

The Gold Standard – Sports bodies, corporate governance and public funding



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The UK Government has just announced a new mandatory Code on Sports Governance that will apply to any sports body in receipt of government funding. This article examines the Code and the other new requirements that sports bodies will need to comply with.

If you were told that the UK Government had expressed a view that UK sporting bodies should achieve the gold standard internationally you might think they were talking about the achievement of gold medals. And you would be right, but only partially.

Whilst the Government is still keen for publicly funded sports to pursue excellence on the sporting field, this requirement will be run in tandem with the Government's desire that UK sporting bodies pursue the so called 'gold standard' off the field, in corporate governance. The Government argues that maximising corporate governance maximises the effectiveness of their investments and of course the unspoken suggestion is that this is more likely to lead to sporting success.

Although there appears to be no empirical evidence to illustrate the implied correlation of governance and sporting success, the Government has firmly tied its colours to the mast by inextricably linking the public funding of sporting bodies with compliance with a series of requirements on corporate governance and beyond.

This article examines some of these requirements and what this means for sports governing bodies.

Sport England and UK Sport have recently published A Code for Sports Governance.¹ This Code contains a mandatory series of requirements for organisations seeking sports funding from the Government. The

Code clearly specifies that it applies to all organisations within the United Kingdom although interestingly the Code acknowledges that the Home Nations have their own governance frameworks in place. SportScotland for example will only fund bodies who comply with the SGB Governance Framework which, although covering the same areas of good governance as the Code, is far less prescriptive than the Code's Tier Three requirements. There should not however be a conflict between the two sets of rules.

The Code specifies three tiers of requirements depending on the amount of funding that the sporting body receives. Tier One is the basic level of compliance for those bodies who might be receiving funding for a specific project or on a one-off basis and that funding is £250,000 or less. Tier One compliance requires compliance with seven basic requirements including, for example, that the organisation should be properly constituted, have a clear purpose and, if membership based, be inclusive and accessible and that committee members should be subject to regular election and ideally should serve no more than nine years.

Tier Two compliance will apply to bodies who receive funding of sums between £250,000 and £1 million and will require the Tier One requirements to be met and a tailored set of requirements from Tier Three. The exact requirements to be imposed on Tier Two organisation and the deadlines for compliance with those

¹ Sport England and UK Sport: A Code for Sports Governance <https://www.sportengland.org/about-us/governance/a-code-for-sports-governance/>



requirements will reflect the amount of the investment that the organisation receives and the base point from which the organisation is starting in terms of its current governance systems.

Finally Tier Three compliance will apply to sporting bodies where funding is granted on a continuing basis over a period of years and is greater than £1 million. Tier Three compliance will require full compliance with all mandatory governance requirements in the Code in their full detail including detailed provisions on terms of appointment of board members, board size and composition, board recruitment, conflicts of interest, skills matrixes and obligations on boards to evaluate their own skills and performance and that of individual directors annually as well as requirements for external evaluation every four years.

Theoretically, a breach of any of these mandatory requirements would render a body ineligible for funding from the Government. The question is how compliance will be tested. It is unlikely that self-certification will be sufficient and therefore the process of demonstrating compliance through an audit for example will impose attendant cost and time constraints on sporting bodies.

One of the key areas in the new Code are the provisions dealing with diversity. The difference between Tier One and Tier Three can be seen from examining the provisions dealing with diversity. The Tier One requirement is that "In deciding who sits on its governing committee, the organisation considers the skills and diversity required of its committee members."² At Tier Three the mandatory requirements on diversity are:

2.1 "Each organisation shall:

- a) Adopt a target of, and take all appropriate actions to encourage a minimum of 30% of each gender on its Board; and
- b) Demonstrate a strong and public commitment to progressing towards achieving gender parity and greater diversity generally on its Board, including but not limited to Black Asian, minority ethnic (BAME) diversity, and disability.

2.2 Each organisation shall identify proportionate and appropriate actions to be taken to support and/or maintain (as appropriate) the diversity targets set out in requirement 2.1.

2.3 The Board shall ensure that the organisation prepares and publishes on its website information (approved by the Board) about its work to foster all aspects of diversity within its leadership and decision making, including an

annual update on progress against the actions identified in Requirement 2.2."³

The commentary on these Tier Three requirements makes it clear that the 30% of each gender on its board is a target, not a quota. It also suggests that diversity should include diversity of socio-economic background and diversity of thought.

The mandatory target of a minimum of 30% of each gender for sports bodies can be compared to the Davies report's aspirational target of 33% of women on FTSE 350 boards by 2020. The draft Parker review has suggested a target of each FTSE 100 board having at least one non-white director by 2021 and each FTSE 250 board having at least one non-white director by 2024.⁴

The corporate experience with diversity targets has been mixed. Whilst FTSE 100 companies have achieved the initial Davies target of 25% of boards being made up of women, the experience is that this is generally met through non-executive directors and that the numbers of women holding executive board positions and in senior roles in companies is far lower.

Given this corporate experience it will be interesting to see how the interpretation of the target of 30% for sports bodies and taking steps towards achieving it will be assessed when it comes to funding reviews. Will sports organisations' feet be held to the fire in a way that has yet to really happen with corporate UK?

Diversity of course is only one of the many areas of board governance that is dealt with in the mandatory requirements but it is perhaps the most interesting requirement given the experience of corporate England and indeed that of the Government itself in terms of diversity in its own ranks.

