

# A Review of Governance and Strategic Leadership in English Further Education

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The future challenges facing governance and strategic leadership in FE

Working together in partnership



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## Introduction

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This study was undertaken between May and September 2009, at a time when there was substantial activity in planning the various changes to the funding and regulatory arrangements for FE. Accordingly, some of the issues highlighted by respondents – and considered in the report – may be in the process of being addressed; however, many remain current and some are urgent.

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The diversity of the FE system is such that few readers are likely to be interested in reading the whole report; instead they will probably read those parts about ‘their own’ sector together with the general conclusions. The report’s layout is designed to facilitate this, as this main volume concentrates on major issues, and matters of detail (some nonetheless important) are left to the numerous appendices, which are published separately. In particular, Sections 4, 5 and 6 of the main report summarise much longer appendices on the three main sectors in FE: colleges; work-based learning; and adult and community learning. More attention is paid to the college sector – not because of any notion of greater importance – but because more data is available about it and its governance processes are less diverse. Both the main report and the appendices are available electronically, but a short summary version and the main report have been produced in hard copy form for widespread circulation.

Appendix H describes the methodology adopted for the review, and the approach varied between the three sectors involved. In general, the content and conclusions are based on qualitative data, partly because there is little robust quantitative information about governance and strategic leadership within FE, and also because the review was undertaken within a short timescale and there was no opportunity to undertake surveys. Nonetheless, a large number of respondents were involved in different ways, and we are confident that the data presented is broadly representative of the whole FE system.

The terms of reference for the review asked for the identification of ‘good’ practice, and also for areas where it might be collected in future. However, it is important at the outset to recognise that, in a sector as diverse as FE, much ‘good’ practice is highly contextual. With the exception of areas where there is defined professional practice (for example, financial control) what is effective governance in one provider (and might therefore be considered ‘good’) may often not work in another. It is for this reason that the description ‘good’ is put in the text in single inverted commas, and alternative descriptors such as ‘interesting’ or ‘innovative’ are also used. As always, providers need to identify what they consider to be ‘good’ in relation to their own positions.

# 1. Executive summary

- 1.1 This report was commissioned by the Learning and Skills Improvement Service (LSIS) and the Association of Colleges (AoC) to review governance and strategic leadership in the whole further education (FE) system, and in particular to look forward and review the implications of the proposed move towards shared regulation and the introduction of the machinery of government changes in 2010.
- 1.2 Developments since the Foster Review have led to a higher profile for governance in FE, and the importance of effective governance and strategic leadership is generally recognised by both stakeholders and providers. However, very different approaches operate in the three main sectors of FE (colleges, work-based learning, and adult and community learning), and generalisations across these sectors are difficult to make. Even within sectors different governance arrangements may apply, for example the position in sixth-form colleges and independent specialist colleges is slightly different from that in general FE colleges.
- 1.3 Nonetheless, one key issue affecting all three sets of providers is that there is no common understanding of effective governance and strategic leadership across the FE system. Rather there are several sets of different assumptions that influence practice and regulation. Even the terminology used is not consistent, for example, the term 'governance' is generally recognised within FE colleges, but may not be understood in the same way elsewhere. 'Strategic leadership' is therefore a useful synonym for governance outside colleges. These variations are also found in the different codes of governance applying to the various types of organisations within the system, and FE is the only sector without its own code, being closely regulated by the LSC.
- 1.4 Section 3 explores why there is no such common understanding and identifies a number of reasons. The problem is compounded by the key stakeholder bodies appearing to have different – and sometimes conflicting – expectations of providers in relation to good governance. This lack of consistency across the system creates potential problems, exacerbated for providers by aspects of the current funding methodology and regulatory requirements. The move towards shared regulation provides an opportunity for greater clarity, although as noted in the report this move itself is subject to substantial ambiguity.
- 1.5 As far as colleges are concerned, there is general support for the view that the quality of governance continues to improve, and has done so since incorporation. Numerous strengths in the operation and conduct of governance are noted in Section 4, and are broadly confirmed by Ofsted data. In general, the sector is now perceived to be more mature in its governance, as recognised by government encouragement to move towards shared regulation. However, there continues to be concern about variability in the quality of governance within the sector, including the extent to which some corporations/governing bodies have a strategic outlook and provide leadership for change. Section 4 also notes a number of specific challenges facing corporations and makes proposals for action.

- 1.6 In all, Section 4 makes 10 recommendations on college governance that would strengthen practice across the sector, and all are consistent with adopting shared regulation. Some may be contentious, and before implementation all key stakeholder bodies should be consulted including the AoC Governors Council and the Clerks' Network.
- 1.7 In particular, some recommendations would – with suitable checks and balances in place – increase the freedom of action of corporations in relation to many aspects of governance. These would have to be agreed with all key stakeholder and regulatory bodies. How such actions would be introduced, and how judgements would be made on institutional maturity to adopt the new arrangements is considered in Section 7. As part of this approach, the report suggests a simplification of the instrument and articles of government, and the adoption of an FE colleges code of governance operated on a comply or explain basis. There is also a sound argument for clarifying the role of the corporation chair and clerk, and draft role descriptions are provided in Appendix C.
- 1.8 Within the work-based learning sector, corporate governance and strategic leadership is provided in different ways depending on the nature of the provider, but the typical approach is that of a private sector board. Here, the issues are largely identical to those concerning general corporate governance in companies or SMEs, and are well known in the literature on the subject. The main issue in this sector lies at the regulatory and contracting interface with the LSC and its successor, and the report identifies a lack of consistent awareness amongst providers of the structural changes taking place in the FE system.
- 1.9 The position for adult and community learning providers is different again, and there is no consistent approach across the local authority and third sector organisations involved. Amongst this sector and private providers, there is the feeling that moves towards a shared regulation agenda have been too dominated by colleges, with the consequent danger that any changes to arrangements may not be appropriate for them.
- 1.10 In Section 7, the report considers the implications for FE governance and strategic leadership of five main future issues: the challenges to general assumptions about effective governance caused by the failure of governance in the banking and finance sector; the move towards shared regulation; the introduction of the machinery of government changes; the increased emphasis on localism and so-called 'place-shaping'; and the adoption of the Framework for Excellence and changes in the Ofsted methodology.
- 1.11 Whilst there is considerable support for some of these measures, there are also significant fears, and in some cases the absence of reliable and consistent information about the progress of these changes has contributed to considerable anxiety about the implications for future effective governance. Indeed, some providers believe that they are being placed in a position of exposure to unreasonable risk, and the report agrees. Many college corporations have particular concerns about a perceived threat to their incorporated status arising from greater local authority involvement, and if inappropriately implemented this could have very negative consequences.

- 1.12 Coupled with what will be a difficult financial environment, many providers fear very challenging times ahead, and are concerned that the aspirations for shared regulation may not survive funding and operational realities. When taken together, these are substantial concerns – although, of course, not all providers will face such difficulties to the same extent. If there is to be confidence amongst those responsible for providing governance and strategic leadership, it is particularly urgent that there should be greater clarity about the implications of adopting shared regulation and the machinery of government and other changes. The report recommends that this be undertaken as a matter of urgency. Failure to do so is likely to lead to a lowering of morale, particularly amongst college governors, with consequent implications for recruitment and retention.
- 1.13 In total, the report makes 15 recommendations (summarised in Section 8) on how governance and strategic leadership might be enhanced. In addition, many proposals for action are made, which – although not having the status of full recommendations – need to be considered in detail by governing bodies, corporations or boards. It is important that these recommendations are taken forward in an integrated and coordinated way; and in full consultation with all the key parties involved. To help achieve this, key stakeholder bodies should draw up an early dissemination strategy for this report. One problem in the current operation of governance and strategic leadership is its fragmented nature, with different groups having different – and sometimes inconsistent – expectations. If this were to continue it would be unhelpful to the introduction of shared regulation and the machinery of government changes. Effective dissemination of this report would be a useful way of starting to address the problem.

## 2. An overview of governance and strategic leadership in FE

2.1 Different governance and strategic leadership arrangements apply in the three main sectors of FE, and these are briefly summarised below. Further details of each one are contained in the relevant appendices to the main report.

### The colleges sector

2.2 As far as the structure and practice of governance is concerned, the college sector consists of three main elements:

First: general FE colleges; land-based colleges; and art design and performing arts colleges which have the same instrument and articles of governance; and the corporations of which, therefore, have identical responsibilities. They constitute the largest part of the sector<sup>1</sup>.

Second: sixth-form colleges, the corporations of which differ mainly in their membership requirements, for example, parents being included as governing body members<sup>2</sup>.

Third: the independent specialist colleges sector, which provides FE for learners with complex or severe learning difficulties and/or disabilities whose needs cannot be met in their local college. In terms of volume, this sector is very small, and only approximately 3,600 learners are funded<sup>3</sup>. As their name implies, these colleges are independent, and their ownership and governance arrangements are a microcosm of the diversity found in the overall FE system. There are no statutory instrument and articles of government, as there are for other colleges, and specialist colleges are either charities, part of large healthcare groups, or privately owned.

In addition, there are four London-based specialist designated institutions – SDIs – (The City Lit, Mary Ward, Working Men’s Institute, and Morley); the Workers’ Educational Association (WEA) (also counted as an SDI); and four residential SDIs (Northern, Ruskin, Fircroft, and Hillcroft), which are currently counted as colleges. A characteristic of the college sector is therefore considerable diversity, not just in size of institution, but also in mission, and whether colleges play a national, regional or local role – or a combination of all three.

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1 For more information about the colleges sector, see [www.aoc.co.uk](http://www.aoc.co.uk)

2 For more information about the sixth-form colleges sector, see [www.sfcf.org.uk](http://www.sfcf.org.uk) and [www.aoc.co.uk](http://www.aoc.co.uk)

3 For more information about the specialist colleges sector, see [www.natspec.org.uk](http://www.natspec.org.uk)

- 2.3 FE colleges are statutory bodies incorporated under the 1992 Further and Higher Education Act, and the governance of the corporation (the governing body of a college) is prescribed in considerable detail in the statutory instrument and articles of government. The majority of funding typically comes from the Learning and Skills Council (LSC), which is the main regulatory body. Corporations agree an annual financial memorandum with the LSC, and are subject to detailed regulation, particularly in respect of finance and accounting. Ofsted inspects the quality of provision<sup>4</sup>, including leadership and management (a category in which governance is included but not separately graded), and receives information about college governance from the LSC in various forms, including the results of an annual financial management and control evaluation (FMCE) (previously a self-review questionnaire – SARQ). The other main funding source for colleges with HE provision is HEFCE, with different quality inspection arrangements through the QAA.
- 2.4 Colleges are also exempt charities, and this confers significant financial advantages for corporations, particularly from rate relief and VAT. In this capacity, colleges are subject to the oversight of the LSC as the principal regulator, rather than directly by the Charity Commission. At the time of writing, an important issue for corporations is that as the LSC will cease to exist in April 2010, which body will take on the principal regulator role, and it is understood that this has not yet been agreed with the Commission. The charitable status of specialist colleges is generally not exempt, and they have to deal directly with the Commission in meeting its regulatory and reporting requirements.
- 2.5 Until relatively recently, college governance took a fairly standard form, with governing bodies (corporations) typically meeting a minimum of three times a year and with extensive committee systems reporting to the main board. External independent members must be in a majority, and the corporation chair must also be external. The principal or chief executive has the option of being a board member, and it is understood that they all are. Other holders of senior management positions are not permitted to be board members (unless they are elected as staff representatives), an issue explored in this report. Administrative and advisory services to corporations are provided by a clerk, who plays an important support role.
- 2.6 In recent years, there has been more innovation in college governance, partly driven by increasing internal interest in the topic and partly by a much greater awareness of the need for good governance in both the private and public sectors, and for FE colleges to respond accordingly (see Appendix B). For example, the membership of corporations has generally declined in size, some colleges have substantially reduced their committee system, and others have sought to introduce particular approaches or styles of governance. The result is increasing diversity, not just in types of colleges, but in approaches to governance. Such innovation has been aided by increased flexibility in the instrument and articles of governance when reviewed in 2008, but an important issue considered in this report is whether greater flexibility – and a reduction in prescription – would encourage more effective governance.

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4 For details of the Ofsted methodology, see [www.ofsted.gov.uk](http://www.ofsted.gov.uk)

## The work-based learning sector

- 2.7 Even if the definition of the work-based learning sector is restricted to training activity funded through the LSC's demand-led funding, the provider base delivering these programmes is diverse and fragmented by comparison with the relatively homogeneous college sector.
- 2.8 In 2008–09, 1,358 organisations received funding from the LSC via the employer-responsive stream<sup>5</sup>. These delivered three main programmes: Apprenticeship, Entry to Employment and Train to Gain. Just under half of them were Apprenticeship providers<sup>6</sup>, and of these just over half (52 per cent) were classified as organisations in business in their own right – private limited companies (Ltd) or companies limited by guarantee; a quarter are further education colleges and the remaining 23 per cent are classified as 'other'. They include chambers of commerce or trade, charities, local authorities, other private and public organisations and organisations of an unknown type. Discussion of the governance arrangements of colleges involved in the work-based learning are included in the sections of this report on colleges.
- 2.9 Of the 15 work-based learning providers responding to a request for information for this study, 13 have boards that are responsible for the governance of publicly funded training. Of the two remaining organisations, one (a national charity) has a council, and one (a large employer) has a committee set up especially for the purpose.
- 2.10 The boards of the companies involved demonstrate typical private sector characteristics, and there is a substantial literature on typical private sector practice<sup>7</sup>. All the boards in the sample are small (with between five and nine members), they all contain executive and non-executive members, and most have slightly more executives than non-executives. Three have employee representatives on the board and two have representatives from other stakeholders. The boards of charities and voluntary sector organisations are larger, with between 12 and 15 members. In three of the four organisations in this category, all the members are non-executives. The other has three executive members alongside 12 non-executives.
- 2.11 There are formal processes for the election or appointment of board members in 10 of the organisations surveyed. The processes include open recruitment and selection (four), appointment by existing board members (four), and appointment by the parent organisation (two). In the other five organisations, where formal processes are not used, members are on the board by virtue of their role as executives or (for non-executives) by invitation of the board.
- 2.12 There are no hard and fast rules for the way in which boards of work-based learning providers are structured. Their make-up depends on various factors including the ownership structure of the organisation, its size and maturity, its primary purpose and the relationship of the organisation to parent companies or sponsors. Similarly, boards meet at varying intervals, five in the sample meet monthly, two every two months, and six meet quarterly. One board meets twice a year, for a full day.

