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PROPER GOVERNANCE IN THE ENGLISH CHARTERED UNIVERSITY

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1. INTRODUCTION

1.1 This Paper explores the legal issues surrounding proper governance in relation to:

a) the ***power*** by which an English chartered university does X, Y, Z;

b) the ***authority*** by which the Council or Senate of the university, or a committee (or its chair) below Council or Senate in the university's governance hierarchy, or a university officer or a university employee acts in the name of the university and hence utilises that institutional power referred to above;

c) the process of ***delegation*** by which such authority may be transferred downwards within the governance hierarchy; and

d) the point at which any members of a committee or its chair, or any university officer or employee may incur ***personal liability*** in the event that institutional power is exceeded, or a decision goes beyond the due authority allocated to that committee or individual, or delegation has been improper.

1.2 These matters are discussed in the Chapters 1, 2 and 5 of *Higher Education Law* (David Palfreyman & David Warner, Jordans, 2002 – being the second edition of Palfreyman & Warner, *Higher Education Management: A Guide for Managers*, SRHE/Open University Press, 1998). Related issues, *not* discussed at length here, but also covered in *Higher Education Law* are: the duties of the university as a trustee of charitable assets (Chapter 4); the proper conduct of meetings (Chapter 5); the law of agency in terms of staff acting on behalf of the university (Chapter 5); and the duty of university staff nominated by the university as directors of any 'spin-off' company in which the university has a shareholding (Chapter 14).

1.3 Any discussion of these legal matters needs to recognise the wider debate on how universities are best governed and managed: collegiality, or in US terms shared-values v. managerialism or corporatism (as summarised in Tapper & Palfreyman, *Oxford and the Decline of the Collegiate Tradition*, 2000, pp 17-24). The debate has recently been given new momentum by Shattock, in launching his damning report on the £9m fiasco with a new computerised accounting system at the University of Cambridge, calling for the retention (and, indeed, in the case of some universities the rediscovery) of academic

democracy and collegiality, *providing* a committee system based on academic sovereignty (as at Oxford and Cambridge), or at least encouraging greater academic involvement in the decision-making ultimately formally concentrated on Council (as at chartered universities generally), can be made to function reasonably speedily, efficiently and effectively. (See also Shattock's forthcoming *Managing Governance* in the *Managing Universities and Colleges* Open University Press series of a projected twenty volumes.)

1.4 In what follows the citations are to:

Birks, being P. Birks, *English Private Law*
(Volume 1, Chapter 3 on 'Companies and Other Associations'), OUP, 2000;

Halsbury, being *Halsbury's Laws of England*, Volume 9 (2) on 'Corporations', Butterworths, 1998;

Kaplin & Lee, being W.A. Kaplin & B.A. Lee, *The Law of Higher Education*, Jossey-Bass, 1995 (third edition); or the Kaplin & Lee **Supplement**, NACUA 2000; both are on higher education in the USA.

Shackleton, being I. Shearman, *Shackleton on the Law and Practice of Meetings*, Sweet & Maxwell, 1997 (ninth edition).

2. THE ENGLISH CHARTERED UNIVERSITY AS A CORPORATION

2.1 The English chartered university (or Oxbridge college) is an 'artificial person' (Birks, 3·18-3·37) as a 'corporation aggregate' (Birks, 3·38), created by a 'charter' (Birks, 3·39; Halsbury, 1036-1045). Universities are 'lay' corporations created for charitable purposes; they are 'eleemosynary' (Halsbury, 1004). The corporation is 'perpetual', having an independent existence from the individuals succeeding each other as its members and with such individuals *not* being personally liable for its debts (Halsbury, 1010).

2.2 So, the English chartered university is not a registered company (although in some universities its officers may mistakenly believe that they can behave as if they were company directors in the Maxwell tradition of corporate governance!); nor is it strictly a trust* (although it may hold certain assets on a specific trust, and hence be itself a trustee in respect of those particular assets). It is governed by the common law, by all relevant statute law, and by the law of corporations which for charitable or eleemosynary corporations includes the role of the Visitor in relation to its internal governance and the proper application of the charter and statutes. The relevant applicable legislation will include parts of the Charities Act 1993, involving to an extent the jurisdiction of the Charity Commission even if universities as exempt charities under the Act escape the requirement to register with the Charity Commission and hence avoid most aspects of its supervision of registered charities. *See, however, note 6.7 below concerning the view of the Charity Commission that the Trustee Act 2000 applies to chartered charitable corporations in relation not only to their management of the investment of charity assets held on a specific trust but also to the investment of general corporate assets, on the basis that

such assets are held on trust (presumably, in the case of, say, New College, Oxford, by the Warden and Fellows on trust to fulfil the intentions of the Founder back in 1379, and as so very firmly set out in his Statutes of 1400, to create in one perpetual corporation both an educational institutional and a chantry to sing for the soul of William of Wykeham: in the instances of, say, the 1900s University of Birmingham or the 1960s University of Warwick the 'Founder' is the local community of initial sponsors/donors and their intention was similarly to create a permanent university, albeit with no duty to sustain a choir!).

