

Heart of the South West Local Enterprise Partnership LEP Board Paper- agenda item 7

Report title: Board Effectiveness Review

Date:

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Summary

Purpose of the report: to present findings and recommendations from the review of the LEP board's effectiveness. This report is for **decision**.

Further Details

Purpose

"A successful company is led by an effective... board, whose role is to promote the long-term sustainable success of the company... and contributing to wider society."¹

Good governance drives good performance. To perform highly as a LEP, and to give stakeholders - funders - confidence in our performance such that they are willing to entrust investment to our charge, we need to be well governed, and to demonstrate that we are well governed.

Boards are recommended to review their effectiveness annually²; this paper details the outcome of the first such review for Heart of the South West LEP.

¹ Code of Corporate Governance Section 1 Principle A <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>

² Ibid Section 3 Principle L & Provision 21

The issues

Participants in the review rate our effectiveness as weak, but improving. The main issues identified are:

- lack of clarity on how decisions are made;
- board meetings consisting mainly of recitation of information at the expense of time for discussion;
- a sense the board is too large to be effective;
- papers being late, too voluminous, and insufficiently linked to our priorities;
- lack of attention to outcomes;
- a disconnect between the board and its sub-groups;
- questions over how the roles of public and private sector directors interrelate.

Underlying the last point, and feeding into a number of the others, has been a lack of clarity over the purpose of independent governance.

Roles of directors

The Companies Acts set out that all directors bear equal responsibility for governance³, however the Code of Corporate Governance distinguishes between executive, stakeholder and independent directors⁴:

- executive directors are employees of the company – we have none, although officers in attendance occupy a similar role and would likely be classed as shadow directors under the Companies Acts⁵;
- stakeholder directors hold office by right under the terms of a company's articles or shareholder agreement, and cannot be removed by the board – for us public sector, HE and FE directors come in this category;
- independent directors, excluding the chair, are recommended to make up half the board⁶ - which our private sector directors do – and “should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account”.

As a board we must act collectively to reach decisions to further the aims of the LEP, but we have perhaps not engaged sufficiently with the distinct mandates of different categories of director.

Stakeholder directors sit on the board representing their nominating body - whilst still making decisions in the interests of the LEP overall.

Independent directors should bring a spread of relevant experience but do not represent their sectors or areas: they should be selected for the potential to provide independent review and challenge of the LEP's strategy and operation.

³ Companies Act 2006 c46 Part 10 Ch2 S170 <http://www.legislation.gov.uk/ukpga/2006/46/section/170>

⁴ Code of Corporate Governance S2

⁵ Companies Act 2006 c46 Part 10 Ch9 S251 <http://www.legislation.gov.uk/ukpga/2006/46/section/251>

⁶ Code of Corporate Governance S2 Provision 11

At least one LEP⁷ has instituted elections for private sector directors. This seems inadvisable:

- outside the Corporation of London, the notion of non-natural persons having voting rights has not been accepted in any electoral system within the UK;
- the number of businesses voting in the case of the LEP that has taken this approach is tiny: under 0.05%, fewer than 1 in 2,000 businesses; so the process may be misleading in creating an impression of representation;
- most importantly it misses the point of independent governance: public sector directors sit on the board as stakeholder representatives, and represent the whole community including businesses, private sector directors sit as independent directors to use their expertise to provide challenge and review.

This distinction has implications for the nature of debate within board meetings.

Conduct of board meetings

There is a widespread sense amongst directors that board meetings are not at present effective, stemming from three factors:

- the size of the board;
- a lack of cohesion between different elements within it;
- the content of the agenda and how items are presented.

Whilst formally we have up to twenty directors, in practice there are up to thirty people at the table participating in debate – with eight officers and two MPs in attendance. For comparison, studies⁸ have shown both that the average size of corporate boards has been, depending on the period covered, 9.2 or 11.2, and, tellingly, that companies with smaller boards outperform those with larger ones. The LEP is not, of course, a regular company and having recently revised our articles it would be impractical – and outside the scope of this review – to reduce our board size, but we should recognise it as a potential obstacle to effectiveness and mitigate it through active management of the discussion. For a large board to be effective requires the chair to manage the debate, inviting directors in turn to express their views and ensuring that all voices are heard.

In addition to its size, the board can lack cohesion and a strong sense of common purpose. It has been striking in conducting this review how consistently directors hold members of other groups – public, private, officers – in high personal esteem, valuing their experience and expertise. Despite this there is a sense that corporately different groups appreciate neither the challenges nor the role of others. It is fortunate that this does not appear driven by any personal animus; good personal relations provide a sound foundation on which to build. The contention of this reviewer is that the prime source of such distrust as exists between the groups is that we have never made clear their roles: that of the public sector as stakeholder directors and of the private sector as independent directors. Within the debate, as called upon by the chair, the public sector directors should bring their appreciation of the practical outworking of the proposal under consideration; the private sector directors provide independent challenge and review.

⁷ <https://solentlep.org.uk/who-we-are/solent-lep-board/elections/>

⁸ <https://www.wsj.com/articles/smaller-boards-get-bigger-returns-1409078628;>
<https://www.investopedia.com/articles/analyst/03/111903.asp>

In terms of the nature and content of the agenda, to drive the performance of the LEP it must relate clearly to what we are seeking to achieve – our strategy. At each meeting we should actively review and challenge the LEP’s performance, our success in delivering outcomes for the area, and then move on to a small number of proposals for decision, with each being tested in debate to which all directors are invited to contribute. We have recently leant too heavily on our chief executive as largely the sole presenter; other officers and directors chairing sub-groups, committees or working groups should predominantly present the items for which they hold responsibility.