5 Figures from the Association of Learning Providers, September 2009.

6 Learning and Skills Council, April 2009. *Apprenticeships: Understanding the provider base*.

7 See, for example, [www.iod.com](http://www.iod.com)

## The adult and community learning sector

- 2.13 There are two main patterns of governance in this sector: that for local authority providers and that used by third sector organisations.
- 2.14 Local authority governance structures were determined by the Local Government Act 2000, which contained provisions for new political management structures for local authorities in England and Wales. This required local authorities to establish overview and scrutiny committees which were charged with holding the executive and officers to account. In addition, the Act also gave power to overview and scrutiny committees to make reports and recommendations to the executive and council on policy development<sup>8</sup>. The 2006 Communities and Local Government White Paper<sup>9</sup> revisited the models proposed in the 2000 Act, and outlined proposals to legislate so that in future there will be three models of executive arrangements: a directly elected mayor with a four-year term; a directly elected executive with a four-year term; and an indirectly elected leader with a four-year term.
- 2.15 Within this context, there is a range of governance arrangements for adult learning that reflect both the nature of local authority governance and that of the adult learning services. All models of governance seek to provide the functions of overseeing strategic direction of the service, monitoring the quality of provision, and ensuring that efficient and effective use is made of resources. There are broadly five models of governance in adult learning services:
- A governing body.
  - A management group.
  - A local area management group.
  - An adult learning sub-committee.
  - A social enterprise approach.
- 2.16 As far as governance and strategic leadership in third sector organisations is concerned, this includes voluntary and community organisations, charities, social enterprises, co-operatives and mutual societies. Current government policy encourages the third sector to be involved in “transforming public services”<sup>10</sup>. Its organisational structure and legal status is diverse, ranging from small, legally unincorporated bodies (such as community associations) to larger, legally incorporated bodies formed as community interest companies.

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8 Local Government Act Part 10, 2000.

9 Communities and Local Government Department, 2006. *Stronger and Prosperous Communities: the Local Government White Paper*. HMSO, Norwich. at [www.communities.gov.uk](http://www.communities.gov.uk)

10 Cabinet Office, 2007. *The Future Role of the Third Sector in Social and Economic Regeneration: Final Report*. HMSO: Norwich at [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

- 2.17 Companies limited by guarantee are the most frequent form of legal status for third sector organisations, and charitable status may be sought by organisations that fulfil the charitable purposes requirement of the 2006 Charities Act. Governance arrangements vary, and the most common is a board of directors or trustees who are accountable to the wider membership. A distinctive feature of many third sector organisations is the accountability of the board of directors to the wider membership of the organisation from whom they may be elected.
- 2.18 A further aspect of the delivery of learning and skills by third sector organisations is that the majority have a wider remit than just the delivery of learning and skills, and their legal status and governance arrangements reflect this. For example, a single organisation may be receiving funding from the Department for Health, Department for Work and Pensions (DWP) and the Department for Environment, Food and Rural Affairs (Defra), as well as from the LSC. Therefore the learning and skills provision sits within a complex remit.

### 3. How does the FE system understand effective governance and strategic leadership?

3.1 The conclusion of this section is that there is no common understanding of effective governance and strategic leadership across the FE system. Rather there are a set of different understandings which influence practice and regulation. They arise for a number of reasons, which are explored below:

- The diversity of the FE system and the variety of approaches to governance and strategic leadership used.
- Different primary purposes of governance and strategic leadership exist in different institutions, sometimes within the same sector.
- The history and background of the FE system with its multiple and changing influences, which mean that no single dominant approach to governance and strategic leadership has emerged.
- Different views about what constitutes effective governance and strategic leadership in the general literature and practice of the topic.
- Different forms of accountability to funders, stakeholder groups, and regulators.

3.2 Even the terminology used is not consistent throughout the FE system, and may not be recognised in different parts of the system. The term 'governance' is generally recognised within FE colleges, but may not be understood in the same way in private work-based learning providers where (as summarised in Section 6) corporate governance is more likely to be recognised, at least in larger providers. Within local authority run adult and community learning provision, both terms may be inappropriate in the context of electorally determined processes, and in the third sector the diversity of organisations involved means that any number of different terms may be used. 'Strategic leadership' is, therefore, a useful synonym for governance in some sectors.

3.3 These differences are also found in the different codes of governance applying to the various types of organisations within the system. Private providers will normally operate their corporate governance systems under the Finance and Reporting Council (FRC) Combined Code<sup>11</sup>, which operates on the ‘comply or explain’ principle. Local authority providers will typically operate under the Good Governance Standard for Public Services<sup>12</sup>, which builds on the Nolan principles for governance, and, whilst containing some relatively common features, also takes account of issues such as outcomes for citizens and service users, and promoting values and demonstrating good governance through behaviour. Both factors tend to be relatively ignored in other codes, but they raise fundamental issues about the responsibilities of governing bodies beyond accountability to funders and legal and regulatory compliance. Third sector providers of adult and community learning will typically have their own codes; for example, voluntary organisations have their own governance code<sup>13</sup>. Indeed, FE is the only sector without its own code, being closely regulated by the LSC. We make a recommendation to introduce one in Section 4. Add to this the requirements of the Charity Commission for providers that are charities (or exempt charities in the case of colleges), then a potentially confusing set of expectations and assumptions about governance is created.

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11 The Code can be found at [www.frc.org.uk/documents/pdf/combinedcode.pdf](http://www.frc.org.uk/documents/pdf/combinedcode.pdf)

12 The Independent Commission on Good Governance, 2005, op cit.

13 See [www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)

## The primary purposes of governance

3.4 Some of these varying understandings of governance or strategic leadership stem from providers or interest groups having different primary purposes and expectations of governance. None of these is right or wrong, they simply reflect different interests and priorities. Three key common purposes are represented in the following diagram:

Figure 3.1: different primary purposes for governance



3.5 Governance for maximising institutional performance and success is the dominant (although not sole) purpose of governance in the private sector and in autonomous institutions such as universities and many charities. Much of the rhetoric about board effectiveness is based on this purpose, and board performance is judged by the extent to which it adds value and maximises institutional performance and success. Accordingly, the approach is most at home in a competitive environment with strong market features. Section 5 reports that many of the boards of private providers delivering work-based learning operate within this frame of reference; and some FE corporations also see this as their primary purpose.

- 3.6 Governance for accountability and compliance has been the dominant (although not sole) purpose of governance in much of the public sector, and in FE is primarily the domain of the LSC. Here, the focus is on providers implementing agreed policy (which may not be their own), meeting defined performance parameters (often expressed through targets), avoiding perceived risk, and assuring compliance with legal and regulatory requirements. Effective governance in this approach, therefore, equates to ensuring accountability and the operation of defined processes, and in competitive environments may at least in part operate as a control on the operation of market forces. There are clear tensions between this purpose and that of maximising institutional performance.
- 3.7 Governance for representation and democracy is the dominant (although not sole) purpose of governance in many social organisations or in those providing educational or social services. Here, the focus is on engagement, participation and democracy (hence the associated concerns about the democratic deficit in the other two approaches). The focus of effective governance here is often as much about how decisions are made as on whether they are optimal or not. Some corporations with strong partnerships with local communities report seeing this as the primary purpose of their governance, and this is particularly the case where there is collaboration rather than competition. Staff and student participation (and that of parents in sixth-form colleges) in governance may work best within this approach.
- 3.8 Of course, in reality all three purposes exist to some extent in most providers, but the balance varies and one approach tends to dominate. The interactions between the circles representing these three purposes raise many issues for the governance and strategic leadership of FE. For example, most governance in FE takes place in the context of boards (whatever they may be called) which are accountable not just for the success of their own organisation, but also in varying ways for implementing government policy. However, much of the literature on board effectiveness (and the models which parts of the public sector have been urged to adopt) is predicated on a private sector approach, which – by definition – assumes freedom of action by boards, with all the associated emphasis on strategy, adding value, and so on. There is an obvious paradox here, as, at one and the same time, the government is seeking to encourage private providers in work-based learning because of their perceived flexibility and responsiveness, whilst still retaining close regulatory control of the college sector.
- 3.9 A second factor is less obvious: most public services operate on a ‘fitness for purpose’ basis, with value for money being a crucial taxpayer consideration. Indeed, there may be substantial debate about what services the public should pay for (as in the case of the National Institute for Clinical Excellence, which formulates policy on drug availability). A major element in effective governance and strategic leadership is then to ensure that service provision meets defined standards, whilst achieving optimal value for money – in FE, this is the role of Ofsted and the LSC. However, institutional success in the private sector (and arguably other sectors such as higher education) does not assume a fitness for purpose approach, but rather one based on growth and achieving institutional success usually by striving for excellence through competition or maximising shareholder value. This clearly provides different conceptions of the effectiveness of governance or strategic leadership, and a board that sees its role in this light is likely to be challenging the constraints of a fitness for purpose approach.

- 3.10 The literature on effective governance – and, therefore, generalised ‘good’ practice – is largely based on assumptions which seek to maximise institutional performance. However, much of it is about the processes of governance, and only more recently has increased attention been paid to the leadership roles of boards<sup>14</sup>. To cite just one example, a report by Bain<sup>15</sup> – chairman of the Institute of Directors (IoD) – has identified some of the key collective and personal attributes that effective boards require. Based on a critique of the quality of much private sector governance, he calls for greater attention to be paid to reestablishing trust and integrity in governance and management, a call amply justified in the light of subsequent scandals. Perhaps most relevant to FE is Bain’s discussion of the IoD’s ‘Standards for the Board’ which defines the following personal attributes (each in turn subdivided into different categories): strategic perception; decision-making; analysis and the use of information; communication; interaction with others; and the achievement of results. Clearly these attributes will manifest themselves in very different ways in the FE sector, but – selectively used – they (and other such approaches) remain a potentially useful list of attributes for providers to consider when recruiting board members.
- 3.11 As far as the greater part of FE is concerned, perhaps the most relevant comparative practice in resolving the tensions inherent in the ‘three circles diagram’ is to be found amongst partnership or cooperative organisations, whether for-profit or not. Internationally, organisations based on such structures are very much alive and well. They range in size from large for-profit cooperatives to very small community based initiatives, and include major companies in the USA and Europe<sup>16</sup>. The governance of such organisations is directly relevant to FE, because in most cases a key element of governance is how members or partners should be involved, and how to balance participation with efficient board decision-making – this issue has a very strong parallel with that of the role of staff and student participation in FE college governance. However, in most partnerships there is usually a tension between only two of the competing purposes (institutional performance and participation) as the influence of compliance and accountability may be much less<sup>17</sup>.

## Types of governance and strategic leadership in providers

- 3.12 As with all organisations, the boards (or equivalent) of FE providers exhibit different characteristics, and can be analysed in different ways. Such differences can have a substantial influence on how governance and strategic leadership is understood, and the ‘style’ and general approach of a board may be almost as important as the structure in which it operates. For the sake of simplicity and brevity, the classification of approaches into three general ideal types is all that is needed to explain the argument.

14 See for example, Lorsch J W, and Clark R C, 2008. Leading From the Boardroom in *Harvard Business Review*, April.

15 Bain N, 2008. *The Effective Director*. Institute of Directors: London

16 For a list of the largest cooperatives see the Global 300 list at [www.global300.coop](http://www.global300.coop)

17 For an interesting exploration of a partnership model of governance see the John Lewis Partnership website at [www.johnlewispartnership.co.uk/Display.aspx?&MasterId=768e29e8-41aa-4716-bce2-df302fa1c3d8&NavigationId=543](http://www.johnlewispartnership.co.uk/Display.aspx?&MasterId=768e29e8-41aa-4716-bce2-df302fa1c3d8&NavigationId=543)

- 3.13 The first typical style is a so-called ‘stewardship’ approach, based on the premise that the interests of all those involved in an organisation are shared. It follows that there should be no inherent problem in executive motivation or need for close control. Therefore, although a separation between governance and management may be attempted, in practice there may be much overlap and potential ambiguity. Many private sector companies operate in this way, and include executive as well as non-executive directors. The approach has obvious advantages in terms of the speed of decision-making and encouraging board teamwork, but also potential weaknesses particularly in the single tier structure common in the UK. Accountability to owners or shareholders may be weak, control of a strong executive may be difficult to achieve, and – where public money is concerned – risk may be excessive. The high-profile problems of governance in the finance sector demonstrate some of the potential problems in action, that these were not resolved by adopting the two-tier governance approach more common in Northern Europe.
- 3.14 Much governance in the college sector of FE has been predicated on a stewardship model, moderated by the accountability requirements of the LSC and its predecessor bodies to ensure that the close working relationships implied in the approach exercised at least some control. Moreover, for many governors and senior managers this is the preferred way of ‘doing business’, and FE is a culture where collaboration and partnership is espoused. Accordingly, governance structures in such an approach have tended to emphasise relatively large bodies with a range of membership, a substantial committee system to provide scrutiny (partly so as not to overload the workload on volunteer governors), and relatively weak forms of internal governance review and self-assessment.
- 3.15 The second and alternative approach is conceptually very different, and is where a board concerns itself solely with control through governance, with a rigorous separation of governance from management. Located in so-called ‘agency theory’, the increasing influence of this view was noted in the Higgs Review<sup>18</sup> of corporate sector governance where board effectiveness was “assumed to be a function of board independence from management, trust relations are formally discounted and the ‘control’ role of the non-executive is emphasised”. As a result this view is increasingly found in many governance codes (including aspects of the FRC code), and the approach is likely to gain popularity because of the problems with governance in the banking industry.
- 3.16 In the FE college sector, aspects of this approach have been popularised by the work of John Carver<sup>19</sup>, whose model of board effectiveness is being implemented in part by some colleges. The approach is based on the assumption that the owners (or shareholders) of organisations have different interests from managers, and as the owners do not have control over daily operations it is the role of a board to act in their best interests. This means a board being solely responsible for organisational ‘ends’ (mission), leaving a chief executive to concentrate on the ‘means’ to achieve them, with he or she being robustly held to account. The approach is explicitly hierarchical (and can be criticised as such), and the participation of executives in governance other than the chief executive is not encouraged, nor is the participation of staff and students easy to reconcile with this approach.

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18 Higgs D, 2003. *Review of the Role and Effectiveness of Non-Executive Directors*. Department of Trade and Industry: London.

19 The work of John Carver has been influential on much recent board development; details can be found at [www.carvergovernance.com](http://www.carvergovernance.com)

- 3.17 The third style is a ‘hands-on’ board which concerns itself directly with management issues as well as governance. This approach is typical of many private sector boards and some charitable trusts, almost always where the owners of the company (or the person establishing the trust) are senior board members. There are also strong echoes of it in local authority cabinet arrangements. The separation of governance from management is likely to be weak, and this approach is not generally recommended because it is too operational. (The operation of scrutiny committees in local authorities is an attempt to address the potential disadvantages.) Nonetheless these types of boards are common in practice, and for them to work several conditions typically apply: boards need to be relatively small; they need to meet regularly; senior executives are usually full board members; non-executives need to possess a sound understanding of the business; and the committee system may be weak or non-existent.
- 3.18 In addition to organisational history and culture, and to the requirements of the regulatory environment, perhaps the most crucial factor in determining how governance or strategic leadership in FE boards takes place is the relationship between the chair and the chief executive or principal. In this, FE boards are no different from any other, except for the regulatory requirements falling upon them. In Appendix C, a model of four styles of relationship is outlined, all of which will have a substantial influence on how governance and strategic leadership is operated and understood. The four types are:

Figure 3.2: Approaches to governance based on chair and principal/chief executive interactions

	The chair seeks actively to maximise the effectiveness of the corporation	The chair does not seek actively to maximise the effectiveness of the corporation
The principal or chief executive seeks actively to involve the corporation	<b>Partnership approach to governance</b>	<b>Under-developed approach to governance</b>
The principal or chief executive does not seek actively to involve the corporation	<b>Conflict approach to governance</b>	<b>Managerial approach to governance</b>

3.19 In summary, the types are:

- **A partnership approach** – where both the chair and the principal or chief executive are jointly committed to ensuring an actively involved and effective board.
- **A conflict approach** – where the principal or chief executive seeks to deny the corporation the active involvement it seeks. This is potentially unstable with governance becoming a battle about who has the right to decide what.
- **An under-developed approach** – where the principal or chief executive seeks the active involvement of the corporation, whose chair is for some reason unable or unwilling to respond. This may leave the executive with a lack of support and constructive feedback, and an under-developed governance system.

