combined, on the sector or on specific institutions. However, experience with similar challenges in HE sectors elsewhere raises serious concerns and cautions against a cavalier approach to risk management and precariously increased debt levels. While, for example, the increasing recourse to debt-financing of capital and other expenditures of HEIs in the United States from the early parts of the 21st century delivered some positive financial returns for selected better-endowed institutions (effectively 'IVY League'), the vast majority of lesser renowned institutions found returns that were significantly outpaced by costs (Eaton et al., 2016).

Meanwhile, despite paying formal homage to principles of prudence and best practice in financial management by the UK HEI sector (Taylor, 2013), HEFCE, in its most recent, and last, report on UK HEIs financial health (HEFCE, 2018)⁴, notes an increasing reliance on borrowing by HEIs and raises concerns about HEIs' assumptions underlying critical key projections (e.g. income, student numbers & liabilities) to cover increasing costs and the servicing of debt finance and other financial obligations. Concerns particularly highlighted by HEFCE were related to the unsustainability of risks with regard to expansion plans, increasing debt burdens, decreasing liquidity and cash reserves, decreasing surpluses, an increasing number of institutions reporting deficits, a widening gap between the lowest- and highest-performing institutions, and increasing volatility of forecasts in the sector (HEFCE, 2018), which in summary: "... signals a general weakening of financial performance and a trajectory that is not sustainable in the long term." (HEFCE, 2018, p.5).

In sum, we examine factors affecting the quality of strategic decision-making at HEI board level, specifically investigating awareness of the impact of heuristics and cognitive biases on judgement during board meetings. We further seek to establish whether boards systematically adopt processes to actively mitigate bias in reviewing or approving plans, set out by university executive management, or in a review of outcomes of past decisions.

Data and methods

In order to explore the quality of board decision-making processes and outcomes, we conducted in-depth interviews with chairs of governing boards and key board members (including acting and former executive members, Vice-Chancellors, audit and risk committee members, and independent directors) from a number of UK and EU HEIs, focussing the discussion on key events and strategies

⁴ The HEFE report provides an overview of the financial health of the HEFCE funded HEI sector in England, covering the financial results for 2016-17, excluding further education or sixth form colleges, or alternative (private) providers of higher education. HEFCE closed at the end of March 2018, with many of its functions being continued by the Office for Students and Research England.

and the handling of issues critical to their respective institutions. Board meeting observations supplemented these interviews and served to gauge the existence, implementation and effectiveness of boardroom quality control procedures. One focus of our attention was on gathering insights on past decisions and the decision-making process that led to those decisions, reflecting on concerns that arose from these decisions, during and after these were made, and lessons for the future that might be learned from past experience. Hence, we were less interested in the merit of the decision itself, but instead tried to shed light on the way that decisions were arrived at and what means were implemented to assure the quality of this process. The insights gathered from these interviews were supported by council effectiveness reviews (CERs, 2010, 2015, 2016, 2017, 2018) relating to HEIs from different mission groups, and further supplemented by confidential discussions with key stakeholders experienced with board/council proceedings. Questions with informants have involved discussions around the level of uncertainty, complexity and accountability faced by the sector, monitoring of, the quality of governance over the use of funds, and key strategic decisions (e.g. major building projects, mergers, international partnerships, private sector partnerships).

Findings and analysis

The rise of HEI dominant leadership and primacy of the board process

We structure our findings around three key themes, namely the primacy of board processes and the rise of dominant leadership, the minimisation of effective challenge and the board's awareness of heuristics and bias. Where relevant, we compare and contrast experiences in the UK vs EU contexts. In the UK HEI context, to ensure that significant decisions and strategies recommended by the executive team (led by the vice-chancellor) are appropriately challenged prior to approval, a significant attention is paid to, and responsibility placed on, the governing board. The oversight role of the board implies review and approval of key policies, procedures and processes, supported by regular audits and post-implementation scrutiny, to allow the provision of assurance to funding bodies, regulators and other stakeholders that the institution is complying with relevant requirements. However, given the volume of the "statutory" business, densely packed agendas and the limited number of governing board meetings (four to five per year), a fear is that governing boards may at times give comparatively less attention to more substantive issues and related decisions (institutional strategy, investment in new projects, institutional reaction to changes in external environment). We provide interview comments from two UK HEI governing board members:

“It’s primarily a governance role, making sure that the procedures are in place to manage funds, to check on the processes by which public money is spent, and that’s broadly, what I think, the role is.” (UK1)

