

ICE Governance Review Evidence Session 20th February 2019

Addendum

Transcripts of Introductory Comments in support of the Evidence statement submitted previously to the Presidential Commission on ICE Governance by Paul Jowitt¹, Adrian Coy², Ian Jenkinson³, Richard Bayfield⁴ and Bob McGowan⁵

Paul Jowitt

I would like to thank Council for instigating this Governance Review in response to the Resolutions passed at the SGM.

As detailed in our written Evidence, there has been a failure of Governance. In process and substance. Sometimes that happens. Let us hope we can fix it.

During the call for the SGM I received an email from an Incorporated Engineer member from the West Country. Alexis said she was young mother from a working class background. Many of her work colleagues told her the ICE was an elitist club. She tried to persuade them it wasn't.

But last year's Ballot to move to an internally appointed circle of Trustees had weakened her argument. She said that her views would not be represented by a group of people that she had had no say over. She supported the call for ICE's Governance to be – quote - *“open, honest and fair and most importantly have integrity (core to being a professional engineer)”*. Unquote.

I think she got it spot on! Similar views were expressed by Members from Halifax to Harare and Hong Kong.

The ICE is the Institution of Civil Engineers, not the Institution of Civil Engineering, far less the Institution of CEOs or the Institution of Consulting or Contracting Engineers.

The ICE has a role in influencing policy makers.

But that voice in the corridors of influence has to be perceived as independent and trusted. It is not a lobby group for industry. Its independence is because the ICE is governed by its Members, its policy set by its elected Officers, not the Officials.

The ICE is about its Members. 90,000 of them. About half of whom are eligible to vote. The Ballot had a paltry turnout of less than 9%, barely 4000. It achieved its required two thirds majority by just 163 votes.

¹ Paul Jowitt. Professor of Civil Engineering at Heriot Watt University. He is a Past President, former Regional Chairman and former elected Member of Council of the Institution of Civil Engineers. Former Non Exec Director of TTL Ltd (ICE's commercial arm). He has been CEO of two Spinout Companies and a non-Executive Director of three water companies in Scotland and England. He is Chairman and Trustee of the Charity Engineers Against Poverty.

² Adrian Coy. Local Authorities Director with AECOM. He is a Past Vice President of the Institution of Civil Engineers, past Chair of the ICE Membership and Diversity Committee, the State of the Nation Steering Group and former Trustee and Council Member. Former Member of ICE East Midlands Regional Executive Board.

³ Ian Jenkinson. Former Chief Executive of Newcastle under Lyme Borough Council. Chairman of the Pensions Board at Staffordshire County Council. Chair & Honorary Editor, ICE Municipal Engineer. ICE West Midland Regional Committee. ICE Sustainability Guidance Panel. Former Council member of IMechE.

⁴ Richard Bayfield. Construction/Development Advisor and Adjudicator. Former Chairman of the Society of Construction Law. Member of ICE Dispute Resolution Panel. Founding Member of the Adjudication Society+. Trustee and Chair of the charity Love Sierra Leone.

⁵ Bob McGowan. Former Chairman of Scott Wilson. Former Member of Council for the Chartered Institute of Arbitrators. Former Member of ICE Council, ICE Disciplinary Board and Professional Conduct Panel. Former Non Exec Director of TTL Ltd (ICE's commercial arm)

The Governance changes are likely to decrease participation even further.

There are many members for whom the ICE is already just a way of becoming registered with the Engineering Council. If they could register direct, they probably would. They would leave the ICE in droves.

A passive Membership might suit some in the ICE firmament, at least until the subscriptions dried up.

But a passive ICE doesn't suit me. And it doesn't suit Alexis and many like her.

The new Governance arrangements are a step backwards, back down the road to the Upstairs Downstairs world from which I thought the ICE had left years ago.

The Governance of the ICE must come from the Members. The Members generate the knowledge, the good practice. The Members oversee issues of professionalism and ethics.

The Members are responsible for planning, designing, constructing and operating the underpinning infrastructure upon which civilisation depends across the globe.

For many of us, fundamental in this whole Governance Review, is the overriding principle that the overwhelming majority of its Trustees must be elected to ensure the separation of Management and Governance.

The motor for the recent Governance changes was the supposed need for Agility – to deal with some unexplained exigencies – and the supposed incompetence of Council Members and their inability to understand their obligations under Charity Law.

I have detailed in the written evidence the difference between the needs of Agility & Management and Thoroughness & Governance.

The Membership needs to be engaged. That won't happen if their views don't count and they have no role or say in how the ICE is run.

Yes, some engineering institutions have moved to smaller Trustee bodies. Not always successfully. Their size is not the real issue, but their composition is.

I could support the case for a smaller Trustee body, but the majority of it must be elected by and from the Members, not stitched up by an unaccountable Nominations Committee in the background.

I could support the case for a structure based on a rebalanced Council and an Executive Trustee Board. But Council must have a proper and real role alongside the elected Trustees.

In the written evidence we have submitted, we have proposed:

A Trustee Board of 12 – with 8 elected directly from and by the Voting Membership plus the President and 3 of the Vice Presidents.