Sporting bodies should also be aware that compliance with the Code is not the only document they will need to comply with in terms of revamping their governance and practices.

The Government's sporting strategy document, Sporting Futures which was released in December 2015 also imposes a number of requirements and one of those requirements is that **all organisations** (emphasis added) who receive public funding must carry out a regular staff survey yearly and act on the results internally as well as making the top line data available to Sport England.⁶ This requirement is included in the Code but as a Tier Three requirement.

Despite the fact that this is a Tier Three requirement in

² Ibid, p 18

³ Ibid, p 42

⁴ <https://www.gov.uk/government/speeches/the-ethnic-diversity-of-uk-boards-launch-of-the-parker-review>

⁵ Department for Business, Innovation and Skills "New Chair and deputy chair of women on boards review will champion female executives." 7 February 2016

<https://www.gov.uk/government/news/new-chair-and-deputy-chair-of-women-on-boards-review-will-champion-female-executives>

⁶ HM Government "Sporting Future: A New Strategy for an active nation." December 2015, p 67



the Code, our view is that this requirement is likely to fall on all sporting bodies who are in receipt of public funding, given the unambiguous statement in Sporting Futures that the requirement applies to all organisations in receipt of government funding.

The Code on Governance recognises that this requirement is set out in the Sporting Futures document and indicates that further information and guidance will be provided about this although no timeframe is given. Our view is that organisations should begin planning on the basis that when this guidance does appear, it will confirm that the requirement will extend to all sporting bodies in receipt of funding, not just Tier Three bodies.

In addition to this requirement, Sporting Futures sets out a requirement that all public bodies in receipt of public funding must use tools such as Women in Sport's Checklist for Change to improve the diversity of leadership at all levels.⁷ This requirement is also referenced in the commentary on diversity in the Code although there is no clarification as to what constitutes a public body as opposed to an organisation.

Finally in order for sports bodies to be funded by Sport England, the Sporting Futures document makes it clear that sporting bodies will need to "make data available which is relevant to getting more people involved in sport and physical activity publicly available in an agreed format **free of charge**" (emphasis added).⁸ This requirement for open data fits in with the previous Cameron government's push to have not only government agencies but banks and other organisations open up their data to their customers. Whether that push remains one that Theresa May's government will throw its weight behind remains to be seen.

Whilst no one would object to data on the location and availability of facilities, coaches and clubs being made available free of charge, the Sporting Futures report is clear that the requirement to make data available freely is not limited to that data. How far the requirement extends however and how much it will cost sporting bodies to meet that requirement are real questions for many bodies likely to receive sports funding.

Will this obligation to make data available freely require bodies to provide for free, data that they might otherwise have been able to commercialise in partnership with a third party? Will these bodies be required to bear their own legal costs in respect of any potential privacy issues that may arise in respect of this obligation to make available data for free? Will the common format be one that can be adopted by bodies at a low cost? Who will assess what data is and is not required to be made available under this requirement?

Sport England released a strategy document, Towards An Active Nation⁹ (Active Nation) in 2016 which suggests that answers to these questions are still being decided, including which bodies will be caught by this requirement.

The Active Nation strategy at one point refers to the need for the sports sector to diversify their funding and states "We will also encourage them [sports bodies] to use their assets – including data – to generate income."¹⁰ Later on in the document however it states "We will encourage others to invest and innovate in markets with the greatest potential by making insight freely available, creating data standards, requiring those we fund to share their data and working with the Open Data Institute to promote the principles of shared data."¹¹

There appears to be no recognition that making data freely available reduces the ability for sports bodies to commercialise that data or other data. How this tension will be resolved therefore remains an open issue but one that is likely to be extremely important for a number of sports organisations.

What is clear however is that the Government is clearly on the path towards the greater professionalisation and transparency of sporting bodies. Whilst for some bodies, the changes to their governance and structure may be minor, for others who might aspire to receive greater funding in the future, the path towards compliance may be a fraught one, particularly in terms of achieving the diversity targets. As discussed above, what remains unknown is the way in which the Government will approach the enforcement of these issues through the withdrawal of or the non-granting of funding.

The slow experience of corporate UK on issues of diversity suggests that diversity targets will not be quickly met and that it is much more about building a pipeline of talent and addressing the deepseated structural issues, rather than having a group of super non-executive directors who hold 3-5 non-executive directorships on a range of sports bodies. The government however wields a bigger stick in the case of sports bodies than it has in the case of corporates and so may expect and demand faster progress than has been the case with companies.

There remains therefore a number of known unknowns for sporting bodies in terms of compliance of and enforcement with the dual requirements of the Code and the Sporting Futures document. However armed with what they do know, sporting bodies should begin to think about what steps they need to take both immediately and for the long term, based on their long term strategy in order to bring their corporate governance and day-to-day practices into line with the requirements of the Code

⁷ Op cit, p 68

⁸ op cit, p 26

⁹ Sport England "Towards an Active Nation Strategy 2016-2021"

¹⁰ Op cit p 11.

¹¹ Op cit, p 25

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and Sporting Future. There will also be many questions that will arise along the way such as how to deal with the transition of existing directors.

Shepherd & Wedderburn has extensive experience in not only assisting corporations but other organisations with their corporate governance and also has specific

understanding of the requirements of sporting organisation. We would be pleased to help sporting bodies address these issues. For any questions about what the Code and the requirements set out in Sporting Futures might hold for your organisation please contact us.



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