

Sport England
1st Floor
21 Bloomsbury Street
London
WC1B 3HFVia email
15 December 2020

Dear Sir/Madam,

A Code for Sports Governance: Consultation

On behalf of ICSA: The Chartered Governance Institute (the Institute) I am pleased to provide comments to the consultation on the current Code for Sports Governance (Code).

The Institute is the international professional body for governance, with more than 125 years' experience and with members in all sectors. Our purpose is defined in our Royal Charter as 'leadership in the effective governance and efficient administration of commerce, industry and public affairs' and we work with regulators and policy-makers to champion high standards of governance, providing qualifications, training and guidance.

We are the professional membership and qualifying body supporting chartered secretaries and governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

The Institute has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and governance issues. The breadth and experience of our membership enables the Institute to access a variety of applied experience in order to provide insights into effective practices across a range of organisations. Our wealth of expertise and experience has informed our response.

The Institute is delighted to be closely involved in the work of the Code in promoting good sporting governance. Governance has evolved and expanded since the introduction of the Code and it is only right that the document is updated to reflect wider governance developments and the public's expectations of how sports bodies should be run. Furthermore, it is the Institute's view that the Code should continue to stay ahead of governance developments (where possible) by learning from other sectors, adapting and applying trends to benefit the sports economy.



The following offers comments on the substantive aspects of the Code consultation relating to equality, diversity, inclusion, independence and culture.

Equality, Diversity and Inclusion

This is an area that continues to be a hot topic in all sectors of the UK economy, and creates a number of challenges. The first is defining the terms in a way that is meaningful for the majority of sports bodies, especially smaller grass roots organisations. We would urge the Code to open up the term 'diversity' by viewing it in its widest sense, not limited to those protected characteristics or differences we can see. Diversity of experience, social class, educational attainment, perspective and lived experience can be equally as valid in reflecting society as those differences more easily identified.

Alongside greater clarification about what is meant by equality, diversity and inclusion is the need to develop and/or signpost governing bodies and other funded organisations to resources about board member recruitment, appointment, induction and ongoing support, for example the Sport England project with Perrett Laver in developing a diverse talent pipeline. There is experience in other sectors (especially the NHS) where efforts have been made to attract diverse candidates only for them to leave before the end of their tenure, or not seek re-appointment, because the culture of the board (and wider organisation) does not encourage them to stay on. Therefore, the need to give due support and consideration to ongoing support and development is as important as the requirement for robust and effective appointment and induction processes.

As with other sectors, the boards or other governing bodies of many sports organisations do not necessarily reflect the communities currently playing, or identified as future participants in, the sport. Those communities will be different for each organisation and as such any developments on equality (or equity), diversity and inclusion should reflect the different starting positions of individual entities.

Targets

Within governance circles the question of mandatory diversity targets, or quotas, can elicit an energetic debate. The Institute can appreciate the value an externally generated target can have in prompting improvements in the area under review, such as gender or race and ethnic diversity on boards. However, there are concerns that such a target or quota, if made mandatory, can lead boards to do the minimum to 'tick the box' without addressing the cultural aspects that build genuinely diverse and inclusive organisations. The general view seems to be that 'goals' (appropriately for sports governance!) are more helpful than quotas.

The Charity Governance Code has recently revised its promotion of diversity, equality and inclusion and following a public consultation decided to adopt an approach which acknowledged the different starting points of every board. The aim of this strategy is to encourage boards to think about the diversity of their boards, the communities they seek to serve now and in the future, and the wider public expectations. Once a board has looked at its own diversity and highlighted where there may be a need to recruit different skills and competencies, the organisation should publicly state the goals they wish to reach in terms of diversity and report against them on an annual basis (in the annual report on their website). With the right tools and motivations from a range of internal and external stakeholders, the board should be subject to a number of stimuli to encourage them to ensure their organisational culture and internal processes better support attracting and retaining diverse talent at every level in the organisation, not just the board.

Organisational culture

While an externally imposed and scrutinised target relating to board diversity might have an initial impact, the longer-term benefits of board diversity need to be supported by a genuinely inclusive and welcoming organisational culture. This requires an honest and ongoing commitment to ensure the organisation acts, and is seen to act, and behaves in accordance with its stated values. Any publicly viewed actions which are incongruent with the stated values are likely to erode trust and legitimacy.



The charity sector has experienced recent adverse media stories where the behaviours of those representing a charity were not commensurate with the charitable purposes and the stated ethics and values of the organisation. This has led to an improvement in safeguarding standards and also a stronger spotlight placed on organisational culture. Similar issues have affected the sports sector and this is perhaps an area where the Code could be updated to address cultural matters concerning the wellbeing of those that come into contact with the organisation.

The Charity Governance Code has amended its integrity principle to include the 'right to be safe' for those that come into contact with an organisation and to ensure power is used properly and held to account appropriately. These factors are viewed as strengthening the role of organisational culture in supporting equality, diversity and inclusion and organisational legitimacy and trust. We recommend that Sport England consider a similar approach in the updated Code.

Integrity

Linked to organisational culture is the need to remind governing bodies that integrity is not solely related to protecting and using the assets of the organisation for appropriate activities, but also to ensure the exercise of power is used properly and held to account.

Certain aspects relating to integrity are covered above, but the Institute would also like the Code to address the issue of ensuring that governing body or board members represent all stakeholders, not just those of the constituency which elected them. This is an issue that challenges many organisations operating a system where governing body members are elected from a broader membership. Greater emphasis on managing conflicts of loyalty, alongside interests, should align with any efforts to improve organisational culture and integrity.

The messaging around diversity and integrity needs to be very clear to ensure that stakeholders and electors alike understand how important it is that boards reflect the whole communities they seek to serve rather than representing specific issues or groups. In the corporate world, directors owe a duty towards all members of a company and in charity law the trustees have to act in the best interests of the charitable purposes. Clarity in the Code on these matters will help internal governance activities to support overall governance development and evolution.

Independent non-executive directors

There is much to commend the addition of independent non-executive directors to sporting governing bodies, however the relatively small pool of candidates from whom these have historically been taken can undermine those benefits. Sports bodies should be encouraged to broaden their approach to board recruitment and appointments for a range of reasons covered above. The potential pool of candidates needs to be widened at every level to ensure that the 'same names' are not submitted for consideration at different board vacancies creating a 'carousel of the usual'. Board appointments should look to encourage candidates from different sectors, even if they have no existing attachment to a given sport or activity, if the candidate has the requisite skills, experiences and competences to collectively lead the organisation for all its stakeholders.

All that said, it is also important that sports bodies do not seek to meet their diversity goals through non-executive appointments. This does not address diversity issues throughout the organisation.

Other issues not currently covered in the Code

Other sectors are dealing with a growth in topics that are being grouped under the governance umbrella. The Code would do well to remain alert to those developments and exercise wise judgement as to whether it will mirror those trends. Some aspects, however, are more pressing and obvious.

Environmental, sustainability and governance (ESG) is a developing theme in the corporate, higher education and housing sectors and given the changes in public expectations and demands these are issues that will become increasingly relevant in the sports sector.



The challenge of managing and utilising data and digital technology is another area that needs to come under the oversight of the board, and therefore is inherently a governance matter. The next Code may wish to include the promotion of digital technologies and the use of data. The risks and opportunities are broad and the next version of the Code may be helpful in dealing with the ethical matters presented by those opportunities.

I trust the above comments help with the development of this governance code. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours sincerely,

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