Effective challenge on a unitary board

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ABSTRACT

This is the third of four articles that explore a range of problem areas in foundation trusts that have caused the trust to have been identified by the FT regulator Monitor (now NHS Improvement) for special attention. These problem areas focus on the board’s insight to its business, the information it has for decision making, the effectiveness of the non-executive challenge function, and how executives are held to account. This learning is equally applicable to governing bodies of clinical commissioning groups. This third article in the series considers the effective challenge function within the board. Resulting from governance reforms in the early 1990s, the challenge function carried out by non-executives—with the aim of more effective decision-making and greater assurance—has not stopped the failures of governance in the NHS. Three areas are explored to get under the surface of the challenge function: first, the level of balcony thinking that underpins an effective challenge function, allowing non-executives and the board overall to understand and shape their context rather than be buffeted by it; and second, the type of behaviour that is effective when carrying out the challenge function on a unitary board. Last, the article explores how the challenge function plays out in different settings such as committees and in public board meetings. In each area the article highlights the problems and makes recommendations to improve how the challenge function can more effectively work in practice. The article concludes with a set of actions that the board can implement to improve the challenge function it experiences. The final article in this series will focus on board effectiveness in holding executives to account for the implementation of board decisions.

Key Words: Foundation trusts • Board effectiveness • Unitary board

This article considers the challenge function within the board. By this I mean particularly the challenge provided by non-executive directors on issues of organisation performance, strategic options, strategy implementation, risk and improvement. Monitor (now NHS Improvement) highlighted the weakness of this challenge function as a key problem area to tackle to improve the effective operation of trust boards. Lessons here are equally applicable to governing bodies of clinical commissioning groups (CCGs), although, as we will explore, there are a number of dimensions that are specific to governing bodies.

This focus on the challenge function of non-executive directors resulted initially from the experiences of British companies in the 1980s that were embroiled in corruption and fraud, and subsequent criticism of the lack of effective board accountability—companies such as Maxwell Communications, Polly Peck and Guinness—which led to the appointment of Adrian Cadbury to carry out a review (Cadbury Committee, 1992). Corporate governance was described in his report as ‘the system by which companies are directed and controlled’, and the role of non-executive directors was highlighted as ‘reviewing the performance of the board"
and executive’. With the establishment of NHS trusts in the early 1990s, their business-oriented governance arrangements were significantly shaped by the Cadbury report. The effectiveness of board governance, particularly the role of non-executive directors, remained a focus of attention, leading to the publication of The Combined Code (Financial Reporting Council, 2003), which summarised the role of non-executives.

‘As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, executive directors, and in succession planning’ (Financial Reporting Council, 2003).

The role of the non-executive director is therefore clear, and with the establishment of foundation trusts at the time the Combined Code was published, FT governance arrangements followed guidance in the code. If role clarity exists, then why are there still so many failures of NHS governance? This article therefore explores the challenge function of non-executives on NHS boards and governing bodies, and recommends areas for improvement. Reflecting both on my experience as a non-executive director and from working with NHS boards since they were established. There are three main areas of the challenge function that will be explored:

- The thinking that underpins the challenge function
- Behaviour exhibited in making a challenge
- Practicalities of where the challenge function is carried out

### Balcony thinking

This issue is about the what of the challenge function. Thinking and insight should underpin an effective challenge, though there are of course many instances of board members ‘shooting from the hip’.

A useful framework for considering key areas of board thinking has been outlined by Bob Garratt (1996) and is illustrated in Figure 1. This figure shows four quadrants—short and long term—and internal and external focus, along with the relevant non-executive role shown in each quadrant. The natural inclination of an NHS board is to tackle the urgent rather than the important, hence, context too often pulls boards to the internal, short-term supervisory role. This focus on supervising operational effectiveness in key areas such as finance, staffing and quality is, of course, fundamental to viability and patient safety, but it must be balanced with effective balcony work in the other quadrants. If the board supervisory role is akin to being on the dance floor, then the other roles are about being on the balcony looking down on the dance floor. Yes, the board must follow the trail of money and quality, but this trail starts with balcony thinking.

