



# A proposition paper critically examining governance development in the arts

Final Report

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<b>Authors:</b>	Cassie Hill, Programme Delivery - Quality Lead, GGI; Professor Michael Deighan, Heritage Chair, GGI
<b>Reviewed by:</b>	Andrew Corbett-Nolan, Chief Executive, Good Governance Institute Peter Hewitt, former Chief Executive, Arts Council England Dr Harry Brünjes, Chair, English National Opera Vikki Heywood, Chair, Royal Society of Arts Harry Hyman, Founder, International Opera Awards Prue Skene, Governance Associate, Clore Leadership Programme John Summers, Chief Executive, Halle Orchestra
<b>Designed by:</b>	Pantelis Soteriou, Communications officer, GGI

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[info@good-governance.org.uk](mailto:info@good-governance.org.uk)

[www.good-governance.org.uk](http://www.good-governance.org.uk)

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## A proposition paper critically examining governance development in the arts

***"All boards have the same need – a potent mix of non-executive directors on the board"***

*Sir William Wells, former Chair of the NHS Appointments Commission*

**"Governance goes beyond what happens around the trustee board table. We need to be talking and thinking about the broader context of governance, about volunteers, about supporters, about stakeholders of organisations, about how organisations communicate the spirit and direction of the work that they are doing. We must take a broader perspective on what is important in terms of governance at this time"**

*Peter Hewitt, former Chief Executive of the Arts Council England*

**"Boards must think about how to future-proof the organisation beyond the here and now and the day-to-day. It is easy to get trapped as a board in spending too much time on going through the processes of overseeing and making sure that the day-to-day is really functioning"**

*Vikki Heywood, Chair, Royal Society of Arts*

**"Governance - the dynamic between executive and non-executive directors is critical. If this is not right, governance will fail"**

**"Governance could fail, management could fail or indeed worse scenario, both fail"**

*Dr Harry Brünjes, Chair, English National Opera*

## CONTEXT

Arts organisations across the United Kingdom are a national success story. Recognised throughout the world for their ambition, dynamism and creativity, they provide a *'national resource that shapes all our lives, powers our creative economy, informs our education, enhances our health and wellbeing and enriches our communities and thus our national life'*<sup>1</sup>. Indeed, the value that arts organisations bring to British culture and to cultural development within the United Kingdom is well acknowledged.

Arts organisations are custodians of public funding. Their links with local authorities help underline the economic as well as artistic and social importance of the arts. Funding for the arts and cultural sector continues to vary significantly across the country. At a time when all areas of public spending are under increased scrutiny, arts organisations will need to argue their corner, demonstrate the case for public investment across the sector, use their resources effectively and develop ways of sustaining excellence in a climate of reducing resources.

The debate around models of sound governance in the arts and cultural sector continues to be live and it is essential, therefore, to consider the need to support and develop governance within United Kingdom based arts and cultural organisations. There is a clear appetite for change across the sector and recognition of the need to embed robust governance practice.

On 7th March 2017, the **Good Governance Institute** (GGI) hosted an evening seminar, 'Governance development in the arts', supported by **Sir William Wells**, former Chair of the NHS Appointments Commission, **Peter Hewitt**, former Chief Executive of the Arts Council England and **Alex Beard**, Chief Executive, Royal Opera House, the purpose of which was to debate the critical issues central to good governance development within the sector. The event, chaired by **Professor Michael Deighan**, Heritage Chair, GGI, brought together a range of chairs, chief executives, non-executive directors and trustees from large and mid-scale UK based arts organisations, together with individuals from a range of other sectors. They included:

- **Dr Harry Brünjes**, Chair, English National Opera
- **Vikki Heywood**, Chair, Royal Society of Arts
- **Harry Hyman**, Founder, International Opera Awards
- **Prue Skene**, Governance Associate, Clore Leadership Programme
- **John Summers**, Chief Executive, Halle Orchestra
- **Andrew Corbett-Nolan**, Chief Executive, Good Governance Institute

This paper presents the core arguments arising from the debate and sets out the critical next steps that we suggest are required to progress the issues fundamental to the development of good governance in the arts.

1. The Business of the Arts, Sir Peter Bazalgette, speech at the Creative Industries Federation (11 November 2016)

**Points of principle for arts boards:****How do you measure value as a board?**

- Do arts boards really follow good governance practice?