2.3 The **law of corporations** is not currently much discussed in academic circles. It was very much a field of law in the eighteenth and early nineteenth century (*Kyd on Corporations*, 1798, and Grant on *The Law of Corporations*, 1850), but then company law in relation to registered companies, local government law in relation to municipal corporations, and 'the law of meetings' generally, along with charity law in relation to the role of the Visitor, rather overwhelmed the law of corporations as a topic in itself. Perhaps this partly explains why, arguably, in recent years, university administrators have seemingly occasionally lost track of the need for due process in governance and institutional decision-making, especially in the context of universities trying to be 'entrepreneurial', 'responsive' and 'managed': 'managerialism' and 'corporatism; as against the traditional concepts of 'collegiality' or 'shared-values').

2.4 Oxford and Cambridge colleges are charted eleemosynary lay corporations and hence have a Visitor, as are and do all pre-1992 English universities *except Oxford and Cambridge*. They are statutory institutions, like the post-1992 'modern' English universities, having been, as it were, 'created' (or perhaps 'recognised') as civil lay corporations by the Oxford and Cambridge Act of 1571. For our purposes, the only practical difference in governance terms is that the University of Oxford and the University of Cambridge do not each have a Visitor. They are still exempt charities and they are still subject to charity law and the law of corporations; but there is no Visitor available internally to resolve disputes over proper governance (or indeed concerning student complaints and grievances): instead it would be a matter of judicial review for both staff (except re the contract of employment) and students or also (for students) contract law and (for staff) employment law (as a species of contract law).

2.5 As Kaplin & Lee in a US context note:

a. 'Trustees, officers, and administrators of postsecondary institutions – public or private – can take only those actions and make only those decisions that they have authority to take or make. Acting or deciding without authority to do so can have legal consequences, both for the responsible individual and for the institution. It is thus critical, from a legal standpoint, for administrators to understand and adhere to the scope and limits of their authority and that of other institutional functionaries with whom they deal. Such sensitivity to authority questions will also normally be good administrative practice, since it can contribute order and structure to institutional governance and make

the governance system more understandable, accessible, and accountable to those who deal with it.[p 76]'…

b. 'Miscalculations of the institution's authority, or the authority of particular officers or employees, can have various adverse legal consequences. For public institutions unauthorised acts may be invalidated in courts or administrative agencies under the ultra vires doctrine of administrative law (a doctrine applied to acts that are beyond the delegated authority of a public body or official). For private institutions a similar result occasionally can be reached under corporation law. [p 79]'…

c. 'Similarly, administrators should understand the scope of their own authority and that of the officers, employees, and organisations with whom they deal. They should understand where their authority comes from and which higher-level administrators may review or modify their acts and decisions. They should attempt to resolve unnecessary gaps or ambiguities in their authority. They should consider what part of their authority may and should be subdelegated to lower-level administrators or faculty and what checks or limitations should be placed on those delegations. And they should attempt to ensure that their authority is adequately understood by the members of the campus community with whom they deal. [p80]…'.

2.6 Moreover, as Kaplin & Lee further note: 'Even when an institutional officer or administrator acts beyond the scope of his delegated power, so that the act is unauthorised, the board of trustees may subsequently "ratify" the act if that act was within the scope of the board's own authority. "Ratification" converts the initially unauthorised act into an authorised act. [p 88]'… and 'Even where an officer or administrator acts without authority and a higher officer or administrator or the board of trustees had not ratified the act, a court will occasionally estop the institution from denying the validity of the act. Under this doctrine of estoppel, courts may – in order to prevent injustice to persons who had justifiably relied on an unauthorised act – treat the unauthorised act as if it had been authorised. [p 89]'.