- **A managerial approach** – where the principal or chief executive is in an overly dominant position because of a lack of commitment by the chair, usually making the board a ‘rubber stamp’.
- 3.20 In addition to the importance of the two-way relationship between the chair and principal, is the relationship of both parties with the clerk to the corporation. The most relevant work here is that of Llewellyn<sup>20</sup> who undertook a study of the impact of ‘triad’ in higher education, however, his conclusions are likely to apply to FE colleges as well. Based on a sample of 110 universities in the UK, using a cluster analysis he identified three groups of institutions where the different nature of these interactions had varying practical implications for governance.
- 3.21 There are numerous other ways of exploring effective governance and strategic leadership, and some of these are summarised in Appendix B.

## What does this mean for governance and strategic leadership?

- 3.22 A major challenge to effective governance and strategic leadership perceived by many respondents during the consultation for this study has been the lack of agreement about what constitutes the main governance roles and responsibilities of an FE provider, even within specific parts of the FE system such as colleges. At first, this might seem a slightly puzzling observation, after all, within colleges the articles of government define six responsibilities<sup>21</sup> for corporations, and both Ofsted and the LSC make judgements about governance as part of their review processes. Moreover, despite increasing innovation, there continues to be substantial similarity between governance processes in most colleges. However, the factors listed above inevitably create a powerful ambiguity about what governance means in practice.
- 3.23 Such difficulties are compounded by the key stakeholder bodies appearing to have different – and sometimes conflicting – expectations of providers in relation to good governance. As far as the LSC is concerned, its approach is set out in the annual financial memorandum and associated processes, such as the financial management and control evaluation (FMCE) (previously a self-review questionnaire – SARQ), which is widely seen as narrow, procedural and compliance focused, and unhelpful in the amount of detail required. Conversely, Ofsted is seen to be moving towards a more rounded view of governance, which is increasingly focused on strategic leadership, impact, and the institutional capacity to improve.

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20 Llewellyn D, 2009. *The Role and Influence of the Secretary in UK Higher Education Governing Bodies*. The Leadership Foundation, see [www.lfhe.ac.uk/publications/research](http://www.lfhe.ac.uk/publications/research)

21 In summary, they are: determining and reviewing educational character; approving the quality strategy; the effective and efficient use of resources; approving annual estimates; HR matters for senior post holders and the clerk; and setting a pay and conditions framework. (paragraph 3 of the articles of government 2008).

- 3.24 In relation to both organisations, providers recounted to us different experiences about inspection, and several commented that their inspectors appeared either not to know much about governance, or were unable to separate governance from management in the way articulated in most governance codes. Add into this, the different expectations of HEFCE concerning HE in FE provision (generally welcomed for being less burdensome), and the ambiguities created by the forthcoming machinery of government changes (see Section 7), then the scope for giving different messages about governance and strategic leadership is obvious. This was summed up – slightly abruptly – by one responding governor who commented to us that “it would be nice if they [the various stakeholder bodies] could agree what they wanted from us!”
- 3.25 This lack of consistency creates potential problems, exacerbated for providers by the funding methodology and regulatory requirements of the LSC and the frustrations for some corporations caused by the capital funding and Train to Gain problems. The move towards shared regulation is an opportunity to provide greater clarity, although as noted in Section 7 this move is itself subject to substantial ambiguity. The following sections identify what action might be undertaken in the particular sectors of FE (including the adoption of an FE college code of governance). However, what most providers would wish, above all – and what we think is necessary – is more all round consistency of approach. The need for this has generally been recognised in some of the initial preparation for shared regulation (including through the work of the Single Voice), although the practical outcomes are yet to emerge.

## 4. A summary of governance in the FE college sector

- 4.1 A major issue that this review was asked to address was the quality of college governance and how it might be enhanced. However, it needs to be stated at the outset that there is no simple answer to questions about the quality of college governance, for at least two reasons: firstly, the substantial diversity of the sector; and secondly, the absence of sector-wide agreement about what constitutes the effectiveness of college governance and therefore how its quality can be measured. Although Ofsted inspection data exists (and is the only sector-wide information available), both its methodology and conception of what constitutes effective governance is challenged by some colleges, and its criteria are not set in any agreed framework – for example, a voluntary governance code to which all parties subscribe. Accordingly, the data summarised here (and presented in more detail in Appendix C) brings together what information exists, but it does not allow ‘simple’ answers to be provided to what are ‘complex’ questions.
- 4.2 However, there is general agreement from various sources that the quality of college governance is improving, and has done so since incorporation. The Foster review<sup>22</sup> itself supported this view, noting that “college governance has grown considerably more robust since the early days following incorporation”, and it goes on to observe that “whilst there is variation in performance across the country, most governing bodies appear to be discharging their obligations in terms of stewardship, probity and accountability reasonably well”. In answering the question “are existing college governance arrangements fit for future purpose?” Foster concluded that “no changes are recommended to governance at individual college level. Indeed we believe the greater clarity of role and purpose, together with a medium term goal of self regulation ... will strengthen the importance of the FE college corporation and give them a vital challenge to address”. The Foster review added two caveats: that the membership of corporations needed to be more diverse, and that there should be greater clarity about the role of board members including a role description for chairs. Both of these issues are addressed below.
- 4.3 Developments since the Foster review (including the removal of some restrictions in the instrument and articles of government) have led to a higher profile for governance, and a recent report produced by the 157 Group claims that (based on Ofsted data) amongst its members governance is “strong, well informed, and appropriately challenging to management, with clearly defined functions for governors in setting strategic direction and acting as critical friends”<sup>23</sup>.

22 Foster, A, 2005. *Realising the Potential – A review of the future role of further education colleges*. Nottinghamshire: DfES Publications.  
[www.dfes.gov.uk/furthereducation](http://www.dfes.gov.uk/furthereducation)

23 157 Group, 2009. *Governance and the 157 Group*, at [www.157group.co.uk](http://www.157group.co.uk)

- 4.4 Ofsted generally appears to support these conclusions, and considers it is clear that “the further education sector is improving”, but nonetheless believes that “there are still too many colleges which remain only satisfactory and have not demonstrated significantly improved performance over time”<sup>24</sup>. Two Ofsted reports published in 2004 identify the contribution of governance to both successful and failing colleges. In *Why Colleges Succeed*<sup>25</sup> Ofsted is clear that “another feature of all the [successful] colleges is their strong and effective governance”.
- 4.5 However, the many respondents providing information to this study also commented on the variability of governance in the sector, and this is evident in Ofsted’s own inspection data. Based on a sample of Ofsted gradings for all full college inspections undertaken in 2008 for the leadership and management element in its inspection methodology, overall some 33 per cent were in the inadequate or satisfactory category, a result which needs to take into account the policy of Ofsted and the government to ‘raise the bar’ so that ‘satisfactory’ performance is no longer viewed as acceptable but is interpreted as ‘coasting’ and not good enough. However, although this is the only comparative statistical data available, its interpretation needs to be treated with care as governance is only one element in the leadership and management category and is not separately rated.
- 4.6 Various strengths in current governance were regularly cited by respondents, and appear to attract a reasonably high degree of consensus:
- Governance is generally felt to be improving, and governors largely perceive themselves to be doing a ‘good job’.
  - When aggregated, the total experience of independent governors represents a huge potential resource to FE. However, views differ about how effectively this is used.
  - Performance management systems are starting to be introduced in colleges with beneficial effect, and corporations are starting to adopt their own key performance indicators to assess institutional performance beyond those required by the LSC.
  - Effective audit committees and processes for ensuring monitoring and control systems are increasingly being introduced, and stakeholder bodies can have increasing confidence that basic governance compliance systems are in place. However, some questions about the broader aspects of internal audit remain (see below).
  - Despite a number of challenges and frustrations about the regulatory environment the motivation of individual members of corporations is generally reported as remaining high, and they gain satisfaction from their role. Nonetheless, there are concerns about whether this will continue if the issues summarised below and in Section 7 are not addressed.

24 Ofsted, 2008. *How Colleges Improve*. [www.ofsted.gov.uk/Ofsted-home/Publications-and-research/Browse-all-by/Documents-by-type/Thematic-reports/How-colleges-improve](http://www.ofsted.gov.uk/Ofsted-home/Publications-and-research/Browse-all-by/Documents-by-type/Thematic-reports/How-colleges-improve), p 1

25 Ofsted, 2004. *Why Colleges Succeed*, p 16 [www.ofsted.gov.uk/content/download/1404/10072/file/Why%20colleges%20succeed%20\(PDF%20format\).pdf](http://www.ofsted.gov.uk/content/download/1404/10072/file/Why%20colleges%20succeed%20(PDF%20format).pdf)

4.7 College governance faces a number of current challenges. Overwhelmingly, the dominant one is perceived to come from the FE funding and regulatory environment. Almost without exception, governors, clerks and chairs responding to this study felt that current funding and regulatory arrangements – particularly of the LSC – were antithetical to effective institutional governance. Collinson et al<sup>26</sup> in a study of the views of 20 college principals confirms these responses, and notes that “principals argued that multiple, competing and sometimes contradictory external pressures and systematic rigidities pushed them towards operating more like ‘branch managers’ of a national enterprise rather than influential servants of their local communities”. Such complaints are longstanding and were considered as part of the previous Department for Education and Skills (DfES) review of governance, but have become more acute with the tensions felt over capital funding and Train to Gain. This is particularly unfortunate as the moves by DIUS towards increasing institutional flexibility in governance through the revised 2008 instrument and articles were widely welcomed.

4.8 Other major challenges to consistently effective governance are reported as:

- A perception that greater clarity and consistency is required about what constitutes the governance responsibilities of the corporation.
- Notwithstanding the increased flexibility in the membership of corporations, there is a view that greater freedom of institutional action is appropriate and that clarification of some resulting issues is required.
- Board size and other aspects of membership remain an issue, particularly in relation to: the recruitment of high-quality governors for some, but not all, institutions; the need to increase the diversity of membership (particularly of black minority ethnic members which is a challenge for most colleges); and student and (to a lesser extent) staff participation.
- Some – but not all – corporations find it difficult to fulfil effectively their responsibility for determining strategy and relating this to educational character and enhancing the quality of provision. There are various reasons for this, which are explored below.
- Some respondents recognised that demonstrating public benefit (a requirement of the Charity Commission) by corporations was a challenge, and although substantial activity took place in building links with local communities, more needed to be done in some cases.
- Although an understanding of the importance of effective governance amongst principals/ chief executives is felt to be increasing, some colleges report that this may not exist at the next management level, with consequent difficulties for effective reporting and monitoring. The importance of effective governance might feature more prominently in the training and development of principals.

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26 Collinson D (ed), 2009. *Researching Self-Regulation in FE Colleges*, LSIS at

[www.isis.org.uk/Libraries/Documents/V12ResearchingSelf-RegulationinFEColleges.sflb](http://www.isis.org.uk/Libraries/Documents/V12ResearchingSelf-RegulationinFEColleges.sflb)

- There is recognition that some corporations do not constructively challenge executive proposals as effectively as is desirable, and may be more comfortable providing support<sup>27</sup>.
- The role of the clerk is widely regarded to be crucial to effective governance, but there is evidence that not all colleges may be devoting enough time or resources to the role.
- As the external environment becomes more turbulent, the need for more effective information for governors grows (including briefings and benchmarking). Some ‘good’ practice exists in meeting this demand, but governors report that more needs to be done in a way that avoids duplication and is simple to access.
- There is a particular challenge for small colleges in ensuring effective governance, as many standard tasks have to be undertaken with fewer resources available. Nonetheless, the idea that all small colleges face problems with effective governance is misplaced.
- Finally, there are concerns in some corporations about the operation of internal audit, and whether the potential value of the role is fully exploited.

All these issues are pursued below and in Appendix C.

## Clarifying corporation responsibilities

- 4.9 Since the evidence for this review was collected, our conclusions set out in Section 3 that clarifying corporation responsibilities is a necessary step to enhancing governance in the sector have been confirmed by the recent publication of a further LSIS study. Based on a case study analysis of six colleges, Gleeson et al<sup>28</sup> conclude that “a key message arising from the study is that the nature and purpose of college governance remains unclear”. We agree. The issue, then, is how to proceed? On the basis of the data available to us, we think that three measures are necessary: first, greater consistency across the sector in identifying what is meant by effective governance and how it is to be judged (see Section 3); second, the development of an FE Code of Governance; and third, greater ‘good’ or innovative practice information about how governance is being exercised.
- 4.10 As far as greater consistency is concerned, Gleeson et al state the need well: “creative or strategic college governance is restricted by invasive audit cultures, changing funding regimes and a proliferation of government agencies and departments that do not operate through a single voice. There is a need for greater partnership and consistency in the way external agencies coordinate their activities with colleges in improving governance and accountability in the sector”. In order to make sense of this environment, corporations struggle to come to terms with the resulting ambiguity, but often feel aggrieved by apparent inconsistencies.

27 A useful guide to the challenge role of governors has just been produced by LSIS; see Field M, 2009. *Learning to Balance Support and Challenge*, LSIS.

28 Gleeson D, Abbott I and Hill R, 2009. *Creative Governance in Further Education: the Art of the Possible?* LSIS at [www.lsis.org.uk/Libraries/Documents/CreativeGovernanceinFetheartofThepossible.sflb](http://www.lsis.org.uk/Libraries/Documents/CreativeGovernanceinFetheartofThepossible.sflb)

- 4.11 Second, for such coordination to exist it needs to be based around something substantial, and not just be a temporary agreement by stakeholders to be forgotten in due course. Moreover, if shared regulation is to have any substance then it needs to be based on agreement by all parties on what is being shared. We think that a practical way forward is the production of an FE college code of governance, setting out the primary responsibilities of corporations and operating (as with other similar codes) on a comply or explain basis. The code should be short and succinct, borrowing where relevant from other established codes including the one produced by the Financial Reporting Council (FRC), and that used in higher education. It should be drawn up by a working group consisting of all key relevant stakeholders, in which the voice of chairs of corporations is central. Once agreed, it should be the basis for consistent regulation by all key groups in the sector, including the successor bodies to the LSC. Specialist colleges should consider what aspects of such a code should apply to them.