*Vikki Heywood, May 2017*

- Arts board must decide their focus – if the board cannot address this, are they fit for purpose?
- This must be done by considering the general wellbeing of both the organisation and the individuals that work within it (the artistic and administrative).

*Sir William Wells, May 2017*

**WHY ARE WE DOING THIS?**

There has been a tendency in the sector to assume that arts organisations are typically well governed and that a suite of documentation existed to allow arts organisations to discharge their governance duties and responsibilities in a tested manner. This related to the assumption that the Arts Council bodies in the United Kingdom had produced 'real' governance guidance for boards. However, consultation with a number of experts and a systematic review of current legislation and available guidance led us to conclude that such documentation did not exist and thus necessitated the debate on some of the following matters in order to address the critical issues central to good governance development in the arts:

1. **What are the current and future board development priority needs** for arts and cultural organisations in the United Kingdom?
2. **How can the exchange of governance learning between different arts and cultural organisations be established?** How can less experienced arts boards learn from the practice of fit for purpose boards?
3. **How can arts boards create a forum for governance information sharing between different sectors?** Are artistic independence, academic freedom and clinical independence areas that throw up similar issues for boards of arts organisations, hospitals and universities?
4. **How are the arts and cultural sector in general likely to be funded over the next five years?** What will be expected by "stewardship" in the arts?
5. **How can we ensure arts boards are robust?** To include consideration of the role of "funders" at board meetings and consideration of the board as a neutral "guardian" of an organisation's artistic focus
6. The notion of **ownership of intellectual property/commercial gain between the board and artistic makers/creators** – how is this best defined? What are the responsibilities of trustees for supporting artistic risk?

## THE ENVIRONMENT FOR THE ARTS

Further restrictions on working rights between countries will likely impact on the ability to grow and access talent, as well as inhibit the exposure of British artists to international talent and experience. Boards must understand value, as opposed to just cost, and employ robust governance systems in order to flourish.

During the course of the debate, the audience described the economic contribution that investment in the arts can bring, which can be measured through independent economic impact assessments. We are conscious that many arts organisations are not 'building based' and that in these incidences, it can become difficult to assess the social and economic impact of the organisation and highly complicated to come up with ways to measure this. Therefore, it becomes the role of the board to agree how the social and economic value of the organisation will be measured.

**Michael Eakin**, Chief Executive, Royal Liverpool Philharmonic Orchestra, described how cultural organisations in Liverpool commissioned a robust economic impact study, which demonstrated that for every pound invested in the sector, £8 of wealth was spent locally. Similarly, **Gus Christie**, Executive Chairman, Glyndebourne, described how Glyndebourne and East Sussex County Council commissioned an independent economic impact assessment to examine Glyndebourne's impact on the East Sussex economy. This amounted to £16 million annually, translating to a Gross Value Added impact of £10.8 million<sup>2</sup>. Thus the value of cultural tourism should not be undersold and arts boards have a role in demonstrating impact and value locally. Where questions are asked about economic impact by local authorities or government departments, presenting information through the board of an arts organisation should be a pre-requisite – a reflection of the organisations good governance approach to collegiate decision making. In addition, evidence of the economic and social impact of the organisation can also be used to open conversation with funders and donors.

### Exemplar 1

#### John Summers: rational for economic mapping

John Summers described how, particularly for organisations outside of London, there is a **perfect storm** imminent. He described how at the very best, public sector funding through the Arts Council was going to be at a standstill in an era where undoubtedly, inflation was going to rise, resulting in a major problem in three or four years time. A situation may emerge whereby many cultural organisations, particularly those outside of London who do not have access to fundraising that London organisations have, are about to get into potentially very difficult waters.

As argued by **Vikki Heywood**, it is critical that arts boards represent the organisation in high level conversations with the local authority, backing the chief executive and artistic director to ensure real clarity and agreement on the purpose of funding and how other monies may get unlocked. Links with local authorities that help underline the economic as well as artistic and social importance of the arts were highlighted as essential and could help local authorities politically in continuing to support investment in the sector – "clever organisations" are having sophisticated conversations with their local authorities about how to maximise every pound.