3. POWERS

3.1 Birks (3.49) comments that ‘a chartered corporation has unlimited powers, unless expressly or impliedly limited by statute, and it may therefore validly act in a way that is not expressly authorised by its charter, or indeed, in a way that is not expressly authorised by its charter, or indeed, in a way that is expressly prohibited by its charter – although if it does act in such a way, its charter may be revoked by proceedings on a *scire facias*, and for this reason, a member can obtain an injunction restraining the corporation from the commission of an unauthorised or prohibited act.’.

3.2 Halsbury, 1130: ‘non-statutory corporations, speaking generally, may do anything which an ordinary individual may do unless restricted directly or indirectly by statute’. But the corporation may find itself restricted by injunction if it seeks to exceed the charter (1147-1148).

3.3 The powers of officers are considered in Halsbury at 1066, and also the appointment of deputies in 1068; plus the ‘amotion of officers’ in 1069 and 1073/1074 (including 1078 re appeal to the Visitor). The liability of officers is considered in 1149, where it is asserted that, where they ‘actively participate in an act which is beyond the powers of the corporation to perform, they are each, to the extent of his participation, liable personally for the consequences’.

3.4 The power to make and enforce bylaws is considered in Halsbury, 1083-1090.

4. AUTHORITY

4.1 Halsbury, 1096: ‘A corporation may do corporate acts only at a corporate meeting…’: hence issues of, for example, notice (1096-1099), quorum of majority of members (1100), presence/concurrence of the head (1101 & 1104), chair’s powers and duties (1106), resolutions/amendments (1107/1108), adjournments (1109), non-members (1100), voting and the casting vote (1112-1115), and proxies (1117).

4.2 Re the conduct of meetings see also Shackleton, chapters 5-8.

4.3 This issue of exactly by what authority committee X, or university officer Y, or administrator Z acts on behalf of the university is, as Kaplin & Lee comment, *absolutely crucial to the proper governance of the institution*, and, as noted earlier, the misgovernance and mismanagement recent scandals within UK HE might in part have been avoided if all concerned had been clearer as to their responsibilities, their line of accountability, their obligations, and the limitations upon them – and perhaps also if the risk of incurring personal liability had been greater in the event of their unauthorised and/or negligent actions concerning financial loss to the university (here personal liability means more than being disciplined or dismissed as an employee, or dismissal as a university officer; it means the real threat of having to compensate the university financially…).

5. DELEGATION

5.1 As Shackleton notes: ‘A “committee” is a body of persons to whom something is “committed” or entrusted… In the absence of express statutory or other conferred authority, a committee being a body endowed merely with delegated powers, is bound by the maxim “delegatus non potent delegare” and therefore cannot exceed the powers and duties entrusted to it, or delegate its duties to others [9·01]… The relationship between delegating authority and committee is basically one of principal and agent [9·03]…’.

5.2 A main or top-level committee (Council, Senate) will have ‘standing committees’ (eg Finance, Academic Planning) and a ‘working-party’ or ‘ad hoc committee’ as necessary, with such standing committees having ‘sub-committees’. Note, however, that: ‘A sub-committee derives its origin from the main committee and can only act within the powers conferred by that body… and these powers can be reserved…’ (Shackleton, 9·04d). Moreover, Shackleton stresses that: ‘The result of the committee’s deliberations should be placed before the body appointing it… Unless the committee has executive powers on the matter or matters delegated to it, such report or minutes are inoperative until adopted by the main body, which may amend or refer back the report or minutes for further consideration…’ (9·05).

5.3 The **law of agency** has already been referred to, and is clearly the set of rules governing delegation and the creation of proper authority at various levels of decision-making and management within the university: on the law of agency generally see Birks, chapter 9.

5.4 In relation to the law of agency for the purposes of this Paper certain key points need to be made:

a) there can be no delegation of authority from a ‘principal’ to an ‘agent’, from a major committee or university officer to a lesser committee or a minor official, ‘where a power is conferred on the principal which he must exercise personally, and where statute or other instrument requires acts to be done personally’ (Birks, 9·30);

b) there may be a need for a formal and ‘a clear conferring of authority, with indication of its extent’ (Birks, 9·31), and this is done by powers of attorney (‘an undefined term covering formal documents conferring (usually) general powers’, Birks 9·31);

c) where the agent acts without authority, or exceeds limited authority, the principal may decide to ratify the agent’s action (‘The whole idea behind ratification is that the later ratifying act supplies the authority not originally existent and the act concerned retrospectively valid’, Birks 9·38);

d) this process of ratification then 'protects the agent against the third party… [for] the agent would have been liable to the third party for loss caused by purporting to have an authority which he did not have… But a principal may ratify reluctantly… and in appropriate cases the agent may be liable to him for loss caused by exceeding his authority' (Birks, 9·41 & 9·42);