**Recommendation 1: That a code of governance for FE colleges be drawn up by a working group consisting of all relevant key stakeholders, and that once agreed it should be the basis for consistent regulation by all key groups in the sector.**

- 4.12 In the expectation that this recommendation will be adopted, many other proposals made below fall into the category of suggested content to go into the code rather than being prescriptive requirements falling upon all colleges.
- 4.13 Third, much greater ‘good’ or innovative practice information about how governance is being exercised needs to be made available within the colleges sector. This should have no element of prescription: rather, it should document a range of interesting practice, for colleges to determine themselves what – if anything – they wish to adopt. A recommendation to this effect is made below.

## Instrument and articles

- 4.14 As noted above, the instrument and articles of governance for colleges were last revised in 2008, and will need revision again by April 2010 to take account of machinery of government changes. They set out the statutory framework within which corporations operate. Some aspects of the 2008 revisions were widely welcomed by colleges as increasing flexibility, particularly in simplifying who could be external independent members of corporations, and also in removing some of the prescription around the conduct of disciplinary procedures which had previously been fairly tightly defined. Such changes have been widely welcomed in the sector, and clerks report that in many cases it is easier to find high quality governors than before.

- 4.15 There appear to be two views within the sector about whether further substantial changes to the instrument and articles are required. The first view is that although there are areas where they could be improved, it is not a priority, and colleges should be given time to adjust to the 2008 changes. The second view (which we perceive to be a majority of respondents) is that further changes would be welcome as a sign of commitment to the shared regulation agenda, providing they were introduced in consultation with colleges. We agree with this second view, and make recommendations accordingly.
- 4.16 The key issue here, is to question whether it is time for a different kind of instrument – much shorter and enabling, rather than the current and relatively prescriptive one. Other than the amendments made over time, the basis of the current instrument and articles was the need to ensure a robust and consistent framework for colleges at the time of incorporation, when governance was less developed. Since then, colleges have – for the most part – undertaken their regulatory roles diligently – indeed, the membership changes permitted in 2008 were made in recognition of this growing maturity.
- 4.17 A pared down framework (particularly the instrument) would seek only to define and regulate essential core elements, and much of the current content of the instrument could become guidance, with some perhaps included in the proposed code of governance. The tone of the instrument could also change and be permissive rather than controlling. Such a measure would have a number of advantages:
- It would permit more innovation in governance, and be a strong signal that government was committed to shared regulation.
  - It would be compatible with similar approaches in other sectors, where the use of governance codes to replace lengthy and restrictive statutory documents is becoming increasingly common.
  - In particular, it would place colleges on a broadly equal footing with higher education, where the instruments of post-1992 HEIs are currently being substantially revised, simplified and shortened. Since DIUS and the Privy Council are thought to have largely agreed to this approach in HE, it is not clear why it would be thought inappropriate for FE.
- 4.18 However, there are three main risks:
- First, the variability noted above (and in Ofsted data) in the consistency and rigour of governance must lead to questions about whether all corporations are mature enough to operate within such a revised instrument. However, the adoption of an FE governance code to operate on a comply or explain basis might be an adequate guarantee, providing (as in other sectors) this was subject to annual reporting and backed by appropriate audit arrangements.
  - Second, the adoption of such an approach would require enhanced arrangements in the role of the clerk, who in some colleges would need to become much more proactive. This will need increased resources (mainly time).

- Third, given the size of the college sector, the innovation in governance practice that might result could possibly lead to occasional problems, where inappropriate judgements had been made by corporations and notwithstanding the checks and balances offered by the comply and explain process. This risk is an inevitable consequence of increased freedom of action, and all stakeholders will need to determine whether it is worth running. Carefully implemented, we think it is.

4.19 To substantially revise the model instrument and articles would need time for the content to be agreed and for legal advice to be procured and further time to enact. Such a revision should be the subject of substantial discussion in the sector, with the intention of getting agreement from all key parties. One possible route would be to involve the same working group proposed above for drawing up a code of governance. The complexity of this would mean that it could not be completed for enactment by April 2010, so would follow at a later date.

**Recommendation 2: That the model instrument and articles of governance be made shorter and enabling, and only seek to define and regulate essential core elements, with much of the current content of the instrument becoming guidance.**

4.20 A judgement needs to be made on how such a recommendation would be implemented, and there appear to be two main options: either a complete cross-sector introduction (which runs a significant risk in relation to the issues set out in paragraph 4.18), or a phased introduction with those colleges that can demonstrate maturity and effectiveness in governance being given greater flexibility at an earlier date. How this might be done, should be a matter of debate within the sector if there is general agreement about the recommendation. Appendix C also notes some specific technical issues to be considered when further changes are considered, including the desirability of introducing remuneration committees in all colleges as part of the new code. This is standard practice in most codes of governance and in Appendix C we argue that colleges will need to demonstrate greater transparency and robustness in this area. Accordingly, we propose that the new code require corporations to introduce remuneration committees, the terms of reference, membership and conduct of which should be determined in accordance with generally accepted good practice elsewhere. If they do not wish to do so they should explain why not.

4.21 The current instrument and articles define the position of ‘senior post holders’ in relation to particular powers resting with nominated senior individuals (particularly for purposes of taking disciplinary action). The main issue to consider here is whether such a stipulation is any longer required, and should simply be part of the proposed code of governance with any necessary powers being defined in a schedule of delegation that all colleges should be expected to adopt as ‘standard’ good governance practice. This would permit greater freedom about such matters as the management and discipline of staff, which in any case needs – as with all organisations – to be undertaken in a way that complies with the law of the land. If this proposal were not adopted, then the designation of the clerk as a senior post holder may need to be considered in a consistent way across colleges.

## Membership and recruitment

- 4.22 Ensuring an appropriate board membership is probably the most crucial aspect of creating the basis for effective governance. Without motivated governors who have the necessary skills, experience and independence, effective governance is simply not possible. This is widely recognised in the sector, and clerks and chairs spend a good deal of time in trying to recruit suitably qualified potential governors.
- 4.23 There is no robust or reliable data on corporation membership and governor recruitment in the college sector. There is no national database, and the last comprehensive survey was undertaken in 2002<sup>29</sup>. There is, however, data on black and minority ethnic governors reported in Appendix C. Overall, many – although not all – colleges report difficulties in recruiting governors from non-traditional groups, particularly from BME communities. Sometimes this is reported to be related to local population characteristics, but more often may be to do with perceived difficulties of attracting applications. However, other colleges report more success, and there may be a correlation with institutions that report highly proactive approaches to governor recruitment generally. Many colleges acknowledge the need to do more in this area in order for their corporations to be broadly representative of the communities they serve.
- 4.24 The diversity of the sector means that there is no agreement about the extent to which the recruitment of independent members is or is not a consistent problem across colleges. Some institutions claim that because of their particular circumstances the recruitment of suitably qualified governors is difficult due to such factors as geographical location or competition for governors from other public bodies (some of whom remunerate board members). Other colleges find no such difficulty, and claim to have a pool of potential future members from which to choose. A conclusion arising from some of the consultative workshops was that – in general – successful recruitment was strongly related to several factors: the effort that colleges (and particularly the clerk) put into governor recruitment; the status and experience of existing governors and therefore the professional networks available to them; and the status and reputation of the college in the communities it serves. The same may be true for the recruitment of BME governors.

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29 Davies P, 2002. *The Changing Face of College Governance*. Learning Skills Development Agency. This reported that 30 per cent of governors were female; 1–6 per cent were registered with a disability; a majority were between 40 and 59 years of age; 88 per cent of chairs were male; and 98 per cent of chairs were white British.

- 4.25 There is also little robust statistical data on the retention and succession planning of corporation members. Partly to address this, our survey of the Landex group of institutions (see Appendix F) sought information in this area, and even on the basis of this relatively small sample it is clear that the periods of office of governors varies considerably. Three colleges applied variable periods of office, and explicitly allowed renewal without limit, a practice defended by one college. The survey asked colleges to identify the period of the current longest serving member, and the answers in order of length were: 30 years; 16; 15; 14; and 12. Discussion of this issue at some of the consultative workshops suggested that such variations in practice are typical of the sector. These results need to be seen in the context of the instrument and articles of government, which require lengths of appointment not exceeding four years, although appointment can be renewed.
- 4.26 This is a contentious area, and some governors, chairs and principals justify extended lengths of continuous service by reference to the special contribution of board members, the experience and expertise they bring, and their contribution to ‘institutional memory’. They may also feel that where such extended service causes difficulties this should be capable of being resolved by corporation search committees. On the other hand, such arrangements do not sit comfortably alongside recognised good practice elsewhere, and the advantages of a regular turnover of members are considerable. Moreover, the special contribution of a few independent governors can be rewarded in other ways (for example, in an ambassadorial role or as a ‘patron’) rather than in a continuing governing capacity. Although the FRC Combined Code<sup>30</sup> does not prohibit long-term continued non-executive board membership, it frowns upon it, and the Guide for Governance in Higher Education<sup>31</sup> goes further, specifically stating that: “continuous service beyond three terms of three years, or two terms of four years, is not desirable... After this point members should normally retire and be replaced by new members” [paragraph 2.53]. We agree, and propose that FE colleges follow this practice. In accordance with our recommendations above, this is a matter best dealt with in the new code of governance, thus enabling corporations to be able to explain why they choose not to comply.
- 4.27 An important issue related to succession planning is the arrangements in place for reviewing the performance of individual governors. This is an issue which is likely to grow in importance as corporations increasingly seek to monitor their performance rather than just rely on LSC processes. Current arrangements vary, and there is no data on the number of colleges where such review is undertaken. Our impression is that it remains relatively rare, and where undertaken usually takes the form of an annual unstructured discussion between the chair and individual governors. Increasingly, other sectors are requiring annual reviews (particularly where board members are remunerated), and more colleges are likely to adopt such practices. This is an area where more information about the practice of corporations could be usefully collected and shared by clerks.

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30 The Code can be found at [www.frc.org.uk/documents/pdf/combinedcode.pdf](http://www.frc.org.uk/documents/pdf/combinedcode.pdf)

31 CUC, 2009. *ibid.*

- 4.28 The involvement of students and – to a lesser extent – staff in governance continues to be controversial. The position of student governors is considered first. It was discussed in a consultation document produced by the government as part of an earlier review of the regulatory framework for colleges<sup>32</sup>, which noted that “the FE White Paper committed to ensuring a higher level of learner involvement in decisions affecting their learning experience” and that as a result a governing body should have “at least two student governors”. Some colleges make great efforts to try and ensure that these potential benefits of student participation are turned into reality. Conversely other corporations report struggling to try to achieve the potential benefits of student participation, and comment that the reality is often that student governors may be difficult to recruit, and participate little.
- 4.29 It follows that if student participation is to help enhance governance – rather than just being a token presence – then substantial support has to be provided by colleges (usually through the clerk). Some do this, and are strongly committed to developing student participation. Other colleges query the benefit, and conclude that – however well-intentioned – effective student participation as governors will continue to be the exception rather than the rule. Some of the difficulties here stem from the different understandings about the primary purposes of governance considered in Section 3 of the main report.
- 4.30 However, the reality is that – whatever the tensions in current arrangements – student governors are likely to be here to stay at least for the foreseeable future, and colleges will need to do more to realise the potential advantages. Appendix C sets out four possible steps including sharing good practice, including looking beyond the English FE system, for example by reviewing the well-regarded Scottish initiative (Sparqs)<sup>33</sup> to support student participation.
- 4.31 Some – but not all – of the same issues apply to staff governors, who may constitute between one and three corporation members. Typically the effectiveness of staff participation depends on two key issues: firstly, the attitude of the corporation to staff membership, and secondly, the particular characteristics of the individual staff who become members. However, the future challenge for colleges is similar to that for student governors: how to provide the necessary support for staff governors to ensure effective participation and that they understand their role fully. Some colleges could also do more to brief prospective staff governors about the requirement of the role, and to inform the voting constituency about the skills and experience that staff governors might ideally possess. As a generalisation, the effectiveness of the recruitment and elective process for staff governors is often a barometer of the health of the overall staffing situation in a college: where a positive climate exists, then fewer difficulties about staff governors may occur; but conversely a more difficult HR climate may result in those tensions manifesting themselves in the operation of staff membership of corporations.

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32 *Instruments and Articles of Government for Further Education Colleges: Report of the 2006 Consultation, Department for Education and Skills* at [www.dius.gov.uk](http://www.dius.gov.uk)

33 See [www.sparqs.ac.uk](http://www.sparqs.ac.uk)

- 4.32 A particular issue concerning staff membership raised by several respondents in the data collection for this review, was whether corporations should have freedom to appoint other members of the executive team to the board as full members. Appendix C summarises the arguments for and against, and concludes that if the instrument and articles were made more flexible, it is likely that some corporations might wish to move in this direction, and at least one university has done so and more may follow. If corporations had the power to innovate in this way, what would be important was that any such decision to strengthen executive membership was not made on the basis of the personal views of either the corporation chair or principal, but as part of a rigorous review of governing body effectiveness and with a thorough awareness of the resulting issues.
- 4.33 There is agreement in the college sector that training, development and support for governors is crucial, but also that it is no substitute for appropriate recruitment in the first place. In other words, development has to support high quality governors, and not try to remedy the consequences of ineffective recruitment. Almost all colleges appear to provide some form of governor development and support, not least because provision is reported to the LSC, and taken into account by Ofsted. Consideration of such activities needs to start with practice within individual colleges, and all corporations need to define what is required by their own governors. The starting point for this – as in existing ‘good’ practice – is for an ongoing needs analysis of governors, usually coordinated through the clerk. To meet such needs all corporations should have their own governor development plan, and a dedicated budget to implement it, and we propose that the new code should have such a provision. We were told by some respondents that funds do not exist in some colleges for governor development, or that principals were not prepared to support requests from governors to attend events. This is simply unsatisfactory, and resourcing governor support and development is a matter for the corporation and not a principal. Put simply, any corporation that is not capable of resourcing its own support and development needs is unlikely to be able to govern its institution effectively.
- 4.34 Nationally, there is a substantial amount of governor training and development provided through organisations such as LSIS, AoC and private providers, some of which is offered regionally. Much of this is well regarded, however, a regular comment from respondents was that such activities are fragmented and could be coordinated more satisfactorily. There is also a strong case for a substantial strengthening of briefing information available to governors and supplied through clerks. In order to be credible, such activities need to be led by providers with very substantial experience and who have worked at the most senior Chief executive levels in organisations and have a deep understanding of governance. Similar needs for support and development exist for clerks, and therefore we make one joint recommendation.

**Recommendation 3:** That as part of the preparation for shared regulation, the current arrangements for the development, training and support of college governors and clerks be reviewed, and more integrated arrangements introduced for delivery.