## ARTS BOARDS – THE EXECUTIVE AND NON-EXECUTIVE DIRECTOR / TRUSTEE

Having the right people on arts boards – those who have an understanding not just of the complexities of artistic life but who are also skilled in running a business - is essential to the success of the organisation. Indeed, as alluded to by **Vikki Heywood**, the pressures engulfing the arts and cultural sector clearly indicate that the skillset required by arts boards has changed over time – arts organisations have become increasingly sophisticated and boards now require members with valuable commercial experience as well as individuals who are creative, understand risk and can adapt to an ever evolving and challenging environment. As reinforced by **Harry Hyman**, board directors must deliver on their brief – there can be no passengers. We must consider, therefore, whether the right people are being attracted to arts boards, whether they are being found in the right way and, once found, whether they are being utilised to the best benefit of the organisation. In accordance with the need to attract the right people to the board, we pose the question – **should the Arts Council have a role in this?**

There is a need to align board members professional skills to the requirements both of the board and the organisation as a whole, a notion reinforced by **Vikki Heywood**. This means utilising the skills that board members normally apply on a day-to-day basis and building on them to strengthen and empower the decision-making on the board – starting a '*proper*' relationship with directors, looking at their specific and *individual governance needs*.

Whilst national arts and creative organisations appear to have no trouble in attracting highly talented and experienced trustees, there in fact exists a small trustee base across the arts and cultural sector, with many board members transferring across organisations. Work must therefore commence below board level to improve succession planning and, as described by **Prue Skene**, to encourage individuals with the appropriate experience, knowledge and skillset to consider themselves as prospective board members.

**Harry Hyman** raised a question concerning payment for the development of non-executive directors. It was suggested a '*tall order*' to be asked to join a board and then to be expected to fund your own training.

## ROLE OF THE SENIOR INDEPENDENT DIRECTOR

One specific point of interest was the need to consider the appointment of a non-executive director to the role of senior independent director (SID) on the board to provide a sounding board for the chairman and to serve as an intermediary for the other directors where necessary.<sup>3</sup> It is important to emphasise that the SID is also a peer to other non-executive directors. The principle of the role of the SID had previously been discussed between **Professor Michael Deighan** and the late **Sir Christopher Bland**, former Chairman of the BBC, BT and The Royal Shakespeare Company, when considering its potential to strengthen boards in both the health and arts and cultural sectors. However, the SID is not yet a role commonly seen in many arts organisations.

## APPOINTMENT OF BOARD MEMBERS BY MERIT

Members of the panel voiced concerns around the expectation by some arts organisations that trustees donate financially within their means to the organisation they serve. Accordingly, consideration was given to how arts organisations can ensure that board members are still assessed on their merit as opposed to the size of their bank accounts and how the inevitable assumption of patronage that comes with it could be managed. More broadly, how do we maintain good governance and accept the differing skillsets that trustees can contribute, for example, their networks and technical/professional ability?

As described by **Prue Skene**, it is now generally accepted that there is a significant role for the board in fundraising, and although keen to avoid the American system of trustees 'buying' their way on to boards, trustees and board members should actively contribute to fundraising within their means. This should not necessarily lead to a model of 'give, get or get off'. Nobody is yet suggesting that people pay fees to join a board, but it does mean having a discussion about all board members possibly contributing financially absolutely within their own financial means, or contributing in other ways such as through their wider networks - it is part of their leadership role.

When considering the role of a wealthy donor, **Harry Hyman** questioned how organisations cope with the demands of an individual who has given a substantial amount of money to the organisation and therefore wishes, or expects, to be represented and to have a say both in how that money is spent and the artistic direction of the organisation. This was a challenge further reinforced by **Prue Skene**, who alluded to the complexity of fundraising and the notion of **appointing non-executive directors as fundraisers – is this a conflict of interest?** It was suggested that a conflict of interest could arise when a director/trustee is appointed to multiple arts boards.

The issue around appointment by financial need and not skill can be particularly pertinent for smaller arts organisations. Indeed, **Vikki Heywood** suggested that for smaller arts organisations that might be in desperate need of a donation, it may be tempting to offer an individual with a strong financial merit a place on the board. Such relationships were described as 'complicated' but not necessarily unhealthy, and it was suggested that the degree of sophistication required to manage this may be much harder for smaller organisations and those outside of London that are financially challenged. It was suggested that this required further consideration and examples of good practice shared.

To ensure good governance is maintained in these incidences, **Dr Harry Brünjes** reinforced the need for appointment by merit, with a robust annual board appraisal process that assesses the board and assesses each individual, and for commonality of roles/expertise in order that the skill mix of the board is useful to the organisation. Board members should be appointed against specific skill sets that match the requirements of the board and of the organisation; they are appointed to serve, and expectations on appointment must be made explicitly clear. Robust assessments of each individual's competences as a director should be scrutinised through agreed performance criteria aligned to the artistic and business vision of the organisation.