e) the agent acting with proper authority from the principal will be liable to the principal, contractually and/or in tort but also through a fiduciary or loyalty duty in equity ('the law on fiduciary duties is rich and flexible, though still in a process of development', Birks, 9·136); and

f) in addition, the implied obligations of the university employee to the university as employer are obedience, care and skill, fidelity and good faith, co-operation, flexibility, and loyalty, and the obligation to perform the job with care and skill 'may be important in enabling an employer, typically at the insistence of the insurer, to refer back to the employee a vicarious liability to a third party which the employer incurs as the result of the employee's negligence in the course of employment' (Birks, 12·75) – clearly, this is relevant to the issue of personal liability discussed below.

6. PERSONAL LIABILITY

6.1 Hambley (*Personal Liability in Public Service Organisations: A Legal Research Study for the Committee on Standards in Public Life*, 1998, HMSO) explores the (low) risk of personal liability faced by university council members, noting, however, that there is *not* (at present) the legislative scope for the court to provide relief at its discretion for them as the controlling members of an eleemosynary lay chartered corporation aggregate, as it can for charity trustees proper (s61 Trustee Act, 1925) or for company directors (s727 Companies Act, 1985): and indeed as recently extended by statute to the governors of further education corporations. In 6.7 below there is discussion of whether the 'directors' of a chartered charitable corporation are in fact trustees under the Trustee Act 2000 in relation to the investment of the general corporate assets. See also Birks, 4.309-4.319, re the duties of trustees* and Palfreyman, 'Unlimited personal liability for members of Councils and Boards of Governors?' (*Education and the Law* 10 (4) 245, 1998) and 'Oxford Colleges: Permanent Endowment, Charity Trusteeship, and Personal Liability' with 'Is Porterhouse Really "A Charity"?' (*Charity Law & Practice Review* 5 (2) 85, 1998 and 6 (2) 151, 1999). *The duties of trustees may be very briefly summarised as: to stay within the terms of the trust (in the case of the English chartered university, as defined in its Charter and Statutes); to promote the interests of the beneficiary (the charitable objectives of the university in providing higher education teaching and research); to be reasonably careful in doing all this, as would 'a prudent man of business' in caring for another person's affairs; to act disinterestedly and to avoid/declare 'conflicts of interest' whereby the trustee might otherwise 'profit' from the trust.

6.2 Personal liability certainly can arise for local government councillors and even local government officers, usually by way of the power of the District Auditor to levy a surcharge to recover from the individuals any financial losses they have caused the local authority. In the case of chartered universities and colleges the (rather passive) 'policeman' is the Attorney-General, as *parens patriae* caring for the charity assets of exempt charities, and perhaps acting on the basis of a corporator providing information (a 'relator'). There is also, of course, the (rarely exercised) role of the Visitor in ensuring that the corporation operates within its charter and statutes in applying the corporate assets only for the fulfilling of its charitable objectives, as well as the (more effective) function of HEFCE, the NAO and the PAC in monitoring the proper use of public monies provided to universities and colleges.

6.3 Kaplin & Lee's 2000 Supplement cites an article by Evans & Evans, ' "No Good Deed Goes Unpunished": Personal Liability of Trustees and Administrators of Private Colleges and Universities', 33 *Tort & Insurance Law Journal* 1107 (1998). In this article the authors note that: firstly, the US courts 'generally show significant judicial deference to [university/college] management'; and, secondly, the courts have steered a path between the two extremes of 'the strict trust standard' and 'the gross negligence plus standard' by going for the middle ground of 'the business judgement rule' (ie. the same standards of diligence in discharging the duty of care are expected from university and college officials as in the case of company directors to their companies: to act in good faith, to act with the care of an ordinary prudent man, to act in the best interests of the corporation).

6.4 Thus, in US Law personal liability will attach to a university or college governor only where there has been dishonesty or gross negligence, and not simply a want of prudence or merely an error of judgement. The leading US cases concerning 'not-for-profit' corporations are: the 1974 *Sibley Hospital* case (as also covered in Kaplin & Lee), the 1989 *Louisiana World Exposition* case and the 1996 *Boston Children's Heart Foundation Inc*. case. The key principle is that managing the modern university is akin to running a business in terms of size and complexity, and hence the analogy with the company director as to when personal liability might apply. Indeed, some US States enshrine all this in legislation (based on the Revised Model Nonprofit Corporation Act and the Uniform Management of Institutions Act), including the provision of volunteer protection laws analogous to the English Law legislation referred to in 6.1 above.