![Figure 1. Domains of board work](image-url)
In seeking assurance, non-executives will be looking for the ‘golden thread’ that links strategy to operational plans to performance. It is this golden thread that allows the trail of money and quality to be understood, questions to be asked, risks considered, assurance sought, and challenge to be carried out. As discussed in the previous article, appropriate information needs to be available to understand and interrogate the ‘cause and effect’ linkages across this trail of people, money and quality. To identify cause and effect, it is necessary to ‘join the dots’ across information areas. An example here is the challenge that all trusts are grappling with in the areas of staffing and finance. This came to a head with Mid Staffs, and has resulted in increases in nurse staffing levels at the cost of financial viability. The trade-offs for trusts are very stark and, driven by outside regulation from the Care Quality Commission and NHS Improvement, trusts are opting for safety over financial viability.

The role of non-executives is to challenge this thinking. At issue is the freedom to act available to the board—the ability of the board to shape its context, or merely to respond to the context in which it operates. Carl Weick (1995) commented on this when he observed, ‘The environment that the organisation worries about is put there by the organisation’.

This requires a different line of balcony questions from the ones used to supervise operational effectiveness. An example of these ‘non-executive’ questions are the ones reflected on by Winston Churchill after the fall of Singapore in February 1942: Why didn’t I know? Why wasn’t I told? Why didn’t I ask? Why didn’t I tell what I knew?

These same questions could be asked by many non-executives after a problem surfaces in their organisation, highlighting a failure in assurance. The challenge, therefore, is to make time for balcony thinking in the wider range of quadrants shown in Figure 1 to shape the context in which the organisation is operating, rather than to be buffeted by its context. In shaping this context, consideration should be given to the public value offered by the organisation. Mark Moore (1995) considered opportunities to create public value by NHS organisations—in contrast to shareholder value delivered by the private sector—from a number of perspectives:

- Increasing the quantity or quality of public activities per resource expended
- Reducing the costs (in terms of money and authority) used to achieve current levels of production
- Making public organisations better able to identify and respond to citizens’ aspirations
- Enhancing the fairness with which public sector organisations operate
- Increasing their continuing capacity to respond and innovate.

The non-executive role is to consider these public value opportunities, to bring independent judgement and critical detachment to help the organisation shape its context and its response. The tension here will be the role of the organisation itself in the system in which it operates. Foundation trusts are not islands—they operate within a complex system of inter-related activities that make up a (hopefully) integrated pathway for a patient across health and social care into the community in which they live.

The non-executive role will be to contribute the balcony thinking and external perspective that challenges the default insularity of executive directors—to challenge ‘the way we do things around here’—which brings innovation and creativity to both service design and delivery in the organisation and the system in which it operates.

This leads onto the level of engagement that non-executives wish to have vis-à-vis executives in shaping organisation direction and decision making. David Nadler (2004) identified five types of boards for their level of engagement, illustrated in Figure 2. Understandably, the middle path of ‘engaged board’ is recommended for best practice, with greater engagement prompted by crises, and less engagement where the chief executive and executive directors are paramount—exactly the situation that the challenge function is designed to counter. Many boards create this time for balcony thinking by scheduling dedicated strategy/development sessions. Fewer boards take time out during a meeting—when a topic is under discussion—or at its conclusion to have reflective time for balcony thinking.
Finally, the challenge function carried out by non-executives doing balcony thinking should prompt executive directors out of their functional areas, to engage in shaping the context externally and internally. This should also help to avoid what Heffernan (2011) refers to as ‘wilful blindness’—the situation in which a person avoids liability by intentionally keeping unaware of the facts. The emerging scandal surrounding Volkswagen and emission testing (Hill, 2015) may well become a case study in wilful blindness.

This balcony thinking, carried out not just by non-executives but also by the whole board, provides the backdrop for how the challenge function is actually carried out.

**Effective behaviour**

Behaviour of board members is ‘the how’ of the challenge function. I have worked with boards where challenge has been inappropriate. I have seen executives suit up with armour in advance of a board meeting because their expectation is that they will be challenged in a manner that borders on the unprofessional. I have observed instances where a robust challenge may have been merited due to performance issues, but was carried out in a way that became counterproductive.

It is up to the chair in these circumstances to set the appropriate tone, and to steer the challenge in the right direction and in an effective way. The Cadbury reforms to corporate governance were not received wholeheartedly by some boards. Managers naturally like freedom to act—accountability is uncomfortable, yet necessary. I still find that some trust boards do not seek, nor want, the best from their non-executives; the same can be said for lay members on CCG governing bodies. Independent directors can be viewed as an annoyance—indeed a hindrance—which can lead to tension in how the challenge function is played out.