Board papers must all be circulated at least seven days in advance. Where this deadline is missed, the item must be pulled from the agenda and held over to a later meeting. The appendix below contains a proposed format for board papers, which should be kept to a maximum of four pages of content, excluding the cover sheet and appendices. Directors should read papers in advance of the meeting; presenters should assume that has been done and not regurgitate the content of the document.

Sub groups and committees

Committees and sub groups of the board should not exist without a clear purpose, either a governance requirement (Finance & Resources, Strategic Investment Panel, Nominations) or from the board delegating to the group an aspect of the strategy, for the group to lead its delivery. The existing sub groups should therefore be reformed around the five enablers of the Local Industrial Strategy (LIS) - ideas, people, infrastructure, business environment and places – and charged with leading the delivery of the elements they comprise. With formal responsibility should come formal governance, the groups should become committees of the board, with membership approved by the board and formal delegated authority. The chair and vice chair should meet regularly with the committee and group chairs to scrutinise their performance⁹.

The current, external, nominations committee should be repurposed as a nominations advisory group, with a formal nominations committee formed of board members only, chaired by an independent director and including at least one public sector director and the board diversity champion. It should be tasked with keeping under review the composition of the board, analysing gaps and need, planning for succession and managing the recruitment process¹⁰. In conjunction with the diversity champion it should report to the board annually on progress in promoting diversity¹¹.

Whilst it is considered good practice for a board to appoint a Senior Independent Director who can act as a channel for independent directors’ concerns¹², this feels disproportionate for a ‘virtual’ body such as the LEP. The Vice Chair could meet this requirement where necessary. Similarly, it would seem inappropriate to appoint an audit committee given our formal accounts show a zero balance sheet, the whole board can act as the audit committee as and when required.

⁹ Heart of the South West LEP Operational Review, Ash Futures, p25 recommendation 4

¹⁰ Ibid recommendation 2

¹¹ National Local Growth Assurance Framework S79

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/768356/National_Local_Growth_Assurance_Framework.pdf

¹² Code of Corporate Governance S2 Provision 12

Broader stakeholder relations

Stakeholders which nominate directors to the board have that channel to feed into LEP deliberations and to be informed of them. It is important if the board is to make well informed decisions, and if there is to be broad confidence in those decisions, that a wider group of stakeholders are engaged, have the opportunity to share their views and to hear why the LEP reaches the conclusions it does. To this end, a register of partners and stakeholders should be established with LEP directors (of any category) allocated as their links to the LEP board. This would include district councils, MPs, business representative organisations (BROs) and sector groups.

It is worth noting that only a small minority of businesses are members of BROs. Consideration could be given to seeking the support of banks' small business teams to reach a broader spread of businesses: every business has a bank account.

Recommendations

1. Board Effectiveness Reviews are conducted annually with a different director leading each year.
2. The chair adopts active management of board meetings.
3. The board agenda consists of active review and challenge of performance, followed by debate on proposals for delivering aspects of the strategy.
4. Agenda items are pulled if the papers are not circulated seven days in advance.
5. The subgroups should be reconstituted as formal committees of the LEP with delegated responsibility for delivering the LIS enablers:
 - a. ideas: Innovation Board, chair - Stuart Brocklehurst;
 - b. people: Skills Advisory Panel, chair – Fiona McMillan;
 - c. infrastructure and places: Place Group, chair – Mel Squires;
 - d. business environment: Business Leadership Group, chair – Richard Stevens.Each group should develop a proposal setting out how they propose to support the delivery of the LIS, what delegated authority they seek to do so, and the proposed membership of the group, all for the approval of the LEP board. The Place Groups should additionally work to understand its relationship to the Strategic Transport Board.
6. The chair and vice chair should meet regularly with the chairs of the groups and committees in a Chairs Group to scrutinise their work in delivering the strategy. This would be an informal gathering, not a formal body. Each group/committee chair should provide a brief update in the review of performance section of LEP board meetings.
7. A nominations committee should be formed of board members, with the existing body becoming an advisory group. A report on diversity should be made annually.
8. Private sector directors should be selected for their potential to fulfil the role of independent governance; they should receive thorough induction including support to understand and fulfil the independent role.
9. An up to date schedule of delegation should be prepared for the board's approval and published on the LEP website.
10. Establish a register of stakeholders and link directors on the LEP board who will keep informed of their views and needs and keep them informed of the LEP's deliberations.

Appendix: proposed format for board papers

Report title						
Purpose	This paper is for noting/decision . ^a					
Link to LIS ^b	Inclusive Growth			Clean growth		
	Energy		Engineering		Digital	
	Ideas	People	Infrastructure	Bus. Environment	Places	
Non-LIS purpose	c					
Timing	d					
Financial impact	e					
Decisions requested						
Author and contact details						

Summary

[Notes:

^a Delete as appropriate. Overwhelmingly papers should be for decision.

^b Indicate by **bolding** which areas the paper links to.

^c If the paper has no connection with the LIS, explain its purpose. Again, overwhelmingly papers should link to the delivery of the LIS.

^d When will the recommendations, if agreed, take effect.

^e Cost or cost saving.

Papers should consist of the summary cover sheet, up to four pages of argument, and appendices if required.

Presenters should assume directors have read the papers and so not regurgitate their content, but rather highlight key aspects then hand back to the chair to facilitate debate.]