“The first [issue] was that university boards were far too big, and they only met infrequently, and when they did, most of them just sat and listened to the vice-chancellor, and discussed a few things, and then went off. [...] And it didn’t really challenge the executive, and it didn’t discuss the big strategic issues ... (UK2)

Concerns about striking a balance between the process matters and issues relating to broader strategic analysis and decision-making are also reflected in recent council effectiveness reviews (CERs), published in 2010, 2015, 2016 and 2017, relating to HEIs from different mission groups. Highlighted were issues of the availability of time and the volume of detail in council papers potentially impacting on the quality of decision-making, coupled with a lack of focus and clarity in the papers or in the ensuing debate; impacts on the board’s ability to support the strategic direction of the university from the volume of compliance and approval activities; and recommendations for greater engagement of the board in planning the board’s business and a more holistic approach to assessing key performance indicators, risk and strategic priorities.

While the above-mentioned CERs acknowledge important issues and suggest a number of actions points, our concern is that these issues have been previously and numerous noted in higher education studies (e.g. Shattock, 1999, 2002, 2004, 2013a; Taylor, 2013) and reports (e.g. Schofield, 2009). Corporate board practices, have come under scathing criticisms, particularly in the case of UK banks and financial institutions (e.g. Walker, 2009), for neglecting the need for boards to “challenge the executive” as an essential aspect of boardroom behaviour (ICSA, 2009; FRC, 2018b). Within such a context and given increased scrutiny of higher education in the UK, it is puzzling that there has been quite modest progress so far in terms of higher education governing boards looking beyond process and other forms of “at arms-length” oversight.

On the basis of our interviews, council observations and secondary data analysis, we suggest that the UK HE sector has increasingly given prominence to a form of a “dominant” executive leadership whereby significantly more is expected (by those within, and outside of, the institution) from the executive with primacy given to the vice-chancellor/president. The latter takes more direct responsibility and is accountable for an array of key performance indicators and “reputation metrics” such as teaching quality, research excellence, research income, student recruitment, student satisfaction, social mobility, and internationalisation. This form of managerial leadership is akin to

that of a company chief executive officer (CEO) operating in a centralised head-office set up, and in an organisational context referred to as hybrid corporatisation (Parker, 2011) and the performative university (Parker, 2014; Alvesson and Spicer, 2016; Visser, 2016; Geppert and Hollinshead, 2017).

This contrasts with a traditionally more participative, decentralised and diffused form of higher education management which ensured that power and decision-making were spread between a large number of predominantly academic stakeholders (e.g. professoriate; heads of departments; deans) and decentralised committees in faculties and institutes; with the vice-chancellor and his/her deputies being a key part but nonetheless, they are not overtly central to the decision-making and strategic direction of the institution. Individualised forms of accountability (e.g. targets for individual managers) were therefore very tenuous to ascertain and the preference was for more informal processes, consensus building and collective notions of accountability.

From the perspective of HEIs shifting towards new public management and corporatisation (e.g. Parker, 2011), this radical change in internal decision-making and power has been well documented in the UK (e.g. Middlehurst, 2004, 2013; Ntim et al., 2017) and worldwide (e.g. Parker, 2002, 2012, 2013), and arises from a series of reforms over the past four decades. In the UK the Higher Education Corporation (HEC) Jarratt Report and the Educational Reform Act, 1988 laid down the foundations for a more powerful and centralised form of executive management “supported” by a governing board composed mainly of lay (external) members and a less prominent senate (or academic board). This model, initially intended to support the establishment of newer universities, is now firmly the norm of management throughout the sector, bar some variants (Shattock, 2017) and exceptions where governance and management reforms have been largely absent (e.g. Oxbridge).

An inescapable element of this new personalised leadership regime is the creation, expansion and/or re-positioning of corporate-style administrative structures (Parker, 2012) in the form of research management offices; teaching and quality assurance; public relations; professional services; recruitment; strategy and planning; with very overbearing finance and audit functions to serve the demands of centralised management, to provide capacity for monitoring implementation at micro-levels and to ensure accountabilities could be focused down, including at an individual level (eg through research monitoring and teaching quality evaluations).