- 4.35 In this area there is a substantial opportunity for enhancing both the performance of governors and the quality of the overall governance by identifying and sharing both ‘good’ and innovative practice. The starting point should be collecting data on membership and other aspects of practice by an appropriate sector body for use by colleges. One aspect of such data should be membership issues such as board size, the nature of membership, recruitment practices, periods of office, and the other factors noted above. This is not intended as a bureaucratic exercise for use by a regulatory body, but rather as a self-help activity for clerks to complete because it would be in their own interests to do so. Who should be responsible for such data is a matter for discussion, but the Clerks’ Network should be central to discussions. This might be an annual report on sector governance, conducted by clerks and through clerks, although doing so biennially might be better and reduce the modest administrative burden.

**Recommendation 4: That data on membership and other aspects of governance practice should be collected regularly by an appropriate sector body for use by colleges.**

## Reward and remuneration

- 4.36 This issue has been considered in a number of previous governance reviews in the sector, and strong views are held on both sides of the argument as to whether remuneration in some form is necessary to recruit and reward high quality governors. Appendix C sets out the arguments on both, and concludes that no data is available to confirm or deny the arguments of either side, and the merits of the argument for remuneration is likely to vary locally depending upon a number of factors. On balance, the opinion amongst the governor community in FE appears to continue to be strongly against remuneration, and this is consistent with the conclusions of both the AoC and the Department for Education and Skills (DfES) when the last governance review was undertaken in 2006.
- 4.37 Whatever the merits of the argument, it is likely that the pressure for remuneration will grow and that it will remain a contentious issue. The main justification for payment must be to improve board performance and the quality of governance. It follows that corporations who wish to remunerate should be able to demonstrate that robust processes are in place to review the effectiveness of governance and the performance of both the board and individual members, including the chair. In such circumstances, it may be difficult to justify remuneration in colleges that at a minimum do not receive favourable Ofsted ratings, but the internal judgement of board effectiveness might be expected to be considerably more challenging than that.

- 4.38 As far as the remuneration of senior officers – particularly the chair – of a corporation is concerned, it is possible to make a stronger case based on the workload and time involved, and the greater responsibilities – and potential liabilities – carried by the post-holders. The moves to shared regulation and the greater duties generally falling on corporations and their senior officers may further strengthen the case. Some chairs – faced with ever-increasing diary commitments – advocate this approach, but the majority appear not to support it. The notion of distinguishing between senior officers and other governors is, of course, itself contentious, and critics argue that such a decision might introduce unnecessary tensions into board meetings.
- 4.39 The key issue here is whether prohibition on remuneration should remain or whether it should be relaxed, if individual colleges wish to consider adopting it in the future? A precedent may have occurred in that at least one university now remunerates all independent governors, and has the powers in its instrument of government to do so. Clearly, no action can be taken until the position is clarified concerning what body in the sector will act on behalf of the Charity Commission in regulating the exempt charitable nature of colleges. Once this has been determined, a policy needs to be identified that is clear to colleges. If such a policy were adopted, college instrument and articles would need to be amended in due course.
- 4.40 Subject to the approval of the various regulatory bodies, and that clear, robust and evidence-based cases for remuneration can be made, there seems no reason why corporations should be prohibited from having the powers to remunerate governors. Many will not wish to do so (and there should be no requirement), but where a good case can be made and a corporation can demonstrate value for money, there seem no good grounds for not giving colleges the powers to do so. This view is consistent with the general tenor of this report, which argues that – subject to robust risk assessment and quality monitoring arrangements – under a shared regulation agenda colleges should be able to take the action that they can convincingly present as being in both their own best interests and those of the communities they serve. The Charity Commission guidelines – suitably implemented – provide such a test.

**Recommendation 5:** That – subject to discussions between the Charity Commission and appropriate bodies in FE – corporations be given the power to introduce remuneration for independent members if they wish, although there should be no requirement to do so. Corporations wishing to do so should be able to demonstrate clear, robust and evidence-based cases for remuneration.

- 4.41 If the opportunity for governor remuneration were to be introduced, it would require robust procedures to be operated by remuneration committees (recommendation 3 proposes that these are implemented throughout the sector), and which may need to co-opt independent members. A decision would also need to be made about whether remuneration levels should be decided nationally (as in the NHS) or locally. The spirit of shared regulation favours the latter approach, but the constraints of the regulatory environment probably mean that a relatively standard ‘rate for the job’ would emerge in any case.

- 4.42 Although remuneration for governors is contentious, the payment of expenses is not – or at least should not be. This is normal practice in almost all governance throughout the public and private sectors, and it is a matter of principle that no governor should be out of pocket for the services provided. Most colleges appear to pay expenses, but during the consultation events we were told of some that do not. This is poor practice and should not happen. However, action is in the hands of the governing body itself and, therefore, no recommendation is necessary.

## Corporation chairs

- 4.43 As noted above, chairs play a crucial role, perhaps the most important of which is providing leadership to enable the corporation to feel confident about its ability to undertake its responsibilities effectively. Whilst recognised in the private sector literature on board effectiveness<sup>34</sup>, this leadership role has generally been under-emphasised in FE with more attention paid to the role of the chair in undertaking the processes of governance. However, in the consultative workshops there was an increasing recognition of the leadership role of chairs, and of the personal challenges this raises. This attention to corporation leadership is likely to grow in the next few years, with greater resource pressures on public expenditure, and with colleges having to take difficult and controversial decisions.
- 4.44 Until recently, support for chairs was relatively limited, but this has been expanded by the development of the Governors Council, which has a valuable role to play in briefing and supporting chairs, as well as helping them act as an effective lobby group. Despite the general enhancement in the quality of governance, in some of the consultative workshops and literature reviewed there remain concerns about whether the full role of chairs, as required by current and future circumstances, is consistently well understood across the sector, and whether greater clarity is required. Accordingly, we have discussed with chairs at some of the consultative events whether an agreed outline role description would be helpful for corporations in thinking about the responsibilities of chairs in relation to the future challenges that colleges will face, and may also assist the recruitment of new chairs. On balance, the idea was supported, providing adoption is voluntary, and accordingly a draft role description is attached as Appendix 1 in Appendix C<sup>35</sup>. We recommend that this draft role description be widely discussed by chairs – and amended as necessary – before being formally issued. The Governors Council should be closely involved in such consultation.

**Recommendation 6:** That a role description for the chair of a corporation be agreed, after wide discussion by chairs and other interested parties, and then be adopted by colleges on a voluntary basis.

34 See for example Lorsch J W and Clark R C, 2008. Leading From the Boardroom in *Harvard Business Review*, April.

35 The draft role description for corporation chairs has been assembled from existing sources; for details see Appendix C.

## The clerk

- 4.45 The importance of the role of the clerk in effective governance in FE is generally recognised within the college sector. Various attempts to support this role have been undertaken during the past few years, for example, the ‘Clerks’ Network’ operated through the AoC<sup>36</sup> and the provision of various development activities (including the ICSEA certificate in FE run through LSIS<sup>37</sup>). Nonetheless a number of issues about the role of clerks remain, and many were highlighted in the consultative workshops for clerks organised as part of this review.
- 4.46 At the moment, not enough information is available on how the role of the clerk is undertaken in colleges. There is concern, however, that some colleges might not be devoting adequate resources to the role, and might be interpreting the role of the clerk too narrowly. It follows that more research might be valuable to assess the extent to which variations in the practice of governance are related to the way the role of the clerk is undertaken. Such a study would also be helpful in highlighting the important role of the clerk for those colleges where this has not yet been recognised. We recommend that such a study should be commissioned and involve the Clerks’ Network.

**Recommendation 7: That a study be commissioned on how the role of the clerk to corporations in colleges is undertaken, and that this should involve the Clerks Network.**

- 4.47 In general, clerks at the consultation workshops expected their institutions to face substantial challenges in the years ahead, and believe that additional demands will be placed upon them and their corporations. In such circumstances, they expect to have to provide enhanced levels of service, with better levels of board briefing and support. Some are confident that this can be done, and that their college understands the importance of the clerk’s role. Others are much less confident, and report being concerned that their institution may wish to drive down the costs of governance to the detriment of an effective clerking role.
- 4.48 In the face of such challenges, the question has to be raised: is the full and proactive job of the clerk actually ‘doable’? The answer from some of the workshops was yes – where a college understood the importance of the role, resourced it adequately, and expected high standards to support board effectiveness. However, it may not be ‘doable’ where these conditions do not apply, on a limited contractual or part-time basis (unless the clerk employed had extensive senior level experience), and that the contract was resourced on a satisfactory basis. It follows, that in the worst case any attempt to drive down the costs of clerking below what is reasonable may threaten institutional governance, and would be a significant risk factor for corporations to address.

36 See [www.aoc.co.uk/en/college\\_governors/national\\_clerks\\_network.cfm](http://www.aoc.co.uk/en/college_governors/national_clerks_network.cfm)

37 See [www.centreforexcellence.org.uk/Default.aspx?Page=Programmes&id=234&status=Live](http://www.centreforexcellence.org.uk/Default.aspx?Page=Programmes&id=234&status=Live)

- 4.49 For the majority of corporations where the role of the clerk is well understood, a different question was identified at the workshops: what can reasonably be done in an efficient and non-bureaucratic way to enhance the performance of clerks? Appendix C identifies a number of possibilities, of which the most important is to clarify the responsibilities of the post. Accordingly, a draft role description is attached to Appendix C<sup>38</sup>. We recommend that this draft role description be widely discussed by clerks – and amended as necessary – before being formally adopted. The Clerks’ Network should be closely involved in such consultations.

**Recommendation 8: That a role description for the clerk to the corporation be agreed, after wide discussion by clerks and other interested parties, and then be adopted by colleges on a voluntary basis.**

- 4.50 Other proposals include an enhanced programme of training and development activities for clerks, and this is catered for in recommendation 3.

## Strategy, measuring performance and quality

- 4.51 The role of a board in developing and approving strategy and the associated task of measuring its achievement is a fundamental aspect of governance, emphasised in all sectors, and it has become part of the mantra of effective governance. In FE, this task is inextricably linked with the quality of learning. Although the effectiveness with which the stewardship roles of corporations have been undertaken are generally felt to have improved, there has been more concern about the strategic roles. As with other aspects of governance in the sector, the key issue appears to be one of variability in practice amongst corporations, although there are numerous examples of ‘good’ practice that enable a corporation to play a central role in strategic development. For example, in our survey of Landex colleges one corporation reported that it produced a detailed rolling seven-year strategic plan with associated performance indicators that were reviewed regularly<sup>39</sup>.
- 4.52 There are a number of reasons for such variations and why some corporations find meeting their strategic responsibilities a challenge: first, developing strategy can be a difficult task for many individual governors in all boards and requires a sound understanding of the environment in which colleges are operating; second, there is a widespread view that the emphasis of the regulatory bodies on compliance has tended to compound the difficulties faced by some corporations in being strategic; third, effective strategy formulation requires robust and comprehensive information which might not always be available; fourth, the reality is that the need for a strategic emphasis by corporations probably varies depending upon their circumstances; and fifth, variations may occur for more mundane reasons: that the organisation of corporation business often tends to emphasise the immediate and may provide little opportunity for more reflective strategic and performance related discussions.

38 The draft role description for clerks has been assembled from existing sources; for details see Appendix C.

39 See [www.plumpton.ac.uk/pages/viewpage.aspx?PageClass=Information&PageID=21&PageTitle=Corporate % 20 Information&DepartmentID=6](http://www.plumpton.ac.uk/pages/viewpage.aspx?PageClass=Information&PageID=21&PageTitle=Corporate%20Information&DepartmentID=6)

- 4.53 The contentious developments in the FE funding environment in the last year have generally not helped colleges to adopt a considered strategic view of future developments. Although the dangers of engaging in short term institutional growth without a corresponding strategy are generally recognised, the increasing short-termism of the LSC and government in relation to funding has given rise to a debate about whether meaningful strategic development is actually possible by corporations. In several of the consultative workshops, different views were strongly heard: on the one hand, the ambiguity of the funding and political environment was taken to mean that any real evidence-based approach to long-term strategic development was simply unrealistic; whilst, on the other hand it was argued that it was in exactly such a environment that robust strategy development was required to try and guide colleges through turbulent waters.
- 4.54 Underpinning the overall institutional strategy, corporations need to develop a series of related strategies, most obviously in relation to learning and teaching, quality improvement, and the learner experience (the names vary). Because of the requirements of Ofsted, these tend to be the best developed in well governed colleges. However, we found two diverged views emerging from respondents on this issue. First, many governors are confident that their corporation quality committees (most, but not all, colleges have them) are performing well, understand quality and educational issues, and provide the constructive challenge required to drive up standards. However, the alternative view was also regularly expressed: that it is in considering issues of quality and educational character that some corporations are most uncomfortable and that their quality committees (or similar) may not be wholly effective. Section 7 considers the future implications of this for the adoption of Framework for Excellence.
- 4.55 Whilst the overall responsibilities of corporations in the area of finance are reported to be generally well recognised, two specific aspects emerged in the consultation process and require further comment: the role of the corporation in relation to both risk and effective internal audit. As far as risk is concerned, there appears to be some tension between the reporting requirements of the LSC and the extent to which the concept of risk is embedded in the practice of some colleges. Current LSC guidance requires compliance with the FRC Combined Code, and it was proactive in 2004 in giving advice to colleges about introducing risk management and ensuring that governance statements were compliant with Turnbull Guidance. LSC reporting requirements include not just financial risks, but reputational and other kinds.

- 4.56 However, although risk reporting is provided to the LSC, some governors (entirely those with a private sector background) observed to us that although corporations recognised financial risk, other kinds of risk (including reputational and strategic risk) were – in practice – not so well understood and featured less in corporation meetings, and also that the quality of college risk management was variable. Some of these governors also observed that risk processes in their own corporations were too mechanistic, too dependent on the maintenance of a risk register as an end in itself (when it is really only a tool for assessing risk), and that responsibility for reporting risk to the corporation was sometimes provided by the finance director rather than – as is generally desirable – by the clerk. Of course, FE is not alone in experiencing tensions between practice and regulation in this area, but it is important that an understanding of risk governance goes beyond the clerk, finance director and chair.
- 4.57 As far as audit is concerned, it must be conducted in accordance with the financial memorandum with the LSC and its Audit Code of Practice (ACOP)<sup>40</sup>. Although we have not looked at the operation of internal audit in any detail, discussions with a number of respondents have suggested that it is only partly effective in some corporations. The need for effective internal audit in relation to financial control is well recognised, however, the more generic role of internal audit to guide institutional development may be less understood, despite it being included in ACOP guidance, and encouraged by the LSC and on LSIS governor training programmes. Accordingly, an important issue is to clarify the generic role of internal audit in relation to both colleges and LSC (or other funding body) expectations.
- 4.58 Appendix C highlights two specific issues in this area that need more attention. Firstly, although rigorous internal audit is a key governance tool, there is an issue about how much information should be shared with the regulator in the form of the LSC. Clearly substantial audit information on finance, risk and data management need to be reported in the usual way, however, there may be aspects of internal audit that should remain a confidential corporation matter as part of their standard quality management processes. It also appears that this latter purpose of internal audit may not be well understood, and that some corporations are reluctant to spend more on the developmental aspects of audit. The prescription by the LSC that a minimum number of internal audit days need to be undertaken is one way of addressing this dilemma, but may do little to create the institutional capacity to use the audit process effectively.
- 4.59 Secondly, there is a specific point about the relationship of internal audit to the Framework for Excellence methodology that causes concern. One aspect of the financial control element in the methodology proposes that the rating of colleges be partly determined by the number of problems identified in internal audit reports. Whilst it is wholly proper that a regulatory body receives assurance that proper internal audit processes are in place, it is wholly inconsistent for corporations to be penalised for pursuing what would generally be regarded as good practice within the audit community. That is, the more demanding and critical a corporation is of its own practice (as determined by internal audit), the more it appears to run the risk of incurring penalties from the regulator.