My non-executive challenge always comes from an appreciative perspective, starting from the viewpoint that there must have been some logic and thinking behind the issue under discussion. My task as a non-executive is to explore the thinking process and decision making, and to get to the nub of the issue in a way that elicits an effective response to the challenge—rather than a defensive one. Key here is achieving the right balance between challenge and support. I do not ascribe to the ‘hair dryer’ approach of the ex-Manchester United manager Alex Ferguson, but rather follow his late Liverpool counterpart Bob Paisley, who observed that ‘Ranting and raving gets you nowhere in football. If you want to be heard, speak quietly’. The same can be said for the boardroom. Following the football theme, can the board be regarded as a team? This is a key issue in board development—for instance, an NHS trust board recently asked for support to ‘develop a cohesive team culture which will build team resilience’

In practical terms, the challenge function within a board has to be viewed from the perspective of the traditional view of a team, which has been described by Jon Katzenbach and Douglas Smith (1993) as ‘a small number of people with complementary skills who are equally committed to a common purpose, set of performance goals, and shared approach for which they hold themselves mutually accountable’. The characteristics they attribute to a team include:

- Shared leadership roles
- Individual and mutual accountability
• Specific team purpose that the team itself delivers
• Collective work-products
• Encourages open-ended discussion and active problem solving meetings
• Measures performance directly by assessing collective work-products
• Discusses, decides and does real work together.

These characteristics certainly describe many of the attributes of an effective board. An NHS board should operate as a unitary board, one which takes corporate responsibility for board decisions, and on which board members—executive and non-executive—operate outside their functional areas to think and act corporately. In this respect, executive directors are equal in status to non-executives. Yet, there are two catches here. First is the challenge role of non-executives to executives, who are tasked with implementing board decisions. Second is the reporting line of executives to the chief executive, which de facto influences their equality of status on the board.

From this I conclude that the board can in theory be considered a team judged against the criteria above, but not in the practical sense of its structure and operation. The non-executive challenge function, alongside executive accountability for the implementation of board decisions, presents a different power dynamic in the boardroom in contrast to the way in which a traditional team will work. Many of the team criteria are ones that boards should adhere to, and in the Monitor (2015) Well-led guidance boards will be judged against this specific criterion: ‘The board operates as an effective unitary board, demonstrating corporate leadership and a good balance between challenge and support’.

Achieving the correct balance between challenge and support is key to the non-executive role. As the French philosopher Joseph Joubert observed, ‘It is better to debate a question without settling it than to settle a question without debating it’.

Underpinning this measure of effectiveness is the level of trust demonstrated through debate and challenge. Peter Block (1987) presents a framework for the relationship of debate and agreement, illustrated in Figure 3. The vertical

![Figure 3. Block’s (1987) Framework for the relationship of debate and agreement](image)
axis presents the level of support or agreement on a topic, while the horizontal axis shows the level of trust among those debating an issue and seeking to move to agreement. If the topic is contentious, and a clear way forward is not readily apparent, then a high level of trust among board members will allow the debate to be carried out among ‘fellow travellers’ rather than ‘adversaries’. This level of trust will ensure that, while there is disagreement, board members respect their colleagues and move forward in this spirit to seek agreement.

Building trust is therefore a significant factor for success in an effective challenge function. This was reinforced by the analysis carried out by Jeffery Sonnenfeld (2002), who observed that, ‘It’s not rules and regulations’ that make great boards great, ‘it’s the way people work together’. He highlighted that great boards:

• Create a climate of trust and candour
• Foster a culture of open dissent
• Use a fluid portfolio of roles
• Ensure individual accountability
• Evaluate the board’s performance.

Finally, under this heading of effective behaviour, there are two further dimensions to explore. First is the way in which the challenge function is carried out on a CCG governing body (NHS England, 2012). Lay members have this responsibility, and their numbers on a governing body vary across CCGs. There is a minimum of two, comprising lead roles for championing patient and public involvement, and overseeing key elements of financial management and audit. These lay members will naturally default to challenging around their specific remit. Their real added value, however, will come when they exercise the challenge function at the strategic rather than just the functional level. For this to work effectively, training in the role is necessary, and the chair will need to encourage wider contribution, rather than keeping them ‘boxed in’.

GPs on governing bodies are positioned in between lay members and executives. They are acting on behalf of member practices, so all too readily default to this representative position. Rather than challenge decision making and performance, the role too often comes across as lobbying, with an absence of a corporate perspective. To a degree this is understandable, given their training, the remit they have been given, their attachment to their own practice, and the structure of the CCG as a membership organisation. However, with co-commissioning presenting wider opportunities for general practices to provide services, both the lay member and GP member roles will need to move towards presenting a more effective challenge function to ensure that conflicts of interest are avoided.