As a result of these reforms, a view has emerged that a centralised executive management needs to be more interventionist, assert tight control over every minute detail, and has to demonstrate actionable points to reach promised goals; notwithstanding that the academic environment encompasses many aspects that are inherently outside its control, long-term in nature, and at times

elusive in terms of causality between actions, strategies, policies and actual outcomes (e.g. student completion and progression; graduate employability; student enrolment, student experience and satisfaction; assessment of research outputs; academic publication performance; and research funding success rates). In such a context, many board members, while mindful of their formal duties and responsibilities, appear to interpret their role in a rather narrow fashion:

“But they mainly discuss the strategic direction of the university, which again it’s for the executive to propose, and we decide whether it’s a good idea. ‘Cos one of the things that most boards in higher education forget, is it’s the board’s job, and that’s how they need to steer the management and the finances... Now most of them don’t do anything about that, they leave that to the executive.” (UK 2)

The UK experience can be sharply contrasted to the European experience. In the case of Italy and Cyprus, governing boards (referred to as councils) have a greater proportion of internal members as a result of specific provisions in the enabling legislation or charter of the university. Seats on the councils are explicitly allocated to represent academic, administrative and student interests. Most of the internal posts are filled through elections while external representation (ranging from 10% to 50%) is either appointed by the council or the relevant state authority. The executive management (rector and immediate deputies, known collectively as the rectorate) is elected from the professorial rank for a given period (three to six years). In effect, councils in Italy and Cyprus handle the administrative and financial matters of the university but the underlying motivations and interests implied in their composition do not appear to significantly differ from those of an academic board structure (i.e. senate). One Italian interviewee (for a relatively large and well-established HEI in the country) highlighted his perception of the council’s role:

“We are similar to a board of a company but... we come from employees and academics and students. It’s not correct to say that I’m a manager. In some way you’re like a manager, you take the decision about buildings, about money, about careers. At the same time, you’re a representative, you have to consider your decision. [...] So you have to decide and manage but the interests of the university as an institution and the interest of people that make part of the university must go together. This is not easy to do because sometimes you have to tell people to calm down, we have to control for everybody, also in Italy we have a very binding law, public administration is [controlled] by law” (IT1)

In the case of the Cypriot institution, a similar dynamic existed particularly in that the elected board members were mainly concerned about issues affecting their internal constituents. It was also felt

that the same level of accountability existed towards the elected rectors and paradoxically, rather than challenge the (elected) rectors, internal board members engaged with the external board members to ensure that the academic and institutional viewpoints were adequately heard at the stakeholder level (e.g. government, private sector employers).

“I wanted to make a difference, I mean, I wanted to support the rector and the vice rectors, um, to give our vision from the academic side, our vision to the board? What we want to do, what we want to get from our strategy and get the support from the board because it is very important to have their support. After all, it is very important for the government, important to the president [chair of the council] himself, so, it is very important to make them understand what we want to do here.” (CY2)

The above reflects a very strong consideration of the interests of internal stakeholders (akin to a form of democratic mandate) when making institutional decisions and a reluctance to position oneself as a decision-maker that is detached from the internal constituency. While such a model arguably does not lead to a swift resolution of issues, it has the benefit of ensuring legitimacy, detailed scrutiny and a wider involvement and acceptance of institutional decisions described below:

“It’s a procedure we have but it’s not written, if there is something new, e.g. xx suggests we can make partnership, [...] xx comes to the rector, he does not say okay, [first] let’s ask the staff and all the people, tell us, maybe [xx] can tell us something about the stakeholders. And the staff suggest it’s okay but it will be better in this way, then we make study for instance or group of study, and then after this study, allow it to ‘mature like fruit’, taking time to be considered. You involve in people, and people should be convinced and sometimes it happens that at first or second steps they said okay, and then, not so okay then, but normally, it works.” (IT1)⁵

A further aspect to note is that the Italian regulatory context provides for a complex set of financial and operational procedures which do constrain the decision-making authority of governing boards, and the current economic context is one where government funding for academic staff recruitment is on a “managed [staff] reduction” basis. In this sense, one Italian board member commented that the legalistic and technical nature of higher education administration in Italy precluded academic and lay board members from engaging with such detailed financial aspects, and instead the emphasis should be on academic issues.

⁵ Contrastingly, the interviewee also narrated a situation where the rector took a quick decision without sufficient consultation, which eventually turned out to be damaging to the institution.