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40 [www.lsc.gov.uk/Search.htm?Term=audit+code+of+conduct&Search=1](http://www.lsc.gov.uk/Search.htm?Term=audit+code+of+conduct&Search=1)

## Public benefit and public understanding of FE governance

- 4.60 The public benefit and public understanding of FE governance probably needs to be enhanced (although the position varies locally), partly because the machinery of government changes will increase the formal responsibilities of local authorities in relation to FE colleges, and also because of the requirements of the Charity Commission for charities (whether exempt or not) to demonstrate public benefit<sup>41</sup>.
- 4.61 Although every FE college will be providing public benefit in all kinds of ways, several areas were identified in the consultation where corporations could make public benefit more explicit, and at the same time increase public understanding. One aspect of this is likely to be the adoption of public benefit strategies which set out specific objectives and indicators of performance that enable corporations to monitor achievement. Strongly related to this is the need for corporations to clarify their strategic approaches to ensuring corporate social responsibility, indeed the two could be part of the same document.

**Recommendation 9: Where they do not already exist, corporations should consider adopting public benefit and corporate social responsibility strategies to guide their engagement with the public and local interest groups.**

- 4.62 Other measures that might be considered include: greater engagement in local partnership and ‘place-shaping’ activities (see Section 7); colleges demonstrating public benefit through commissioning their own local or regional economic impact studies; colleges communicating more proactively with their local communities, and although it has gone ‘out of fashion’ there remains much value in corporations producing an annual report in a form suitable for the core readership it chooses to define; senior governors acting in a valuable ambassadorial role for colleges; and finally, although undertaking much of the above is a management task, a corporation can lead not only by developing a public benefit and associated communication strategy, but also by ensuring full information on its own activities. College websites vary in the information they provide about governance, with some being comprehensive and others poor.

## Conclusions

- 4.63 The diversity of the college sector makes general conclusions difficult, most particularly in the independent specialist colleges sector (indeed, some parts of this section may not apply to all parts of that sector). Rather, all that can really be written is a series of general observations, to set against the circumstances of individual colleges. Overall, as noted above, the quality of college governance is generally considered to have improved substantially since incorporation – and continues to do so. Subject to a relatively small number of colleges perceived to be at risk, there is general confidence about colleges meeting the regulatory requirements as set out in their financial memorandum.

41 For a discussion of public benefit and the requirements for charities see [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk);

<http://readingroom.lsc.gov.uk/pre2005/funding/providers/circular0407-audit-code-of-practice.pdf>;

<http://readingroom.lsc.gov.uk/lsc/National/SuppAv4final.pdf>; and <http://readingroom.lsc.gov.uk/lsc/National/SuppBV2final.pdf>

- 4.64 At its best, college governance is reported to be effective, robust, and to add value to colleges, and the important role of corporations in assisting institutional change has been highlighted, most notably by Ofsted. Within colleges with effective governance, there is no single approach to governance, and whilst some are decreasing board size and reducing the number of committees (sometimes using a model such as ‘Carver’) others continue with established committee based approaches. What is demonstrably important is commitment to effective governance from all those involved, most notably the corporation chair, the principal/chief executive, and the clerk.
- 4.65 However, there are numerous challenges to further enhancing governance in many colleges: some external – most notably the demotivating constraints of a regulatory culture which causes continual ongoing frustrations for many corporations; and some internal – of which the resources devoted to governance (including the time available to the clerk and the seniority of the post), are amongst the most important. Some have suggested<sup>42</sup> that in the face of such challenges college governance tends to lack a strategic focus and creativity, and whilst this may be true in some cases the generalisation may be dangerous, and many governors who responded to this study would claim that this would not be the case in relation to their own board. However, it is clear that if action were taken to address some of the issues raised in this Section and Appendix C, then some of the existing barriers to more consistently effective governance across the college sector would be removed.
- 4.66 A important question remains: in the college sector is the job of a governor actually ‘doable’ as currently conceived? That is, are there enough skilled, experienced and highly motivated volunteers available to become governors and able to give the time, commitment, and rigour necessary to the task, in what will be difficult and challenging times in the next few years? The effectiveness of governance in some colleges clearly indicates that the task is ‘doable’ under appropriate circumstances, and given the implementation of the recommendations proposed above and the adoption of a much more collaborative regulatory climate, the task may also be ‘doable’ across the sector as a whole. However, if action is not taken to address the challenges identified above, it is unlikely that consistently effective sector-wide college governance will be demonstrated in any real strategic sense, and the motivation of governors will decline.
- 4.67 Finally, in addition to the formal recommendations of this Section there is a danger that the many points of detail considered in Appendix C will be overlooked by colleges. Accordingly, it is recommended that clerks review the full content of the Appendix and produce a proposed action list of issues relevant to their own corporation. Where necessary, some ongoing discussion of the issues arising might be taken forward by the Clerks’ Network.

**Recommendation 10: Clerks in all FE colleges should review Appendix C in detail, and produce a suggested action list of issues relevant to their own corporation.**

<sup>42</sup> For example, Gleeson et al, 2009, *ibid*.

## 5. A summary of strategic leadership and accountability in the FE work-based learning sector

- 5.1 The purpose of this part of the study (described in more detail in Appendix D) is to provide a picture of the way in which strategic leadership and accountability are fulfilled in organisations delivering government-funded work-based learning, together with some useful indicators as to what makes provider boards effective. It does not answer the question: “How effective are strategic leadership and accountability in work-based learning?”, which would require a more detailed and in-depth study across a wider range of organisations.

### How boards function

- 5.2 Board<sup>43</sup> structures and roles in the work-based learning sector are predictably varied depending on the type of organisation, ownership, size and primary purpose of the provider. Most boards have some non-executive members, although their number and role varies. In some of the stronger boards, the chair is a non-executive director who has a close working relationship with the chief executive. The most important function of boards is to maintain the organisation’s viability. This typically manifests itself in two ways: looking back at performance and looking forward to the future. The first focuses on recent performance, the second looks towards the longer-term horizon and is seen as more strategic.
- 5.3 The relationship between boards and executive teams is an important part of how they function. Among the various roles played by boards, challenging their executives and senior managers is perhaps the most critical. Boards hold the executive to account, hold to the core values of the organisation and present, to a greater or lesser degree, its profile to partners, stakeholders and the public. Boards also support the executive, contribute valuable intelligence, and provide the space to be creative.
- 5.4 The psychological aspects of the relationship between boards and the executive are as important as the more overt practical aspects. Boards provide the psychological support that underpins the executive’s capacity for confident and decisive action. They are the setting in which the organisation rehearses its position on the wider stage, the attitudes it displays and the scripts it uses. The mimetic function of boards is most visible in those with a strong non-executive representation.

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43 The term ‘board’ is used to denote any structure that fulfils the strategic leadership and accountability role for work-based learning. Most of the providers included in this study have formally-constituted boards, although a small number have councils or committees that fulfil this function.

- 5.5 The decisions boards make generally reflect the intentions of the executive. However, their decision-making function is genuine and significant. The process of ratifying a decision involves a second layer of scrutiny of the grounds on which the decision is made, and thus confirms the executive in its intentions. The process may also reveal weaknesses or flaws in the executive's plans and lead to modifications which strengthen them.
- 5.6 Chief executives describe themselves variously in relation to their boards as first among equals, a conduit between the executive and the board and 'tutors' of the board (especially non-executive members) in terms of the industry and the practicalities of what can be achieved. Looking after the board is an important task for chief executives, and takes time and energy. In return, good boards generate considerable energy which transfers almost without friction into the momentum of the business.

## Board effectiveness

- 5.7 There are no hard and fast rules for a well-structured board in work-based learning providers. Boards develop to match the requirements of each organisation, and need the freedom to develop in appropriate ways. There is no obvious merit in seeking greater commonality of structure or process of strategic leadership and accountability among work-based learning providers, given their range and diversity.
- 5.8 All the work-based learning providers taking part in this survey said that the roles and responsibilities of their board are very clear. In very broad terms, boards agree key performance indicators against which the performance of the organisation is measured, and they monitor performance against these measures. These providers felt that the most important functions of the board are to ensure an effective planning process, define – and where necessary defend – core values, and monitor performance. Of moderate importance are ensuring that bottom-line targets are delivered, and building trust and confidence in the organisation. The three least important functions are to engage with the local community (including employers), benchmark the organisation's performance against peers and measure the performance of the board itself. Interestingly, this contrasts with some typical expectations of college corporations.
- 5.9 Most providers are confident that their governance structures are solid enough to provide accountability for public benefit, as well as legal and financial accountability. Existing controls in the contracting and regulatory environment provide sufficient scrutiny of public value, without the need for further control mechanisms. The independence of boards generally tends to reinforce the social and ethical values of the provider's mission. Most boards and senior managers of work-based learning providers think that existing controls in the contracting and regulatory environment provide sufficient scrutiny of public value, but excessive regulation is seen as problematic (notwithstanding that there is a much lower compliance burden than on colleges).

5.10 The various aspects of accountability may be expressed as follows:

<b>Accountability for</b>	<b>Accountability by</b>
Financial probity and health	Published audited accounts, LSC audit outcomes, Framework for Excellence scores
Value for money	Performance: learner success rates
Economic good	Employer impact and return on investment measures
Social good	Participation and performance data, relating to equality and diversity
Legality	Compliance with rules and codes
Ethical conduct	Adherence to stated values and delivery of wider mission

- 5.11 Boards of work-based learning providers are conscious of the risks inherent in delivering a service that is wholly or largely government-funded. Risk is computed in terms of the impact of government policy on funding, and boards are sensitive to its inherent volatility. Some are critical of the balance of risk between themselves and government, and anxious that the current balance threatens their long-term sustainability.
- 5.12 There is no equivalent in work-based learning to the groupings of colleges in the college sector (e.g. the 157 Group). However, some of the larger and better-performing work-based learning providers understand that they have the potential to provide leadership to the work-based learning sector as a whole. Some seek to change government policy as well as set an example to other providers.
- 5.13 Clear strengths in work-based learning provider boards emerge from this study, as well as areas in which their effectiveness could be improved.
- 5.14 Appendix D makes a number of general proposals to enhance the effectiveness of strategic leadership and accountability in work-based learning providers. However, the diversity of the sector means that they will not apply to all providers, and will need to be used selectively.
- 5.15 Supplementing the survey of private providers undertaken for this study is a recent report by McEvoy-Robinson and Marples on proposals for self-regulation in private providers, and the implications of this work is considered in Section 7.

- 5.16 Future developments in strategic leadership in the work-based learning sector (and any additional research that might be required), need to be considered alongside the implications of the machinery of government changes once these are known. The starting point for this might be discussions with providers and the Association of Learning Providers at any dissemination event on this study held for the sector.

**Recommendation 11:** Possible further research on strategic leadership in the work-based learning sector needs to be considered alongside the implications of the machinery of government changes once these are known. The starting point for this might be discussions with providers and the Association of Learning Providers at any dissemination event on this study held for the sector.

## 6. A summary of governance and strategic leadership in the FE adult and community learning sector

- 6.1 For the purposes of this research the adult and community learning sector relates mostly to local authorities and the third sector (previously known as the voluntary sector). It is part-time, up to level 2 but often progression focused provision, some of it uncertificated, and much of it targeted at disadvantaged areas/clients. It is often delivered by part-time staff, mainly short programmes that are needs driven by the local community. The governance and accountability arrangements for local authority and third sector organisations are significantly different from those of the rest of the FE system.

### Local authorities: structures and governance

- 6.2 In parts of England (largely the ‘shire’ counties), responsibility for services is divided between district and county councils: the ‘two-tier authorities’. In all other parts of England, a single-tier, all purpose council is responsible for all local authority services and functions. These may be unitary councils, metropolitan district councils (in larger urban areas) or London boroughs. The City of London Corporation has its own individual status. In April 2009, nine new unitary authorities were established. These new authorities replace the existing two-tier county and city, borough and district councils with single-tier authorities. The rationale for the creation of more unitary authorities is a reduction in bureaucracy and bringing management of services closer to communities.
- 6.3 Local authority governance structures were determined by the Local Government Act 2000, which contained provisions for new political management structures for local authorities in England and Wales. The Act required local authorities to establish overview and scrutiny committees that were charged with holding the executive and officers accountable. In addition, the Act also gave power to overview and scrutiny committees to make reports and recommendations to the executive and council on policy development<sup>44</sup>. The 2006 Communities and Local Government White Paper<sup>45</sup> revisited the models proposed in the 2000 Act and outlined proposals to legislate so that in future there will be three models of executive arrangements: a directly elected mayor with a four-year term; a directly elected executive with a four-year term; and an indirectly elected leader with a four-year term.

44 Local Government Act Part 10, 2000.

45 Communities and Local Government Department, 2006. *Stronger and Prosperous Communities: the Local Government White Paper*. HMSO: Norwich, at [www.communities.gov.uk](http://www.communities.gov.uk)

## Delivery models for adult learning

- 6.4 Adult learning services are diverse, both in the range of learning and skills programmes they deliver, and in the mechanisms they use for delivery. Many local authorities have a range of contracts funded by the LSC, and these may include: adult community learning; Train to Gain; apprenticeships and other work-based training programmes; neighbourhood learning through the deprived communities fund; and European social fund projects. Furthermore, local authorities may have contracts with Learndirect and the Department for Work and Pensions for pre-employment programmes. Responsibility for delivering provision may reside with a local authority adult learning service or may be divided between different departments within the authority. For example, Train to Gain or Workstep programmes may be managed within economic development or human resources departments, whilst adult community learning programmes may be managed within the children and community services department.
- 6.5 Where adult learning services are delivered within one local authority directorate, one of following models is usually used for service delivery:
- Direct delivery: all aspects of planning, delivery and quality assurance are managed by the local authority.
  - Sub-contracted: planning and overall quality assurance are managed by the local authority, but delivery of programmes is sub-contracted to FE colleges, the voluntary community sector and other organisations.
  - A mixed model: planning and overall quality assurance are managed by the local authority with a combination of both direct delivery and subcontracted provision.
- 6.6 The majority of work-based learning and Train to Gain contracts are delivered directly by local authorities, rather than sub-contracted. The recent white paper, *The Learning Revolution*<sup>46</sup>, signals a changing role for local authorities in relation to adult learning and may affect arrangements for securing or delivering provision.