3. BUPA, Role of the Senior Independent Director <https://www.bupa.com/corporate/about-us/corporate-governance/role-of-the-senior-independent-director>

## ARTISTIC DIRECTION

The debate regarding artistic planning and risk and the relationship between artistic directors and the board was identified as key, and often one that posed a problem. **Prue Skene** alluded to the need for concrete advice and training on how this could be done both sensitively and with mutual respect and honesty - intellectual artistic ownership vs. organisational ownership. The core purpose of arts organisations is the delivery of creative content. Whilst few would question that the artistic head of an organisation sets the programme, the debate described incidences in which artistic directors did not permit their board to discuss artistic matters. **Andrew Corbett-Nolan** believes it to be critically important that boards should not intervene with the delivery of creative content, nor trustees confuse their own personal taste with their scrutiny role – a principle no different to the general governance approach of separating the roles of the board and management. However, it is important that boards are sufficiently fluent around issues of artistic content in order to effectively discharge their role in risk management and assurance. It was suggested that boards that fail to understand and scrutinise the artistic direction of their organisations would be unable to hold their management to account or properly assess risk and undertake their central role as the controlling mind of the organisation. Therefore, a failure of an arts board to discuss the artistic merits and actual work of the organisation renders it very difficult to take any strategic overview. Boards must understand enough about the artistic strategy to ask the constructively challenging question without interfering with the artistic direction itself.

The role of arts boards in relation to artistic direction, vision and programming was described by **Michael Eakin** as a challenging area. It was suggested that members on arts boards can find it difficult to enter into conversations around artistic programming and vision as they feel unequipped and challenged by the executive and artistic director, which, it was suggested, could create an intimidating environment.

In order to critically examine the working arrangements between organisational direction, governance direction and artistic direction, board members need to have the right mechanisms to challenge and support decision-making. One such example, as described by **John Bullivant**, Chair of the Good Governance Institute, could be a model used in the National Health Service (NHS) - board assurance prompts (BAPs). A BAP considers a certain issue or topic and includes a series of questions that are developed to enable this to be scrutinised by the trustees on the board – it is a supportive tool that enables non-executive directors to know enough to ask the challenge questions. The following elements should be considered within a BAP:

- a) the extent to which programming decisions fit with the organisation's artistic policy
- b) the extent to which artistic decisions sit well within a national or international artistic context
- c) key assurance questions that the board should be asking with regards to this issue, and examples of strong and weak answers
- d) self assessment against a defined set of artistic and commercially related standards

### Exemplar 2

**Michael Eakin, Chief Executive, Royal Liverpool Philharmonic, in describing the notion of board assurance prompts and artistic freedom, provided the following example in support of this.**

The Royal Liverpool Philharmonic Orchestra held an in-depth board discussion focused both on the artistic direction of the organisation and on the financial risks of selecting certain approaches. This had the purpose of trying to help the board to understand and engage with the fact that this posed a calculated and managed risk. The conversation not only gave the board greater confidence in playing a role in the artistic leadership of the organisation and the decisions they were making, but also in the boards own ability to engage with those decisions themselves.

Therefore, an education process for the board to enable it to provide the necessary guidance and strategic support to the artistic leadership of the organisation can help nurture the relationship between the board, artistic direction, vision and programming.

## FUTURE PROOFING ARTS AND CULTURAL ORGANISATIONS

It is easy for organisations to become fixated on the here and now and inundated with the requirements of the immediate, meaning that they can lose the ability to take a perspective on the medium to long term. **John Summers** alluded to the fact that where arts organisations thrive, it is because the governance structures are right and enable the organisation to look beyond the horizon – ‘to fly and not just dribble along’. This was reinforced by **Vikki Heywood**, who suggested a real need to think about how to future-proof the organisation beyond the present day – what model do arts organisations need for the next ten, fifteen, twenty years and what should arts boards be driving the organisation towards? **Vikki Heywood** went on to describe how boards become trapped in spending too much time going through the processes of overseeing and ensuring the everyday running of the organisation. She suggested that this should be managed efficiently in board meetings to enable the board sufficient time to consider the direction of travel for the organisation. She described how, as chief executive, ‘this is the most useful thing that my board members could do....[to] really contribute to thinking about the future’.