Together with a Council comprising the 8 elected Trustees, the President, the VPs, elected Regional (UK and International) Members, and representatives from the Graduates.

The Trustees would deal with high level risk issues (eg finance, policy, commercial activity), and Council would deal with Membership facing issues (eg engagement, qualification, knowledge, professional conduct), areas in which they are respectively more competent.

Members would directly elect the majority of the Trustees (8 from 12) and the vast majority of Council.

We must separate Governance from Management.

Why? You don't have to look far.

The recent communication from the IMechE to its members spells it out in stark terms. Their recent imbroglio in which Management and Governance got catastrophically confused led to the resignation of both their CEO and President. Their Trustee Board is now up for election.

Both the new IMechE CEO and President are crystal clear:

“It is time to reinstate the power of the ballot box over the soap box”, says one.

“The key for me is that we remain a democracy; our strength is that within our charitable aims we are a Members-led organisation”, says the other.

And that is where the ICE needs to get back to.

Adrian Coy

During my relatively recent time on Council I was involved in both the Orr and Hewlett governance reviews, and in discussing at both Council and Executive Board a report by Saxton Bampfyld that concluded that Council could satisfactorily fulfil Charity Commission expectations of trustees. I served on the Executive Board as both an elected general member of council and as a Vice President. I acted as scrutineer for last year's ballot.

Council now meets only three times a year, plus the ASM. This is too infrequent for Council to respond to important issues that arise. Last year there were a number of high profile incidents affecting UK charities that ICE may have had difficulty responding to if it were dependent on calling emergency meetings of the full council. I am therefore in favour of a smaller Trustee Board, able to respond to issues and protect ICEs charitable commitments in a timely and agile way. It is important though that this body is constituted in a way that represents all members.

The Executive Board, now the Trustee Body, has in recent years been dominated by ‘Captains of Industry.’ Some within the presidential team bring a top-down view of the industry that makes them excellent ambassadors for ICE in its interface with Government and other key decision makers, but doesn't make them expert in the needs and expectations of ICE members. Not all of those selected for presidential office in recent years have had an understanding of ICE prior to taking up office, nor the time, commitment or inclination to learn once elected.

It is quite intimidating for a general member of council elected to the Executive Board to challenge a presidential team dominated by company CEOs or leaders of major infrastructure projects. It is not only about a balance of numbers, but the influence that the authoritative and persuasive voice of an industry figurehead can carry.

I am not convinced that the President and all Vice-Presidents need to be on the Trustee Body. Recent Presidents have been expert in Boardroom Politics and executive decision making. Council has sometimes frustrated them and its views have been managed rather than accepted. ICE is a membership organisation and so all of its constituents (grades/geographies) need a role in ensuring the ICE as a Charitable Body continues to make decisions in the best interest of its members, AND society.

I once presented to UKRAC, and submitted to the Hewlett review, an organogram of the ICE that had ordinary members at the top, supported at a second-tier by regional and international committees, ICE Committees on a third-tier, Council at fourth-tier, with the Exec Board and President supporting the whole membership from the bottom. I will refrain, therefore, by calling for a bottom-up approach to Governance. Ordinary members are the most important constituent of any effective governance model, and the diversity of ICE membership should have influence over the decisions that are made.

Ian Jenkinson

While I'm very pleased to be here this hearing should have been held 2 years ago, before the ballot.

I'm Ian Jenkinson; I normally describe myself as a municipal engineer because my background is in Local Government. I know that ICE is different to Local Government but my approach is to see things through the lens of Local Government because there are more similarities than differences.

Within Local Government I started reporting projects to Committee, then programmes to Committee and Council and, finally, corporate policy to Cabinet, Scrutiny Committees and Council. I have had governance responsibilities throughout my career.

My final title was "Acting Chief Executive, Head of the Paid Service and Returning Officer" so I also had responsibility for the whole governance process itself.

During my career I was appointed to the Board of lots of organisations, some of which I chaired everything from SRB through Neighbourhood Management Pathfinders to Crime & Disorder Partnerships and Safeguarding Children. Since I retired I have been on the Board of many more "public" bodies: a LEP, a Credit Union and, currently, a Pension Fund.

I have also sat on, and occasionally chaired, more than a few ICE Panels and committees plus a short period on the Council of IMechE. So I come to this issue with more than a little experience and more than a few scars.

While I understand that ICE is not the same thing as any of these organisations there are more than a few similarities. They are all complex organisations that contain a lot of vocal stakeholders.

Managing any big organisation is difficult, so I understand and have a lot of sympathy for the ICE officers, trustees and council members in trying to work their way through our affairs. It's a tough call and I wouldn't be at all surprised if some (perhaps everyone sooner or later) want to cut through the complexity and simply impose "a solution" that appears to be the "right thing to do at the time".

However, allow me to suggest that such an approach inevitably leads to tears. I have seen far too many organisations do something and, when challenged, find that it is unable to defend the action because the governance structure that took the decision was flawed in the first place.

It's hard to defend anything against the accusation that the decision makers acted in their own self-interest and they are untouchable by any democratic procedure.