6.5 Evans & Evans, calling upon other journal articles, list the commandments for being a successful governor/trustee of a university or college (or indeed for being a valuable member of a committee or for holding a senior lay office within a charitable corporation): insist on proper notice of meetings, and then prepare for and attend such meetings, always questioning any inconsistencies and seeking expert advice as necessary; know the bylaws, policies and rules; focus on policy not on routine administration; advocate more than criticise; encourage risk-taking by administrators; attend to the budget as the key institutional document; ensure that reward and evaluation systems are meshed into achieving institutional goals and not merely into personal predilections;

stimulate co-trustees/fellow governors or committee members to reflect and plan beyond the present; promote open communication; and investigate rumours.

6.6 They conclude: '…with the lessening of respect for charitable entities and pillars of the community, and the accelerated search for solvent defendants [in the context of a culture of blame], there will be no lack of plaintiffs eager to seek the imposition of personal liability upon officers and trustees. Well-articulated standards, preferably by statute, should be in place and widely distributed throughout the not-for-profit sector so as not to discourage competent individuals from serving private institutions'.

6.7 Given this emphasis on the analogy with company directors (rather than with charity trustees), we need to consider the circumstances in which personal liability arises for company directors. First, however, it is worth noting one area where the 'directors' of a chartered charitable corporation are, at least as far as the Charity Commission is concerned, very clearly charity trustees. Thus, when handling the investment not only of the assets of any specific trusts but also of the institution's general corporate assets which the Commissioners assert are similarly held on trust, the members of council of an English chartered university (or the fellows of an Oxbridge college) must comply with the terms of the Trustee Act 2000 in so far that the terms of the corporation's Charter and Statutes do not contradict it. The Act codifies the common law case-law interpretation of the fiduciary duty of trustees in exercising the investment powers of their trust and also sets out 'good practice' for trustee investment decisions. The Act requires trustees to reach in meeting 'the duty of care' a standard defined as 'such care and skill as is reasonable in the circumstances' (s1(1)); and to have regard to 'the standard investment criteria' in terms of the suitability to the trust of a class of investments and then any particular investment within that class, and in terms of the need for diversification of investments across asset classes and then within asset classes (s4).

6.8 Returning to the analogy with company directors… The ground is covered in Birks (3.69-3.80), and in the standard texts on company law such as *Gower's Principles of Company Law* (Sweet & Maxwell, 1997, Chapter 22) or Ferran (*Company Law and Corporate Finance*, OUP, 1999, Chapters 5 & 6). A very full treatment is given in Butcher, *Directors' Duties: A New Millennium, A New Approach?* (Kluwer Law/Institute of Advanced Legal Studies, 2000).

Broadly, the company director has overlapping duties of skill and care in both tort and in equity, with the director being judged to a significantly higher standard in recent decades: that said, the courts do recognise that managing a company involves commercial reality and pragmatism. There are also the fiduciary duties of fidelity and loyalty (analogous to the duties of trusteeship: to act honestly, in good faith and *bona fides* - or 'the proper purposes doctrine'), involving the avoidance of any conflict of personal interest with the interest of the company and any improper benefit to the director, and in addition avoiding any fettering of the directors' discretion to act in only the best interests of the company by the directors, say, allowing themselves to improperly consider the interests of a third party (for example, if the university-appointed director took into account when reaching a decision the university's

interests as a major or even the major shareholder in the company; the university does *not* control its spin-off company through the nomination of directors, and can do so only via its voting rights at shareholder meetings: see Chapter 14 of Palfreyman & Warner). Personal liability for the director in relation to any breach in the duty of care will arise along similar lines as for general negligence in tort: the rules concerning causation, foreseeability, and mitigation of loss apply. Any breach of fiduciary duty, however, is likely to be treated more harshly by the court than a breach of the duty of skill and care.