**Professor Derek Bell**, President, Royal College of Physicians of Edinburgh, raised the issue regarding the need to be confident that contributions to board papers were not skewed towards specific biases but were proportionate to the aims of the organisation and to the pillars of good governance - how do arts organisations ensure that the board topics are balanced and proportionate to the needs of the organisation both now and in to the future? The debate alluded to a need to define a more useful role of the board, which should align to the governance mantra described by **Dr Harry Brünjes** in Exemplar 3. In addition, **Vikki Heywood** suggested that ensuring that board topics are balanced and appropriate revolved, in part, around ensuring that a clear relationship existed between the board and the chief executive and the organisation itself. It was suggested that away days be used as the forum at which the board agrees its focus for the proceeding year.

### Exemplar 3

#### Dr Harry Brünjes: the role of the arts board

- we **govern** (key policies; performance; succession)
- we **guide** (challenge the senior management team; advise the Senior Management Team; be a critical friend)
- we **guard** (the mission; the vision; compliance; reputation and charitable purpose)
- we **give** (time; money according to means)
- we **get** (relationships with donors; relationships with stakeholders; networking; advocating your institution)

## CROSS-SECTOR LEARNING

As described by **Peter Hewitt**, there are many good examples of imaginative governance arrangements and structures within the arts and cultural sector that should be respected and built upon. The development of a forum facilitating the exchange of governance learning between different arts and cultural organisations could thus provide the opportunity to explore imaginative governance arrangements across the sector, share learning and enable less experienced arts boards to learn from the good practice of fit for purpose boards.

A key theme arising during the course of the debate were the similarities that exist with regards to the challenges facing the arts and cultural sector and health organisations – for example, a significant expectation of ongoing capital investment, complex HR, the requirement of both sectors to be highly innovative and resourceful with reducing public investment and the need to maximise intellectual property. Building and developing the cadre of board members and trustees for a sustainable arts sector, and creating more two-way opportunities that would also enrich the non-executive community in other sectors too could be aided by more opportunities for learning and networking between board members and trustees of different organisations. **Harry Hyman** described how providing a more regular cross-sector forum, where individuals could come together to discuss issues in private and benefit from the experience of others, would be both interesting and helpful. This could facilitate learning and sharing

opportunities for chairs, non-executive directors and executive directors, and could include boards, for example in the health sector, sharing generic training approaches with arts based institutions.

We are conscious that all arts boards and trustees do not necessarily have the time to sit on a 'sharing group'. With this in mind, **how can we maximise the sharing of learning between sectors?** This should be viewed as a two way process – arts organisations learning from other sectors and other sectors learning from the arts. One way to address this could be to recruit from across sectors.



## WHAT IS NEEDED FOR IMPROVEMENT AND DEVELOPMENT IN GOVERNANCE IN THE ARTS – THE NEW FUTURE FOR ARTS GOVERNANCE

Do all arts organisations really follow best governance practice – for example, adhering to terms of office and length of tenure for chairs and non-executive directors?

How do you measure value as a board?

Good governance should not be viewed as a burdensome bureaucracy in the arts, but should be seen as a critical contribution to organisations in achieving their strategic and artistic objectives. Outlined below are a series of fundamental priorities that we suggest be considered in order to drive the development of good governance in the arts and cultural sector, helping to ensure that arts organisations are sustainable into the future:

1. **Governance development for trustees, as opposed to board development:** governance goes beyond what happens around the trustee board table. It is about transparency, about good communications - demonstrating a well-governed organisation of which trustees are a critical but not the only part. Given the communication nexus in which arts and cultural organisations work, arts boards need to be talking and thinking about the broader context of governance, about volunteers, about supporters, about stakeholders of organisations and about how organisations communicate the spirit and direction of the work that they are doing. Critically, arts organisations must develop and implement:
  - a **more focused approach to succession planning for new non-executive directors** of arts boards, clarifying the terms of office for board members and aligning the skillset of the board to the needs and objectives of the organisation
  - **arts focused board assurance prompts** to enable non-executive board members to understand and ask the right assurance questions and to critically examine and question the linkages between organisational direction, governance direction and artistic direction
  - an **annual board review** to empower effective evaluation of the board and its members as a means by which to improve board effectiveness, maximise the strength of the board and tackle its weaknesses
  - there needs to be a clear relationship between trustees and friends/ membership organisations
2. **Economic mapping to enable arts boards to implement their critical role internally, and to also support or challenge local authorities to establish models that will facilitate the development of the regions cultural sector.** Arts boards must make the case locally to support the ongoing investment by local authorities in the sector. Presenting the **economic contribution** that investment in the arts can bring through an **independent economic impact assessment**, delivered by the board of an arts organisation, should be a pre-requisite and would be reflective of an organisations good governance approach to collegiate decision making.
3. **Appointment of the senior independent director (SID):** the role of the SID is not a role commonly seen in arts organisations, yet is suggested an important role. The duties of the SID include:
  - **duties relating to board members of the organisation**<sup>4</sup>: being available to members if they have concerns which contact through the normal channels of chairman or chief executive has failed to resolve or for which such contact is inappropriate
  - **duties relating to the chairman**<sup>5</sup>: acting as a sounding board for the chairman and chief executive on board matters; be a conduit, as required, for views by other non-executive directors on the performance of the chairman, and chair a formal annual session of the Nomination and Governance Committee members (excluding the