Plainly, those who have been elected can also make dreadful mistakes. Initially, they have the moral authority to carry things through, it was their election manifesto and their constituents elected them. When challenged they can always argue "back-me or sack-me".

But, if it all goes wrong they carry the can and someone else can be elected in their place. Currently, within ICE, under the new Trustee arrangements, we don't have this.

I understand the concern that people might be elected without sufficient skills to undertake the duties of a Trustee. We have the same problem within local government. We manage it through induction, training and mentoring programmes. We do this for everyone from the rookie councillor through to Council Leaders.

We also carry out "community capacity building" projects to try and ensure that there are sufficient people available to stand as candidates in the first place. It's not perfect, far from it, but it is a manageable process that does give results, it's something that ICE should also consider.

I'm not committed to any particular 'new' governance structure for ICE, there are lots of ways it can be set up, but I do want the assurance that I can choose a candidate for election and cast my vote for someone who is a best-fit for my views and opinion.

As I said when I began, ICE is not the same as local government but allow me to point out some features that you may wish to consider in your Review. Within local government it's ubiquitous to separate out all of the various roles and have many checks and balances.

A Leader drives policy adoption but the Mayor carries out the 'public-face' duties. A Cabinet determines policy but within a budget approved by Council. A Cabinet member implements policy but is challenged by a Scrutiny Committee. The importance of separating responsibilities and having checks and balances in place cannot be overstated.

If you centralise responsibility for all Council functions upon a handful of councillors, it's a recipe for trouble. The other elected members who have no obvious role or purpose either vote with their feet and disengage or become a catalyst for rebellion; sometimes both.

I'm sure that everyone here will know of places and events where things have gone very badly wrong. Allow me to suggest that a finding from almost every public inquiry is that a root cause was some failure of governance.

If we don't get an appropriate Trustee & Council arrangement then it will soon be our turn to be in the dock eating humble pie and mouthing the miserable words "we will learn the lessons to ensure that this never happens again ... "

Richard Bayfield

My comments are predominantly about the risks facing the ICE and my starting point is our professional code.

ICE Code of Professional Conduct - Ethics (from page 1 of the code and page 45 of the bye laws / charter)

"The duty upon members of the ICE to behave ethically is, in effect, the duty to behave honourably; in modern words, 'to do the right thing'. At its most basic, it means that members should be truthful and honest in dealings with clients, colleagues, other professionals, and anyone else they come into contact with in the course of their duties. Being a member of the ICE is a badge of probity and good faith, and members should do nothing that in any way could diminish the high standing of the profession. This includes any aspect of a member's personal conduct which could have a negative impact upon the profession."

Reputational Risk consequent of manner of change to ICE Charter in 2018

It is a requirement of ICE membership that we "play fair" and act honestly. There is however a question as to whether the ICE corporately has behaved in a manner that lacked probity and / or good faith in its method of changing the charter in 2018. There are some specific areas which require self-examination by the ICE:

1. The issue of a clarification note part way through the ballot in the summer of 2018 is far from reputation enhancing and raises questions of a fair process – what of voters who had already cast their vote before the clarification was issued? The Electoral Reform Commission, which ran the election, was apparently unaware about this mid ballot change to process. Such practice left the ICE vulnerable to a challenge as to the legitimacy of the ballot.
2. The holding of a ballot to change the charter, with no proper consultation in advance is hardly behaviour that can be described as meeting the standard of "probity and good faith".
3. The decision-making being moved from 44 elected members of Council to 12 Trustees without a transparent Trustee selection process. However good the individuals are in these new roles it is an inappropriate legacy to pass down to future generations, because of the risk of favouritism in future appointments or worse.

4. The lack of reporting of the Special General Meeting held on the 31st July 2018. At the beginning of the meeting we were told by the Chair that a report of the meeting would be issued. Future historians will be asking questions as to the record of the meeting as well as those who attended. The SGM report is still awaited (the existence on the internet of a bootleg recorded version acts as a reminder of this failing).
5. The misreporting of the Council decision making consequent on the outcome of the SGM raises further areas of concern. The ICE web page news headline "Council to implement full governance consultation and review following the results of the SGM" should have been "Planned Governance changes going ahead in November 2018 but Council to implement full governance consultation and review in 2019".

Risks to ICE

The key risks which emanate from the above analysis emanate from the question "what are the consequences if we fall short of our Professional Code?"

1. External Reputational Risk – On the one hand we require our membership to behave with probity and good faith. The same standard must be observed by the ICE itself, not least on the issues of Governance, maintaining transparency and openness and ensuring objectivity and impartiality in its reporting. To do otherwise risks leads to a slippery slope which will result in huge corporate reputational damage.
2. Internal Reputational Risk – The risk of a disenfranchised membership means the ICE may not be able to properly function. The ICE relies on Members for the skills which it cannot buy in (and which it fortunately gets for nothing). The body corporate and the individual members need to be closely aligned.

It is hoped that the present Commission will put the ICE back on track and help it to avoid the failings of the 2018 Governance Changes process.