6.8 Butcher notes the increasingly demanding climate of accountability within which company directors now operate following the scandals surrounding Robert Maxwell and Alan Bond which gave rise during the 1990s to a series of reports and codes of good practice on corporate governance (Cadbury, Greenbury, Hampel, Turnbull) and to the Law Commission's 1999 report on the duties of company directors leading to a 2001 White Paper on company law. As Butcher comments: '…it is only in the last decade or so that these traditional [legal] rules and [equitable] principles [governing director conduct and corporate integrity] have been refashioned by our courts, and applied in a more robust and interventionist manner in response to public calls for raised levels of directorial responsibility and accountability…' (p9). The director's duty of care and diligence is traced by Butcher from the 1742 case of *The Charitable Corporation v Sutton*, which established the director's duty of reasonable diligence, via the traditional nineteenth century subjective application of the expected standard (the Marquis of Bute was *not* negligent in attending only one board meeting in some forty years: *In re Cardiff Savings Bank*, 1892), to the now clearly objective test of director competence applied in 1990s cases (*Bishopgate Investment Management Ltd v Maxwell (No. 2)*, 1993; *Re Westmid Packing Services Ltd*, 1998; *Re Barings plc*, 1998; and *Re Barings plc (No. 5)*, 1999). The *Sutton* case is especially interesting for our purposes: fifty committee men of a chartered corporation were held personally liable for some £350K in losses to the corporation arising from their failure to supervise an employee making loans on inadequate security to poor folk (1742, 2 Atk 400; see also Treibilcock, *The Liability of Company Directors for Negligence* (1969) 32 MLR 499, with Sealy, *Fiduciary Relationships* [1962] CLJ 69 and *The Director as Trustee* [1967] CLJ 83).

7. PRACTICAL IMPLICATIONS

7.1 What are the practical implications of all this for the governance and management of a chartered university or college? What court cases, if any, have so far arisen and what lessons do they provide? Are university officers and employees *really* at any risk of personal liability? Who would/could start legal proceedings? Consider the few instances of corporate failure within pre-1992 universities which are in the public domain: Bristol, Lancaster, Cardiff, and Cambridge (and, indeed, Edinburgh and Aberdeen from Scotland; and all as opposed to the governance and management fiascos in the 'modern' and 'managed' statutory universities and colleges of higher education, usually duly investigated by the NAO and the PAC: Thames Valley, Huddersfield, Portsmouth, Southampton Institute, and Swansea Institute; and in various colleges of further education): the 'fall-guy' has usually been the Director of Finance, rather than the VC or even the Registrar and let alone any (as it were) 'non-execs' in the form of

such lay officers as the Treasurer. There have certainly been no court cases; there seems to be virtually no risk of being held personally liable for the corporation's losses; increasingly well-paid *wannabe*-'Chief Executive' officers of the corporation suddenly slip back into the shadows as merely the servants of the traditional committee system, as at best *primus inter pares*, and re-emerge as late converts to collegial and cabinet responsibility!

7.2 So, if the combination of common law with charity law and the law of corporations gets us not very far, that leaves external monitoring by and financial accountability to various agencies (notably HEFCE, and in terms of bolting stable doors NAO and PAC). This 'regulatory framework' aspect of encouraging proper governance is discussed in Thomas, H. (2001), *Managing Financial Resources* (Open University Press series, 'Managing Universities and Colleges'), Chapter 7 by Brian Lewis. It comprises such control devices as: the HEFCE-HEI Financial Memorandum; the HEFCE Audit Code of Practice; the HEI SORP; the requirement for HEIs to have an Audit Committee, a Designated Accounting Officer (usually the VC), Financial Regulations, Internal Audit, and to be up-to-speed on, for example, space management, costing & pricing, procurement, commitment accounting. Some of this web of legislation and quasi-legislation follows on from governance and managerial fiascos such as at Cardiff (see Shattock, M.L., 1994, *The UGC and the Management of British Universities*, Open University Press, Chapter 6), while much stems from the UK's unhealthy fascination over recent decades with the alleged panacea of 'a compliance culture'. Either way, just as a decade of corporate governance reports (Hempel, Greenbury, Cadbury, Turnball, and doubtless more to come...) have failed to prevent a repeat of the BCCI and Maxwell scandals in the shape of the recent Equitable Life and Independent Insurance examples of corporate incompetence, so has the 'tick-the-box' HE audit trial not prevented the Cambridge CAPSA episode.

7.3 There really is no 'quick-fix' for corporate governance; implicit shared-values and old-fashioned collegiality matter as much as, if not more than, newly-imported and explicit systems, neat 'organograms' of hierarchy, and expanding rule-books. The latter may give the comforting illusion to those in the management bunker of quickly-achieved (superficial) 'control', of *economy* and *efficiency*, of audit and accountability; but it takes the sophistication, imagination and sheer hard-grind of nurturing the former to be certain of corporate *effectiveness* in terms of deserving the title and status of 'university' (see Duke, C., 2002, *Managing the Learning University*, Open University Press).