The second dimension of the challenge function to explore is the role of women and those from diverse backgrounds on boards. Simply, they are well under-represented. Roger Kline (2014) has explored the links between good diversity management and improved service delivery, and states that ‘the case for an inclusive and diverse leadership at trust board level—and indeed across the NHS—is now a convincing one’. In London, the proportion of trust board members from a BME (black and minority ethnic) background is 8%, which has declined from 9.6% almost a decade ago—this in a city where 41% of staff and 45% of the population are from a BME background.

Kline also reports that the proportion of women in London on trust boards is 40%, which is well below that of the NHS workforce (77%) or the population as a whole (51%)—women are especially under-represented at chair and chief executive level. This is an issue across businesses too, and has been tracked by Lord Davies (Department for Business, Innovation and Skills, 2015) in reports over the past four years that have shown representation of women as non-executives rising to 28.5%.

Ruth Sealy of Cranfield University (2015) has reported on the better governance resulting from more gender diverse boards—enhanced independence, better induction, more accountable, better self-evaluation, more awkward questions, improved innovation and decision making processes, improved stakeholder relations—all of which affect organisation performance.

If behaviour shapes an effective challenge function, so too does the governance processes of the board.
Challenging locations
Meetings of the board and its committees are ‘the where’ of the challenge function. A unitary board was a principle of the Cadbury review, and positioned the non-executives to act as a counterbalance to the perceived hegemony of executives. A unitary board is one on which members have equal legal responsibility for the management of the organisation and strategic performance—indeed, independent directors are therefore less likely to be excluded from access to information and decision making by strong executives. The presence of non-executive directors carrying out their challenge function should, therefore, lead to better decisions and promote greater cooperation within the board.

Yet, as discussed above, the board is not a team in the practical sense, and it is the challenge function that can put in place a degree of ‘them and us’ around the board table. This final section explores how the challenge function plays out in a range of circumstances: meetings of the executive team, non-executives, board committees, and the board as a whole.

The executive team is expected to function as a team in the traditional sense. The chief executive leads this team, and, as the accountable officer, is tasked with the implementation of board decisions. Executives will support the board in analysing performance, understanding context, shaping strategy, managing performance, and taking corrective action. There should also be challenge within this executive team. For instance, team members may well disagree on a proposed course of action, and challenge each other in their executive meetings before coming to a recommendation for the board.

Alfred Sloan (1964) wrote about decision making during his tenure as chairman of General Motors: ‘Gentlemen, I take it we are all in complete agreement on the decision here’—nods of assent—‘Then I propose we postpone further discussion of this matter until our next meeting to give ourselves time to develop disagreement and perhaps gain some understanding of what the decision is all about’. This challenge within the executive team is not always played out in a board meeting. As a non-executive director I always asked to hear the divergent views that led to a recommendation to the board—sometimes there was hesitancy in surfacing this disagreement, which may itself divulge dysfunctions within the executive team. However, I would rather be aware of this than find that I am being steered towards a decision which lacks the rigour of challenge that Sloan sought.

Next to consider is the benefit of non-executives meeting as a group. When I became a non-executive I was not in favour of this type of offline meeting, since I thought it flew in the face of a unitary board. My experience changed this view. What I saw over time was the benefit of non-executives sharing insights among themselves, gaining a balanced perspective, and hearing where their colleagues would wish to challenge, and why. Each non-executive brings a different perspective to the board, as an individual with a specialist knowledge, yet taking a corporate view in the final analysis.

In some cases a challenge from a non-executive colleague changed my view—in others I challenged what I perceived as too operational a perspective, or contributed information that put the issue in a different light. Non-executives also need to be comfortable in both complementing and contradicting each other as appropriate in their challenge function—getting to know each other enhances the challenge function.

The challenge function plays out in great detail at the committee level. Boards will have a range of committees—audit, clinical governance, staff, remuneration, nomination—each with a defined, yet over-lapping, remit. These committees will receive papers and reports relevant to their remit, often in much greater detail than those that go to the board. This allows for much greater depth and breadth of challenge to be carried out in committees than at the board. However, not all non-executives attend each committee meeting, so the issue often arises as to the extent of replay of the detailed committee conversation at the board meeting. For instance, a performance report will have been discussed by the audit committee, with considerable drill-down into detail—is this repeated at the board, or is it assumed that the appropriate challenge
has been made? I find that too frequently it is the latter, which results in both frustrated non-executives who were not present for the committee discussion, and potentially lost opportunities for even more effective challenge. Through my challenge I seek a middle ground—to understand the thinking of the committee, to hear what was challenged, and to reflect on what this means for other topics being discussed by the board, namely to ‘join the dots’ across individual topics.