In a similar vein, governing boards in Cyprus have a majority of internal elected members (staff and students). The chair of the council is appointed by the state and is an external member, while the rectorate is elected for a period of three years. In such a setting, internal council members appear to take into consideration the detailed concerns of their constituency and there is a strong concern in maintaining institutional independence and autonomy from outside influence (including government). The council's business tends to be quite operational in nature and meets relatively frequently (once a month). In addition there are a large number of sub-committees (16) meeting to address specific issues or functions. However, from the perspective of the interviewed external board member, there is a sense that the board is not focusing sufficiently on more strategic issues:

“So, ... that's why things are confusing during the meeting because [...] it is very difficult to concentrate on the agenda with 10 matters, when half of the matters should have been discussed in a very [detailed] way, before to be presented to the council.” (CY3)

However, when considering that the executive (rectorate) and the governing board are only elected for a period of three years, it is not surprising that the development of a longer-term strategy on the basis of stakeholder demands and other institutional expectations will not be an overt priority. In contrast, the Dutch experience is characterised by the existence of a relatively small governing board (between three and five external members) referred to as a board of trustees and which acts as a monitoring mechanism of the executive board (led by the rector and up to two other vice-rectors). The board of trustees (known as a supervisory board in most institutions) is appointed by the state (minister) and its mandate and operation is guided by a code of good governance for universities (2013). One supervisory board member comments:

“I am part of the supervisory board of the university and it is my main task, first of all, to have a certain amount of level of control on the quality of the decision that have been proposed to us, where it concerns major decisions that have an influence either on strategy or the leadership, or big financial exposure to university [...] So the [executive] board proposes, supervisory board approves [...] so, [...] when setting the strategy, we would be part of making, not making the strategy, but giving our reflections on specific question regarding this strategy - so we are not only supervisory institution, we are also a mirroring or reflection institution.” (DU1)

The chair of the supervisory board reflected on the fact that there has been a gradual change in terms of supervisory boards adopting a more active role:

“To give a historic perspective, I think some time ago when I started nine years ago in the supervisory board in [...], it is almost a habit for the supervisory board to just come along for four meetings per year and do what is formally necessary [...] not for being very close to the organisation but [now] we really try to understand what’s going on and really interested and particularly as chairperson I invest much more time” (DU2)

This increased involvement is reflected by the rector’s account of the accountability relationship with the chair:

“We meet many times informally, we walk to the offices, and I have, I have a weekly telephone call with the chair also to the supervisory board to informally to um, inform her about everything is going on, um, sometimes we have nothing, sometimes the call only takes five minutes, or sometimes we say we don’t have um, we don’t have anything to tell but sometimes we talk for half an hour too, that’s why the board is never surprised because there’s some informal contacts.” (DU3)

In conclusion to this section, we highlight key aspects in terms of the focus on board processes and highly personalised leadership (at times resembling the ‘cult of the individual’, Khrushchev, 1956, with predictable consequences) in the UK and contrast these to the case of selected institutions in continental Europe. The experience in the Dutch case in particular seems to suggest a more balanced approach with fewer non-executives and a more effective working arrangement with the rectorate, in a framework of meaningful consultation and the careful development of consensus driven decisions.

Effective challenge by governing boards: absence and presence

As with management arrangements in the private sector, the now dominant higher education regime in the UK appears to foster the development of powerful executives who, intentionally or not, develop a dominant hand in relation to a governing board largely composed of external unpaid members whose motivations are diverse and sometimes difficult to fathom (Fearn, 2008; Newman, 2009; Baker, 2011; Soobaroyen et al, 2014). In such cases, reported cases of poor strategic decisions in the UK (Morgan, 2013; Matthews, 2014) can be attributed to a lack of effective challenge by governing boards. In one of the reported cases, information about the investment risks (e.g due diligence, reports from consultants) was available but was not given sufficient emphasis in boardroom discussions. In other cases, effective challenge is constrained because lay board members are not sufficiently knowledgeable about the implications of the decisions in the higher

education sector (Shattock, 2013b). In yet other cases, strategic decisions are made by boards under pressure to sanction proposals given the suggested “urgency” of the matter.

We observed a telling case in a UK governing board meeting where, with very little background information and notice, the executive informed the board that there had been a significant budgetary over-spend in a project and an urgent request was made to approve this over-spend. There were very few questions from the external members to ascertain the circumstances (and any lessons learned) relating to this financial issue and approval was granted within minutes. The interesting corollary of this case is that later, during the same meeting, new, and very substantial, spending proposals were made by the executive, and approved by council. Yet again, none of the governing board members raised questions or sought assurances in relation to mechanisms or policies which would ensure that over-spends, such as the one that had just been disclosed, would not arise from these projects.