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46 Department for Innovation, Universities and Skills, 2009, op cit.

## Governance arrangements for adult learning

6.7 There are a range of governance arrangements for adult learning that reflect both the nature of the local authorities' governance and that of the adult learning services. All models of governance seek to provide the functions of overseeing strategic direction of the service, monitoring the quality of provision and ensuring that efficient and effective use is made of resources. There are broadly five models of governance in adult learning services:

- **A governing body** exists with instrument and articles of government, with delegated responsibilities and sub-committee structure. Typically sub-committees would include finance and resources, curriculum, quality and standards. Although largely a model adopted by adult education colleges, a number of other adult learning services have a governing body. Membership of the board of governors will include elected members, often the cabinet member responsible for the portfolio including adult learning. Reports from the governing body will be submitted to a council's executive for scrutiny.
- **A management group** exists consisting of the head of adult learning services and senior management team, with sub-committees. The decision-making process typically involves all significant policy changes and developments to be submitted for approval to the cabinet member with responsibility for adult learning and then, as appropriate, to a cabinet or full council. The development plans, self-assessment reports and Ofsted inspection reports will form the basis of performance monitoring by the cabinet member. In addition, a scrutiny function will be provided by one of a council's scrutiny overview committees comprised of elected members. Local authorities that deliver work-based training or Train to Gain may have a separate management structure, and a different cabinet member responsible for that provision.
- **A local area management group** exists, which is a variation on the second approach above, providing a management structure for specific geographical areas, either within a large county council, a city or metropolitan area. Representation of these groups will reflect the area and usually include local elected members and learners, as well as local authority staff. In two-tier authorities, elected members from district, as well as county councils, may be represented on management groups. Varying degrees of autonomy and financial delegation will be given to these local groups, usually with a reporting mechanism to an overall service management group.
- **An adult learning sub-committee** although this model has largely been superseded by the other models of governance. However, the cabinet member responsible for adult learning may be supported by an advisory group of elected members, and there may also be a structure of local area committees.
- **Social enterprise**, which is an emerging model of governance, as yet developed by only one local authority, is social enterprise. The governance options for a social enterprise are as a co-operative, charity or community enterprise.

- 6.8 The majority of councils have a system of governance in which the executive consists of a leader elected by the council, with an executive of up to nine members appointed by the leader. Given the breadth of services delivered by councils, individual cabinet members will often hold a broad portfolio of service area responsibilities. For example, a cabinet member may have up to 10 individual areas of responsibility within their portfolio. Ultimately, responsibility for all provision lies with a council's cabinet.
- 6.9 A cabinet's responsibilities are much broader than those of an FE college's governing body, and a significant difference between FE colleges and local authorities is that learning and skills provision is a small part of the overall services they provide. For local authorities, adult learning contracts may amount to less than 1 per cent of the overall budget. For this reason, the financial health performance indicator in the Framework for Excellence will not be used for local authority providers. This suggests that shared regulation may require a discrete accountable body for the governance of adult learning that fits within the overall regulatory and performance framework of the council. The introduction in 2007 by Ofsted of multi-remit inspections, where all LSC funded contracts (except Workstep) are inspected as a whole in a single inspection, has been a catalyst for change in some local authorities, with more unified and strategic leadership and management structures being created<sup>47</sup>.
- 6.10 A key aspect of all models of governance of adult learning services is involvement and scrutiny by elected members. This provides a degree of accountability, through the electoral process to local citizens, which distinguishes it from both the FE colleges and third sector governance models. It is not clear how this function of governance will be accommodated within a shared regulation approach. Adult learning services' priorities, aims and objectives link closely to those of their local authorities. Furthermore, some local authorities provide funding in addition to that allocated by the LSC. As such there are potential policy tensions between the priorities and targets of the skills funding agenda and those of a council.

## The third sector: structures and governance

- 6.11 The third sector includes voluntary and community organisations, charities, social enterprises, co-operatives and mutual societies. Current government policy encourages the third sector to be involved in "transforming public services"<sup>48</sup>. Its organisational structure and legal status is diverse, ranging from small, legally unincorporated bodies, such as community associations, to larger, legally incorporated bodies formed as community interest companies.

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47 Watters K, 2008. *Leading Local Authorities, as Providers of Adult and Community Learning and Work-Based Learning Through Multi-remit Inspection*. Centre for Excellence in Leadership: London.

48 Cabinet Office, 2007. *The Future Role of the Third Sector in Social and Economic Regeneration: Final Report*. HMSO: Norwich at [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

6.12 Companies limited by guarantee are the most common form of legal status for third sector organisations, and charitable status may be sought by organisations that fulfil the charitable purposes requirement of the 2006 Charities Act. Governance arrangements vary and the range is shown in the table below. The most common is a board of directors or trustees who are accountable to the wider membership. A further distinctive feature of many third sector organisations is the accountability of the board of directors to the wider membership of the organisation from which they may be elected.

**Table 6.1: Third Sector organisations – type, legal structure and governance**

Type of organisation	Incorporated	Eligible for charity status	Governance	Examples
Association	No	Yes	Governing body, often known as management committee. Two-tier governance: governing body accountable to wider membership.	Community association
Trust	No	Yes	Trustees. Single tier of governance with no members other than trustees.	Grant awarding charitable trust
Company limited by guarantee	Yes	Yes	Board of directors. Two-tier governance with directors accountable to members.	Many charities, and very common for VCS and social enterprises
Industrial and provident society	Yes	Yes	Management committee. Two-tier governance, with management committee accountable to wider membership.	Housing associations; cooperatives (owned and controlled by members)
Community interest companies limited by guarantee	Yes	No		Social enterprises (usually owned by their members)

6.13 A distinctive aspect of delivery of learning and skills by third-sector organisations is that the majority have a wider remit and purpose than just the delivery of learning and skills, and their legal status and governance arrangements reflect this. Consequently, their quality assurance, MIS and reporting arrangements also reflect this broader remit. For example, a single organisation may be receiving funding from the Department for Health, Department for Work and Pensions, and Defra, as well as LSC funding. Therefore, the learning and skills provision sits within a complex remit. Programme delivery typically uses a number of approaches:

- Prime contractor and direct provider of learning and skills programmes.
- Prime contractor and lead agency for a consortium of other voluntary community sector organisations delivering learning and skills programmes.
- Sub-contractor of other learning and skills providers, such as FE colleges or local authorities delivering part of a learning and skills contract.
- Sub-contractor as part of a voluntary community sector consortium delivering part of a learning and skills contract.

6.14 The development of capacity for governance and quality assurance within the sector has been the focus of the Third Sector Governance Hub established by the Home Office in 2005. One outcome of this was the introduction of a code of governance for the voluntary and community sector that sought to address and clarify the main principles of governance and accountability for boards of trustees of voluntary and community organisations<sup>49</sup> (Governance Hub, 2005: 7).

However, the code is voluntary, and a survey in 2008 found that whilst it was welcomed by the sector and 42 per cent of organisations were using it, 21 per cent were not aware of it<sup>50</sup>.

6.15 A variety of quality assurance frameworks are used within the voluntary and community sector. The Practical Quality Assurance System for Small Organisations (PQASSO) and the EFQM Excellence Model are the most common quality assurance systems adopted<sup>51</sup>. Those organisations delivering learning and skills, either as prime contractors or sub-contractors, also operate quality assurance systems that meet the requirements of inspection and funding bodies.

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49 Governance Hub, 2005. *Good Governance: Code for the Voluntary and Community Sector*. NCVO: London.

[www.ncvo-vol.org.uk/publications/publication.asp?id=3837](http://www.ncvo-vol.org.uk/publications/publication.asp?id=3837)

50 Madden M, Saxton J, Vitali C, 2008. *Review and Development of the Code of Good Governance*. NCVO: London. [www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)

51 Parker M, 2006. *Measuring Governance Performance*. BASSAC: London. [www.ncvo-vol.org.uk/uploadedFiles/NCVO/Publications/Publications\\_Catalogue/Trustee\\_and\\_Governance/Measuring\\_Governance\\_Performance.pdf](http://www.ncvo-vol.org.uk/uploadedFiles/NCVO/Publications/Publications_Catalogue/Trustee_and_Governance/Measuring_Governance_Performance.pdf)

Most of these quality assurance systems include governance as an element of the overall leadership and management. However, they may not specifically focus on performance management or governance, and may not have a self-assessment model like those generally adopted in the learning and skills sector. Thus, third sector organisations that deliver learning and skills may be operating different quality assurance systems for different aspects of their work.

- 6.16 Third-sector organisations are often involved in the delivery of other public service contracts as well as learning and skills, creating challenges for leadership and management. The different performance standards, quality assurance and contractual arrangements of different funding bodies together with a broad constituent membership may cause tensions, as Parker<sup>52</sup> notes: “The functions of governance, and more specifically of the board, are multiple, complex and often shared with paid staff and volunteers. Organisational effectiveness is equally contested for voluntary community organisations, as they have multiple stakeholders with differing perceptions of effective performance”.
- 6.17 A common governance issue across the third sector is attracting trustees with the appropriate skills and experience on to the boards of either social enterprises or voluntary and community organisations<sup>53</sup>. Shared regulation may add to the responsibilities of the directors or trustees, and require additional support and training. The complexities of shared regulation may also add to the difficulty of attracting directors or trustees with the appropriate experience and willingness. Given the wider remit of many third sector organisations, the time and costs of implementing shared regulation may be disproportionately high in relation to the size of their contracts.
- 6.18 Overall, the complexity of provision in the adult and community learning sector is such that further research may be needed to look at the practical implications of shared governance and strategic leadership in ACL providers, particularly when set in the context of developing interest on localism, local partnerships and ‘place-shaping’ (see Section 7). The starting point for considering such possible research might be dissemination events on this study held for ACL providers.

**Recommendation 12:** Further research may be needed to look at the practical implications of shared governance and strategic leadership in ACL providers, particularly when set in the context of developing interest in localism, local partnerships and ‘place-shaping’. The starting point for considering such possible research might be dissemination events on this study held for ACL providers.

- 6.19 Appendix E provides more information on governance issues facing the adult and community learning sector, including four case studies that show how different authorities are addressing the issues of public accountability.

52 Parker M, op cit.

53 Governance Hub, 2007. *For Love and Money: Governance and Social Enterprise*. NCVO: London.

[www.ncvo-vol.org.uk/publications/publication.asp?id=7986](http://www.ncvo-vol.org.uk/publications/publication.asp?id=7986)

## 7. The future challenges facing governance and strategic leadership in FE

7.1 In this section, some of the major future challenges facing governance and strategic leadership in FE are reviewed. They are:

- The challenges to effective governance caused by the disastrous governance failures of the financial and banking sectors and their implications.
- The proposed move to greater shared regulation in the FE sector.
- The implications of the machinery of government changes.
- The increasing emphasis on localism and ‘place-shaping’ in national policy.
- The adoption of Framework for Excellence and the changes in the Ofsted methodology.

Taken together, these present substantial challenges to FE corporations and boards, although the impact does not affect all parts of the FE system equally.

### The implications of governance failures in the financial sector

7.2 It is no understatement to observe that the recent failures of governance in the banking and finance sectors may have a profound impact on the operation of private sector governance, and at the very least will lead to reviews of current practice and amendments to the existing regulatory codes. The recent ‘Walker Report’<sup>54</sup> of corporate governance in banks is likely to be the first of many reviews that will have implications for governance in all sectors. In particular, different – and perhaps more intrusive – forms of regulation are likely to be proposed (also stimulated by the need to regulate aspects of global e-commerce), although these may be resisted by those parts of the private sector that think that such measures are not needed.

7.3 Such developments in the private sector regulatory environment are important for FE for several reasons. Not only have previous private sector developments driven governance changes throughout the public sector, but also greater accountability and transparency have been seen as critical in terms of engendering public trust. Moreover, many independent members of FE corporations will have experience of private sector corporate governance, and may see benefits in moving in that direction.

7.4 It is therefore reasonable to expect, that aside from pressures to enhance governance and strategic leadership that come from within FE, there will be continuing expectations to consider adopting private sector practice as that itself changes.

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<sup>54</sup> Walker D, 2009. *A review of Corporate Governance in UK Banks and Other Financial Industry Entities*.

HM Treasury see [www.hm-treasury.gov.uk/walker\\_review\\_information.htm](http://www.hm-treasury.gov.uk/walker_review_information.htm)

## Shared regulation in FE

- 7.5 Shared regulation in FE needs to be viewed within the wider context of public service reform and the developing concept of ‘new professionalism’, part of which encompasses moves toward shared regulation. The government’s reform agenda for public services over the last eight years has been characterised by a staged approach. The 2008 Cabinet Office policy document ‘Excellence and Fairness: Achieving World-Class Public Services’<sup>55</sup>, was a continuation of this agenda, and set the overall context for the improvement of public services. One aspect of this is the development of what is described as ‘new professionalism’, proposing greater freedoms for high-performing services and with professionals helping to define standards of excellence.
- 7.6 Within this broad public sector reform agenda, the DfES 2006 white paper, *Further Education: Raising Skills, Improving Life Chances*, proposed a new relationship with providers, with an emphasis on reducing bureaucracy and then moving towards self-regulation. In this context, in November 2006 the Secretary of State at the DfES challenged FE to develop a proposition for self-regulation. This work was initially taken forward by the Self-Regulation Implementation Group (SRIG) and subsequently by the Single Voice, a body that is owned and managed jointly by some of the main provider representative bodies. The Consultation Prospectus for Self-Regulation was published by Single Voice in November 2008<sup>56</sup>, and discussions both within the FE system and with government have continued since.
- 7.7 There appears to be general agreement that the FE system (as represented by the Single Voice) was not seeking to own or run the regulatory system, rather that there would be moves towards regulation and associated activities being co-owned and developed in consultation with the sector. Some of the issues raised in this report have already been the subject of such discussions, while others have not, but clearly the Single Voice has a central role in achieving the kind of integrated understandings about governance called for in this report, whilst not undermining the responsibilities of individual providers.

## Shared regulation in colleges

- 7.8 A report on the perceptions of self-regulation in colleges by Collinson et al<sup>57</sup>, based on 20 interviews with principals, noted that all welcomed some form of external regulation and accountability, and none was asking for independence. For example, Collinson notes that it was not thought realistic for colleges to take full responsibility themselves for challenging serious under-performance in other colleges, and pragmatically that “most principals advanced a clear but simple notion of how a new settlement could operate in ways that balanced autonomy and regulation for accountability”.