As explored earlier, effective challenge at the board is influenced both by the thinking behind the issue and the behaviours exhibited in making the challenge, and also by the information available to the board. The public nature of the board meeting provides a further impact on the quality of challenge. I know from my own experience that punches can be pulled when the meeting is held in public. There is an understandable caution about what is said in some respects, given the presence of members of the public, press and/or staff. It is necessary to consider what will be played out in the public arena, and how it will be perceived. I have observed a lay member on a CCG—who acted naively but with good intent—literally throw a hand grenade in the middle of the room. What is needed is maturity and experience to make the challenge in the right way in the right circumstances, with awareness of the implications.

Boards often have private sessions where issues deemed inappropriate for public discussion are raised. Sadly, this delineation is often counter-productive—for a number of reasons. First, if the private session is held after the public one, the energy seeps out of the discussion and board members begin to think of the journey home. I have observed performance discussions held over to the private session, then glossed over. Second, behaviour often does not change between the public and private personas of board members—non-executives do not become different people when they are in private session. Finally, the opportunity is lost to engage the public. The NHS is in a tight fiscal environment with sensitive decisions needed—why not engage the public in these decisions, and spread ownership of the actions and implications? Value patients and service users, rather than disenfranchise them, and help move public debate from the ‘save our hospital’ narrative.

Finally, challenge at the board, in committees and in executive/non-executive meetings is not a solitary task. Challenge needs to be reflected on, followed up, and challenged in return. If the challenge is appropriate and the decision has not gone the way of the challenger, then there is a limited range of options—at the extremes, to get behind the decision or go out the door. In the middle ground, to become an ‘agent provocateur’ as one non-executive (misguidedly) described their role—with all the implications for board relationships—to escalate to the senior independent director, to become a whistleblower, or to go public—all with significant personal and professional ramifications. I found myself in the middle ground on one occasion, and it is a lonely place. There are a number of people in Volkswagen (Norman, 2015) who, in hindsight, wish they had the courage of their convictions to move to that middle ground.

Conclusion

The challenge function in a unitary board is intended to result in better decision making and enhanced assurance—the non-executives challenging the executives on the information they are presented with, the recommendations made, and the performance achieved. Boards can work on a number of areas to improve the effectiveness of this challenge function:

- Create the time for balcony thinking to view the landscape both beyond the organisation and in operational areas, which can be done through both dedicated development sessions and by incorporating reflective time in board meetings
- Non-executives should seek out and hold onto the ‘golden thread’ that connects balcony thinking and the board’s delivery of public value to operational effectiveness carried out on the ‘dance floor’
- Non-executives need to be clear on, and confident in, their challenge function, since
this is their raison d’etre, and use this to help the board shape the context in which it operates

• Similarly, executives need to develop the same understanding of what this challenge role entails, and should be prepared to seek, accept and respond to challenge as part of their role on the board

• Non-executives should follow the maxim of Theodore Roosevelt when making their contributions to the board, when he observed, ‘Speak softly and carry a big stick’, since balanced contributions build trust for effective board relationships

• If the board feels too comfortable and operates more like a cosy team, then alarm bells should be ringing and it should step back and reflect on how members are carrying out their role; board members need to develop the professional trust in each other that allows for an effective climate of discomfort

• Lay members and GPs on CCGs, like their non-executive counterparts, need to ensure that their contribution and challenge is not merely functional, and reflects the overall corporate issues of the CCG

• Executives need to demonstrate at the board their own internal challenge carried out within the executive team so that non-executives gain insight to the richness of debate that underpins recommendations for decision making; this is also the case for debate and challenge carried out at the committee level

• Non-executives should meet periodically as a group to explore how effective they find the challenge function and to gain insight to each other’s perspectives

• Boards should work more proactively to recruit members from diverse backgrounds to reflect gender and BME diversity of their staff and those they serve, and provide development support to enhance their effectiveness

• Boards should consider the balance between public and private sessions and reflect on the benefits of engaging the public in the contentious decision making issues they face

An effective challenge function is pivotal to an effective board. The board’s awareness of its business and having the appropriate information for decision making underpin this challenge function, and together move towards enabling the assurance required by the board. Finally, the fourth article in this series of articles will address the issue of holding to account for the implementation of board decisions.

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