In another UK case, evidence of effective challenge was more forthcoming in relation to a decision by the executive to invest abroad, particularly in that it has arisen from having knowledgeable and experienced external members on the board:

“...We had a big argument here about whether we should build a campus in [country]..... And one of our governors who is a businessman and does lots of business in [country], was vehemently opposed to the whole thing right from the start; he said, “The courts are crooked, the civil servants are crooked, the ministers are crooked, you’ll get taken for a ride, don’t touch it, don’t start”. Well, we went ahead and we did explore it, because the manager was very keen, and we got to the point where we were going to sign a contract. And then, suddenly, it all started to go pear shaped, and he was very good, he didn’t say “I told you so” but he said “I’m not surprised, and I repeat my warnings”. And the board then decided, with management, that we were not going ahead.” (UK2).

Positively, this challenge by the board appears to have arisen from the experience and insistence of external board members prevailing over the proposals put forward by the executive. This seems to support the role expected of board members in a classical and mainstream approach of governance oversight. However, on a more problematic note, it still took the best part of a year to eventually reach this outcome, in view of the managerial resistance (i.e. managers being “very keen”) and the fact that approval had already been given in principle. Therefore, it took a relatively well-qualified and insistent group of lay non-executive members to convince the executive to critically appraise

and eventually abandon this project. This potentially arose due to their ability to transpose their strategic insight from other sectors to the higher education context as intimated below:

“So to some extent it’s training... But I think there is a limited amount of strategic contribution you can make as a result of having received that training, because it’s a few hours, maybe one or two days max, and you won’t get masses of strategic insight into the education sector. It’s down to your background, your specialism that you bring in, to be able to challenge; and you come with that, in my opinion. You need to understand the context; you need to adapt; you need to perhaps understand the organisation. And for those things, training is very helpful, but I don’t think you can train someone to add value strategically to the organisation.” (UK3)

Effective challenge has also been framed in terms of the extent to which governing board members could be involved more intensively in reviewing the justification for specific portfolios and decisions; something which is relatively difficult to implement in a unitary board meeting four to five times a year. A unique experience in one UK HIE has been the implementation of the dual engagement approach, whereby dedicated non-executive (lay) members are allocated to particular portfolios or areas of activity and work more closely with the relevant executive/manager. The nominated board member is hence more aware of issues affecting his/her portfolio and, in the governing board, can raise more pertinent questions or brief the board members more thoroughly from a more independent perspective. There are no sub-committees (other than the statutory ones) since the dual engagement board member acts as a “bridge” between institutional activities/priorities and the full governing board. However, in a recent CER, it was noted that board challenge and questioning became more individualised and less holistic in nature since the dual engagement non-executive member felt more able to question issues affecting his/her portfolio during the board, while other non-executive members did not believe they were sufficiently kept abreast of the matter at hand to question the explanations or request more information.

While the above can be seen to be a rather idiosyncratic practice in the UK, it does also highlight the possibility that the closeness between “more involved” governing board members and executive management might lead to less effective challenge during the board meetings; since these board members would have already received sufficient insights to negate the need for detailed questioning. In the context of the other European institutions, effective challenge by the (non-executive) members of the board towards the executive is arguably a lesser consideration, except to a certain extent in the case of the Netherlands and Cyprus. In the Netherlands, one of the members of the supervisory board commented on the higher level of scrutiny compared to another Dutch institution he is familiar with:

“In my humble opinion, [...] the supervisory board in my own hometown university did not and does not play a significant role. This may sound very critical, [but I] am convinced that the members of the supervisory board [there] do not really care. They do not spend the time and the energy which is in my opinion required to be effective as a supervisory board, they see it more like a one more item on the CV, to be a prominent member of this board instead of trying to contribute to the institution they’re supposed to serve.” (DU4)

In the case of Cyprus, political and governance concerns relating to prior events at the institution seem to have led to a higher level of scrutiny by the council, particularly from the chair (president) of the council who is from a business background, and who is nominated by the state. This led to a perceived interference in academic affairs by a non-academic member of the council, and concerns that the internal members of the board were being bypassed:

“The president has a more active role because his office is just here, next door, so, he wanted to see us, the rector, and the registrar more frequently so he came up with a committee that he called the operations committee. So we said..., operations committee, is the vice president of the council, the two rectors, and two vice-rectors. It’s clear that there’s some problems, because this committee does not exist” (CY2)

The notion of effective challenge in Italy is seen much more from an internal perspective, particularly as only very few of the council’s members are external members. In the case we had access to, a large proportion of elected staff representing a variety of departments and interests were generally keen to ensure that decisions could be made in the best interests of the academic mission of the institution. In spite of the enthusiasm of one of the two external board members in meetings, the interviewee (external board) member seemed to be quite unsure of the role to adopt in the board, given the lack of understanding and appreciation of academic activities and challenges.