4. BUPA, Role of the Senior Independent Director <https://www.bupa.com/corporate/about-us/corporate-governance/role-of-the-senior-independent-director>

5. Ibid

chairman) to agree the chairman's objectives and review his/her performance; being the focal point for board members for any concerns regarding the chairman, or the relationship between the chairman and the chief executive; conducting the chairman's annual appraisal

- **duties relating to the board<sup>6</sup>:** act as a trusted intermediary for non-executive directors where this is required to help them to challenge and contribute effectively; take the initiative in discussion with the chairman or other board members if it should seem that the board is not functioning effectively
  - appointing to the role of the SID therefore supports the adoption of good governance practice and can have the following advantages:
    - bringing an outside (internal) perspective and preventing the board from becoming too introverted
    - the SID can bring good governance practice from other examples in their career
    - the appointment of the SID can bring clarification to the use of both fundraising and donor acceptability and the impact this contribution might make to the artistic /governance endeavours of the organisation and the direction of the organisation
4. **Establishment of a trustee and chair development forum** nationally, with the view being taken that there ought to be a central fund for governance development in the arts. This requires neutral brokerage between the Arts Council, local authorities, local government and arts organisations.
5. **An established trustees/ non-executive director appointments process: in critical consideration of the current trustee appointments system, it was recognised that there was a need for a neutral independent body to assist in the development and appointment of the right people to arts boards in the UK – not compromised by a centralised governmental appointments body.** An example of this is the direction Sir William Wells took as former Chair of the Appointments Commission, in re-aligning the role of the non-executive director in the NHS, reducing their input to two and a half days per month and making their focus more strategic.

6. BUPA, Role of the Senior Independent Director <https://www.bupa.com/corporate/about-us/corporate-governance/role-of-the-senior-independent-director>

## CONCLUSION

The two key overarching factors that should be addressed now are as follows:

1. **There is a need to grow a pool of suitably qualified trustees and directors to ensure that good practice can be followed.**
2. **The quality of directorship and trusteeship within arts organisations needs to be further enhanced.**

As described by **Peter Hewitt**, the arts and cultural sector has nothing to be ashamed of in terms of governance. Indeed, arts organisations are becoming increasingly sophisticated in nature, and there are examples of impressive governance arrangements that should be respected and learnt from. However, there is a recognised need to create a better structure of governance, with established economic mapping by the board for the local community underpinned by a neutral trustee/non-executive director appointments process. Arts boards need to understand what the audience requirement is and this, together with artistic inspiration, should determine the allocation of funding to enable the development of new artistic commissions. Therefore it becomes the board's responsibility to broker the debate between artistic creation and commercial sustainability – independently assessed with both financial and artistic rigor. Good governance is about creating organisations that can deliver this brief. The BAP and SID proposals are just some important ways that governance should be strengthened, but there are no doubt many others of equal relevance, many of which are discussed within this paper.

Unlike the heavily regulated health sector, the arts and cultural sector enjoys greater regulatory freedom, which creates a window of opportunity to really address the questions critical to the development of good governance in the sector. Establishing and embedding good governance practice will enable arts organisations across the sector to play their part in building a better, sustainable future for all.

The recommendations listed above are as radical as those enjoyed in the debate surrounding the future of the NHS. They are about safeguarding the future of the arts in the United Kingdom and developing a new audience for the future.

**Cassie Hill**

**Professor Michael Deighan**