From the perspective of the internal board members, external board members are seen to be fulfilling very narrow, and somewhat symbolic, considerations (e.g. representing a key local constituency to ensure support; help with private sector employability), but pointedly not to be involved in decisions relating to ‘direct’ academic matters. This has particular resonance in the Italian context, following 2010 legislation which sought to mandate the inclusion of external board members from outside academia; and seeking to enable a more constructive interaction with stakeholders. Our interviews in Italian institutions point to a rather limited level of challenge and effectiveness to board decision-making, from the admission of the external members themselves.

Addressing heuristics and bias in higher education governing boards

Cognitive bias arising from social, psychological and situational factors can significantly weaken the quality of decision-making on governing boards, with negative consequences for accountability and stewardship (Marnet, 2011, 2014; FRC, 2018b). Whilst there is an extensive reliance on independent non-executive members in formal governance processes, this is typically based on a widespread presumption that such individuals can make decisions without being affected by their own preferences, motivations, heuristics, and social ties, or that members acting in good faith are capable of overcoming their biases (Marnet, 2008). Yet, behavioural research shows that claims of immunity to individual and group biases in perception and judgement, or the ability to sufficiently adjust for these when making decisions, are ill founded (Janis, 1989; Kahneman, Tversky and Slovic, 2000; Bazerman and Watkins, 2004; Bazerman and Malhotra, 2006).

In contrast, bias arising from social, psychological and situational factors can be shown to significantly weaken the quality of decision-making on governing boards, with negative consequences for accountability and stewardship (Marnet, 2011; 2014). Bias arising from social, psychological and situational factors typically weakens the quality of decision-making on governing boards, with such factors including the presence of dominant decision-makers, insufficient attention to risk, complacent or intransigent attitudes, conflicts of interest, emotional attachments, inappropriate reliance on previous experience, responsibilities for prior decisions, and groupthink (Janis, 1989; Kahneman, Tversky and Slovic, 2000; Bazerman and Watkins, 2004; Bazerman and Malhotra, 2006; FRC, 2018b). Some of these issues are highlighted by Greatbatch (2014) - e.g. a concern with not 'rocking the boat' – but we would contend that there has been an insufficient examination of the decision-making process and the effects of heuristics and bias in HEI boards.

While we note a workshop by the Leadership Foundation and the Equality Challenge Unit ('Unconscious Bias workshops for governing bodies', December 2015), which highlights raised some awareness of the challenges and barriers to good decision-making presented by cognitive bias, research which systematically focuses on the quality of strategic decision-making processes and the impact of bias thereupon is virtually inexistent in the UK HEI sector and internationally. We consider this a critical shortcoming and suggest that the failure to review decision-making practices and judgement formation at board level to have contributed to past governance failures.

How then can boards strengthen their defences against cognitive bias and avoid falling victim to mental traps? An awareness of the impact of heuristics on perception and the quality of judgements and subsequent decisions of groups and individuals is a start. However, in order to avoid making

poor decisions in good faith, boards need to systematically reflect on the path that led to a decision. Rather than merely focusing on the perceived merits of proposals, boards should acknowledge that the way in which deliberations take place will affect the quality of subsequent decisions. Boards can minimise the risk of poor decisions by careful design of their decision - making policies and processes, reflecting on the path that led to a particular decision, the impact of heuristics on the quality of judgements, and by actively adopting processes to mitigate bias (Marnet, 2007; FRC, 2018b). Specifically, the risk of poor decision-making can be reduced by actively adopting procedures to mitigate inevitable bias. Such procedures can act as safeguards against haphazard decision-making, and as circuit breakers that kick in when projects resulting from poor decisions run the danger of being perpetuated. For significant decisions, boards could, inter alia, consider carefully recording the process that led to a proposal, asking members not involved in coming up with the proposal to discuss it separately, tasking a committee with seeking alternatives, using a devil's advocate to challenge it, and purposefully considering reasons for not taking it up (FRC, 2018a,b).

The potential impact of heuristics and bias in this context has been recognised by some regulators and professional bodies, and is explicitly recognised by the Financial Reporting Council (FRC, 2018b), the Institute of Chartered Secretaries and Administrators (ICSA, 2009), and also evident in bias workshops organised by the Leadership Foundation. In contrast, the CERs we reviewed did not specifically identify issues about the use of heuristics and bias. Instead, notions of heuristics and bias are, in the main, limited to and narrowly understood in terms of concerns about discrimination in the workplace, the need to address the effects of stereotypes, and the avoidance of conflicts of interest. We could find one limited example of a possible bias mitigation procedure in one CER reflecting a concern about cognitive processes of the decision maker(s), which suggests an implicit understanding of the need to focus on the quality of decision-making processes leading up to proposals being presented to council, without this being explicitly associated to heuristics and bias. Noted in this instance was an awareness that once a proposal is presented to council there typically would be no meaningful option to present alternative proposals for council to consider and decide upon, and little space for critical analysis or discussion. This led the particular institution to separate important decisions into proposal for discussion and proposal for decision, with a decision on the issue only taking place at the later stage, and after additional detailed work by a sole purpose sub - committee.

During our interviews, isolated references were made to the need to allow space for critical analysis and adequate reflection which, in one instance, tentatively allowed for a discussion of proposals prior to these being presented to the board for a decision:

“How long [ago] was that old discussion on the [country] campuses proposed? Two to three years. We set up a sub-group, with these, some experienced non-executives on it, to be in constant contact with the assistant vice-chancellor who is doing negotiations, which he found very helpful. And they reported back to the board, sort of having meetings every three months and then eventually, the board, sort of say, better have a general discussion about it, and see how you’re getting on, So, that was a good example, being effective, but not what universities want to do.” (UK2)

We note a reflection in the prior note of a distinctive reluctance by universities to engage in effective challenge of proposals. In contrast, the importance of independent review prior to board decisions and a separation between groups responsible for proposal and those groups making the final decision on a proposal was intimated during another interview:

“The only way to do it is to make sure that you have independent characters, in the supervisory board that are coming from different angles, so we have people coming from academia, we have people coming from business, we’ve got people coming from culture [...] and we have somebody coming from the ministry of, and I think by taking that balance, being able to look at things from different side, I think that’s probably the best way to ensure that, that we have a separation between this decision-making and supervision. So, as a supervisor, we have to be very careful to make sure we’re not part of the decision but that we’re really looking at the sounding of it decision” (DU2)

While the requirement for a thorough discussion on the risks associated with a proposal was raised in the context of a poor outcome of a prior decision:

“It happens that... not with this governance, but with the governance before, we took one decision, very, very bad, because the manager did not explain the consequences of that position. It just something that every administrator should know, I think. If you say to me, you take this decision but you have this risk, I can decide, I want risk or not, but if you do not tell me, I’m like blind... in that case, it was a very bad decision ... and we have to go back.” (IT1)

After reviewing all interviews and board observations, instances of reflection on ways to arrive at better decisions, constructive reflections on past outcomes (especially poor ones), and awareness of

the need for bias mitigation procedures appear haphazard in nature, are isolated and almost accidental, and are void of evidence for a consistent, systemic, or deliberate use of processes and procedures to systematically mitigate cognitive bias. Little evidence was provided for an awareness of heuristics in human judgement and the likely presence of bias in everyday decision making, either at individual or at group level. There was also little evidence of a desire or intention to systematically learn from past mistakes or that past mistakes represent significant learning opportunities. Regardless of views on the best future direction of the HEI sector, a focus on avoiding mental traps in the face of unprecedented challenges and uncertainties should be high on the agenda of all board deliberations. Given the cost of poor decisions, past excellence, good intentions and faith in reputation of institutions and leaders alone are likely insufficient to successfully chart the rough seas that lie ahead.

Conclusions and recommendations

Irrespective of individual approaches to the challenges and uncertainties facing UK HEIs, university governing boards need to relentlessly challenge the quality of their decision-making processes to ensure the long-term viability of their institutions and avoid potentially becoming a case study on *"...recklessness, hubris and greed, its business model was a relentless dash for cash."* (House of Commons,2018).

During our investigation we noted 1) a wide diversity in decision making processes, arising from the strengthening of a more centralised form of executive management ('dominant' leadership) and a concurrent emphasis by the board on process in the UK but less so in the case of other surveyed countries. 2) widely varying opportunities for board members to review and discuss information critical to their strategic decision-making and to review the processes which led to proposals being tabled. The notion of effective challenge is not always privileged and practiced consistently. Academic boards (e.g. Senate) appear to retain a substantive element of oversight and influence in the case of some continental EU countries, and 3) low levels of awareness of heuristics and biases, and a near total absence of systematic implementation of bias mitigation procedures on boards (other than in relation to matters of equality and diversity)

We suggest that university governing boards need to question the quality of their own decision-making to avoid making costly mistakes. How each university reacts to challenges and prepares for uncertainties will determine its health and long-term viability, and the wellbeing of the sector as a whole. Our findings in the UK highlight that process and compliance remain a dominant feature of governing boards. However, we also find that this comes at the expense of sufficient capacity and

opportunity to scrutinise the quality of strategic decision making. While formal adherence to governance codes and best practice has led to substantial and visible improvements in terms of formal structure and representation, the various council effectiveness reviews (CER) highlight that external board members were not always given adequate time or opportunity to review important decisions or the underlying reasoning and information to make an informed judgement prior to voting on material agenda items.

Furthermore, in parallel with an increasing emphasis for “dominant” leadership in the name of maintaining international “competitiveness”, there is a de-emphasis on the extent to which governing boards and other governance bodies (notably senate) can meaningfully participate in strategic decision-making and debate. Consistent with extant work in corporate settings, the notion of critical challenge is frequently absent in practice. This runs the danger of reducing governing board meetings to rather sedate, and toothless, tick box exercises that may meet the letter of governance guidelines while largely failing to meet their spirit.

The experiences from continental Europe reveal a wide diversity of governing board practices and one key consideration (versus the UK) is the extent to which academic boards (e.g. senate) or internal academic representation continue to maintain a significant influence on decision-making. Limited reforms to embed external representation in governing boards have been implemented but there remains a strong focus on deferring to senate or similar academic boards composed of internal board members. Finally, the use of smaller but more focused supervisory boards in EU institutions demonstrates that more efficient and effective use of governing boards could be considered in the UK.

While we note some awareness of the challenges and barriers to good decision-making that “bias” presents during interviews, in CERs and in sector codes of best practice, bias in this context is primarily interpreted in terms of the equality and diversity agenda, and with regard to legal aspects of conflicts of interest avoidance. At present, the Higher Education Code of Governance (CUC, 2018), for example, does not explicitly recognise heuristics and bias as a factor affecting the quality of decision-making. In contrast, our research suggests that HE councils need to take greater note of, emphasise, and take practical steps with regard to the impact of cognitive bias on the quality of decision-making. We specifically suggest codes of best practice to adopt clear guidance and recommendations on a systematic adoption of active bias mitigation procedures during board proceedings and during the development of proposals prior to presentation to council, and refer to the FRC’s Guidance on Board Effectiveness (FRC, 2018b) as an example of regulatory guidance which heeds the dangers to sound decision making from the impacts of heuristics and bias.

Case studies of “difficult” governance decisions are available for circulation to members due to the fact that bad news on the outcome of a poor decision are often picked up in the press. However, very little is known thereafter in terms of a reflection by the governing boards to ensure that such decisions do not recur. Relatedly, the Leadership Foundation could collate all CERs and analyse the key themes and issues raised in these reviews to flag areas in need of development and training and/or to motivate further research or higher education policy changes. Furthermore, we recommend greater support in training and development offerings for governors with emphasis on anti-bias procedures, to raise awareness of the impact of heuristics and bias on the higher education environment, and to lower the deference to those in dominant position i.e. the executive. We suggest that a consideration of the format, evidence used, remit and related accountability of CERs can help ensure some harmonisation and enhancement of the review process in the sector.

Relatedly, a further recommendation is on the commissioning of opposition research / viewpoints from selected board members or committees not involved in the proposal in order to ensure a balanced report through a deliberate and cogent search for alternatives, and systematically review the strengths and weaknesses of a material proposal. We also suggest implementing *circuit breaker* mechanisms to ensure that governing boards are not faced with pressure towards committing to proposals before being able to form an educated opinion, and implement further mechanisms to prevent continued commitment to failing projects.

We suggest an urgent need for further research on the outlined issues to allow a deeper and broader analysis of factors which impede good decision-making in HE governing boards. Examples of future investigations include research on the balance of power in higher education institutions to investigate why, for example, senates frequently seem to be co-opted into, rather than provide constructive challenge to, a given decision.

In terms of limitations of this study, we do accept that the methodology chosen for this investigation could be deemed subjective, which may give rise to validation concerns of the analysis. We accept this critique and hope to address some of these concerns in future work. Nevertheless, as researchers, observers of board practices, and at time participant-observers of board practices, we hope to provide a unique insight to the decision making processes and procedures at board level and give pause for thought whether these are fit for purpose and provide reassurance that major mistakes are either not made, or mitigated before they can cause significant damage to institutions. What we have observed in actual practice, at UK HEIs does not fill us with confidence that important lessons from prior corporate governance mishaps are systematically learned and translated into better practice.

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