55 Cabinet Office, (2008), ‘Excellence and Fairness: Achieving World-class Public Services, [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

56 See [www.feselfregulation.org.uk/infoabout\\_singlevoice.html](http://www.feselfregulation.org.uk/infoabout_singlevoice.html)

57 Collinson D (ed), (2009), op cit.

- 7.9 A set of seminars run by LSIS in late 2008 and early 2009 and an associated report set the context for discussions about a growing change in emphasis from self-regulation to shared regulation<sup>58</sup>. This reflects a number of concerns, not least: the difficulty of advocating self-regulation immediately after the banking collapse; concerns about the maturity of governance to support full self-regulation in all providers; and also that a notion of regulation based on partnership suited the culture of FE quite well. One outcome of these seminars was to articulate a number of important dimensions of shared regulation with implications for governance and strategic leadership. These included:
- Further streamlining and simplifying regulatory and performance management arrangements.
  - Ensuring greater sector ownership of performance measures, standards and targets.
  - Agreeing a protocol to address under-performance and avoid failure.
  - Developing further the roles of sector-led bodies relevant to regulation.
  - Developing a fresh commitment to excellence through self-improvement, including that “an unmistakable conclusion of our discussions was that the creation of a pervasive culture of self-improvement across the whole sector would be a necessary foundation for a shift towards co-design and shared regulation”. The LSIS report also draws an important distinction between self-improvement and shared regulation.
- 7.10 When seen in these terms, the available data confirms strong sector-wide support for shared regulation, and addresses some of the concerns that had been voiced in parts of the system about the dangers of overly provider dominated arrangements if self-regulation were to have been introduced. For example, as noted in Appendix E, a view strongly articulated by some local authority respondents was that the regulation of any publicly funded bodies cannot be left wholly to the sector receiving the funding, and therefore the regulatory framework needs to be agreed by the government (or its commissioners of services) and by the providers. Shared regulation addresses such concerns, however, because it is a relative concept, many respondents to us in all sectors felt that ‘the devil would be in the detail’.
- 7.11 The LSIS report also notes that “the current mechanisms and processes for developing policy on regulation and performance management, and the levels of engagement by the sector, are not visible or widely understood”. The feedback during our consultation confirms this, and amongst governors and board members there was relatively little understanding of how the discussions about shared regulation were being conducted, what the state of progress was, and still less how implementation would occur. All this, almost inevitably, led to scepticism as to whether any real intention exists to introduce shared regulation, and many questioned why government would wish to relinquish the powers it had granted itself. The absence of effective communication to providers during the past months about the progress of shared regulation and its implications has not helped develop governor confidence.

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58 LSIS, 2009. *Self-regulation – Shifting the Paradigm*. LSIS at [www.lsis.org.uk](http://www.lsis.org.uk)

- 7.12 The challenges for governance and strategic leadership of moves towards shared regulation inevitably depends on the precise measures to be adopted, and therefore only general observations can be made at this stage. However, some risks were perceived, and Collinson et al noted that most principals interviewed felt that a single set of arrangements for self-regulation was not feasible because of the diversity of the FE system. In particular, principals had concerns about how such measures might work in the non-college parts of the FE system. They “expressed strong antipathy” towards granting further autonomy to private providers and wanted them regulated through a tight contracting regime. Moreover, some provision through local authorities and third sector organisations was seen as problematic, because these “often have complex governance arrangements and their recent exposure to Ofsted inspections suggested that many were still at an early stage of the journey towards excellence”.
- 7.13 During the consultations for this review a range of views was expressed about the challenge of shared regulations for boards and corporations, and opinions inevitably reflected the perceived quality of arrangements in the respondents’ own institutions. However, as a generalisation the following were frequently cited:
- Within the colleges sector, the greatest needs were perceived to be ensuring more consistency of governance, and removing some of the current variability. A common perception is that general confidence will need to exist in the institutional maturity of all colleges to adopt shared regulation in an appropriate professional manner. The recommendations made in Section 4 might form the basis for doing this.
  - Some corporations may find particular challenges in demonstrating the strategic leadership necessary to encourage ongoing quality improvement. This may be partly because “it is increasingly recognised that this top down management regime may have reduced the overall level of poor performance, but it has not facilitated the development of self-sustaining systems with the capacity to support continuous quality improvement”<sup>59</sup>.
  - Building institutional capacity whilst at the same time coping with the financial consequences of recession will be challenging for many colleges, and there will be an inevitable tendency to avoid difficult long-term strategic decisions where contentious issues are raised.

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59 Collinson D (ed), 2009, op cit.

## Shared regulation in the ACL sector

- 7.14 Within the adult and community learning sector different issues generally apply. Local authorities have statutory duties and discretionary powers and are democratically accountable for the services they deliver, with learning and skills provision being a relatively small part of their overall provision. Third sector organisations are diverse in their structures and governance and may have a broad remit and mission but, similarly, learning and skills may be only part of their overall mission. Three particular challenges are identified in Appendix E (based on the work of Yarroll<sup>60</sup>): capability with existing governance processes; the legitimacy of the new regulatory bodies; and the capacity of providers to implement any new requirements.
- 7.15 In particular, the creation of separate governing bodies or management committees to oversee adult learning services was felt to be contrary to the ethos of many local authorities and third sector organisations wanting to maintain a common system of governance and accountability across all services. Although some separate arrangements currently exist (for example, children’s trusts are examples of separate accountable bodies based on a statutory requirement), councils are unlikely to establish similar bodies on a voluntary basis. Given that adult learning is not a statutory service, a common view was that councils were unlikely to see moves to self or shared regulation as a priority, and might view it as an additional bureaucratic burden.
- 7.16 Such views raised issues about the legitimacy of any new regulatory bodies, and the main concerns expressed by third sector respondents were that in any system of self or shared regulation the workload required should be proportionate to the size and maturity of the organisation. Greater ownership is perceived to be required across the whole FE sector if there are to be any changes in the regulatory system, with self or shared regulation being seen as a predominantly FE college agenda, driven by an institutional model of governance. The nature and membership of the Single Voice was reported as a factor here. Although a body “owned and managed by the sector” may have attractions for colleges, some third sector respondents thought that the lack of independent members was a weakness. It also goes against the trend in other areas of the public sector where a high proportion of the members of regulatory bodies are independent of the sector they are regulating.
- 7.17 The final major challenge identified in the ACL sector was a lack of organisational capacity to deal with the additional demands that new forms of regulation would bring, with some respondents from third sector organisations highlighting issues of capacity in terms of the extra demands it would place upon a board of trustees. Also the ability of individual trustees to deal with self or shared regulatory processes was questioned, given that they were appointed for a different purpose.

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60 Yarroll I, 2009. *Exploring the Leadership and Governance Implications of Self-Regulation for Local Authority and Third Sector Providers of Adult Learning and Skills*. LSIS at [www.lsis.org.uk/Publications.aspx](http://www.lsis.org.uk/Publications.aspx)

7.18 To address such issues (considered specifically from the perspective of self-regulation, but nonetheless mostly relevant to shared regulation as well) Yarroll made a number of recommendations, some of which are already being acted upon, namely:

- Representation from local authorities and the third sector organisations on the Single Voice and LSIS Council and Board should be strengthened.
- The understanding of bodies involved in the development of self-regulation concerning the diversity and complexity of leadership and governance arrangements within local authorities and third sector organisations needs to be further developed.
- A third sector body that can articulate the collective views of third sector learning and skills providers on self-regulation could make a valuable contribution to developments. The newly formed Third Sector National Learning Alliance may have the potential to be such a body.
- Further development of models of self-regulation need to build on the distinction made between self-improvement and regulation. Self-improvement and development activity should continue to be sector-led.
- Further exploration of the potential integration of CAA inspection and auditing processes, and Ofsted inspections of learning and skills provision, should be undertaken with a view to clarifying the role of such activities within an accurate and robust set of arrangements for self-regulation.
- It will be important to ensure that changes to government departmental responsibilities arising from the implementation of machinery of government changes result in the development of coherent quality assurance and quality improvement processes within and across local authorities.
- A comprehensive performance assessment framework that supports self-regulation should be developed that is appropriate for application across a diverse FE sector, and is differentiated to reflect the varying missions and purposes of the wide range of provider organisations involved in governance and delivery. This will need to take account of forthcoming changes resulting in the transfer of responsibility for 16-18 provision from the LSC to local authorities.
- As planning for self-regulation moves forward, account must be taken of the recent white paper, *The Learning Revolution*<sup>61</sup>, (specifically paragraph 4.10, which relates to accountability for public funding).

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61 DIUS, 2009, op cit.

- Further and wider consultation should be undertaken with local authorities and third sector organisations to inform the development of models of SR that properly reflect the diversity of the FE sector. The consultation should also identify the elements of a support programme for those in leadership and governance roles during the transition period as such models are implemented.

## Shared regulation in the work-based learning sector

- 7.19 As noted in Section 5, the nature of strategic leadership in the work-based learning sector is primarily determined through conventional private sector board structures, with providers operating under contract from the LSC. Therefore, the main concerns then in relation to prospective shared regulation are whether the nature of regulation is appropriate and proportionate; will shared regulation increase or decrease the regulatory burden and if so with what added or lost value; and are future arrangements capable of being operated with suitable regard to risk and speed of response? In any case, many providers work in partnership with FE colleges (or indeed larger private providers as franchise partners), and in a study for LSIS McEvoy-Robinson and Marples<sup>62</sup> note that these providers assume that self or shared regulation would sit with the college or larger provider.
- 7.20 The McEvoy-Robinson and Marples study reviewed proposals for self-regulation in private providers and concluded that:
- There are different understandings of self or shared regulation in the sector, and that for many small and medium-sized training businesses it is not an important issue at this stage.
  - There would be some reluctance amongst providers to share potentially commercial information within a shared regulatory approach.
  - There is a fear amongst some providers that a shared regulatory approach may be an additional burden rather than replacing current practice, and yet another ‘hurdle to jump’.
  - The move by the LSC of adopting a qualified provider status is generally seen as a constructive way of licensing provision, and the relation between this and any additional burdens caused by shared regulation would need to be carefully considered.
  - It is estimated that over 85 per cent of private providers have less than £1m annual turnover, and are therefore keen that the costs of regulatory compliance be as low as is consistent with defined standards of quality.

62 McEvoy-Robinson D, and Marples P, 2009. *Self Regulation and Private Providers in Work-Based Learning*. LSIS at [www.lsis.org.uk](http://www.lsis.org.uk)

7.21 Accordingly, amongst the actions they identified as being required (some of which are being taken) were:

- Raising the awareness of small private providers who are not part of ALP or other networks.
- Taking account of the different levels of maturity of private providers and that one approach may not fit all.
- Ensuring that leadership development programmes in the sector meet private provider needs.
- Ensuring a stronger voice for larger providers, both within the Single Voice and elsewhere.
- Ensuring that account is taken of the costs of compliance in a changed environment.
- Providing support with the peer reviews aspects of shared regulation and practice.
- Offering commissioned contracts to new providers on a two to three year timescale and providing support as required. In this context, the LSC's own risk assessments and financial health assessments were thought to lack transparency.

## Implementation

7.22 Perhaps the most crucial issue in relation to governance and strategic leadership is how shared regulation might be implemented. In particular, does shared regulation have to proceed at the pace of the slowest provider? If not, what action might be taken? There are two possible approaches:

- First, a more risk-based approach could be introduced. This would provide increased freedom of action for those providers that could demonstrate effective governance and strategic leadership. There is some support amongst college corporations (and possibly private providers) for this approach. It would be generally consistent with both the idea of shared regulation and also the thrust of the new Ofsted methodology. It is also consistent with some of the recommendations made in this report about the adoption of more flexible instruments and articles of government for those colleges who can demonstrate the maturity to use them effectively.
- Second, some respondents proposed a hub and spokes model, whereby a mature provider who could provide satisfactory levels of assurance would be partnered with other providers to develop their governance and strategic leadership. This is more contentious as an approach, but might work well in some local circumstances, particularly where existing partnerships were strong. However, McEvoy-Robinson and Marples note the views of several private providers who questioned the general feasibility of this approach, including one who would “run a mile” from a college hub model, believing that it would seriously slow down their ability to respond to demand.

## The implications of the machinery of government changes

- 7.23 The machinery of government changes are generally perceived to affect primarily the college sector, as commissioning other providers will continue – at least in the short term – in a way similar to now.
- 7.24 Almost all responses from within the college sector emphasised the improvements in both provision and governance since incorporation, and stressed that no structural changes resulting from the machinery of government should be considered which undermined that, or put the resulting improvements in jeopardy. That said, reactions from sixth-form college respondents had a slightly different emphasis from those of general FE college respondents.
- 7.25 Most sixth-form college respondents observed that their institutions were already, of course, in close contact with local authorities, and therefore, providing their institutional corporate status continued, and the relationship with their authority was positive, being funded through the local authority family was not necessarily a bad thing, and potentially provided advantages in ensuring integrated local provision. However, concern was expressed over the lack of information for governors about the Young People’s Learning Agency and how numerous implementation issues were being addressed. The main potential problems perceived were those summarised below for all colleges, including the position of local authority representatives on corporations, and the position facing colleges where relationships with their local authority were not good.
- 7.26 As far as general FE colleges are concerned, many respondents commenting on this area expressed concern about aspects of the machinery of government changes, and the instability generally perceived to be the likely result. The policy position that the Skills Funding Agency will be a funding body, and not a funding and planning body, was welcomed in principle, although not generally believed. A number of specific issues perceived to be a potential challenge to effective governance are listed below.
- 7.27 Firstly, numerous respondents observed that the political, policy and financial environment is, at best, ambiguous. For example, the general election is likely to follow soon after the implementation date for the new machinery of government arrangements, and the continuation of current government policy cannot be assumed. Couple this with an uncertain funding environment, demographic and numerous other strategic challenges, and many respondents have understandably suggested that most colleges will adopt a relatively passive and ‘wait and see’ approach to the new arrangements in the first 12 months. This will hardly provide the impetus for change proposed in the various policy documents. Should major policy changes occur following the election, by the time they have been implemented a substantial period of ‘planning blight’ will have occurred.

- 7.28 Secondly, almost all respondents (whether governors, principals or clerks) feel exposed by the lack of information about the implementation arrangements which go ‘live’ in only six months. Many commented that it was difficult to find out what was going on and, at the time of our consultations, there was growing frustration at the lack of consistent information. Some commented that effective governance could be placed at risk if corporations were unable to prepare adequately for the forthcoming changes.
- 7.29 Thirdly, many respondents expressed concern about an enhanced role for local authorities within the new post-19 arrangements. Some observed that although potential advantages existed in integrating local provision, they lacked confidence that they would be realised consistently across the sector. A typical comment by one principal was that “the maintenance of the independence of incorporated sixth-form colleges is critical but probably not well-understood, or differently interpreted, by local authorities”, and many other respondents made essentially the same point about all other aspects of the college sector. In such a context corporations may face difficulties developing their own strategy independent of local arrangements, although (in a report written for the Foster Review) Perry<sup>63</sup> notes that such a situation would not be new and “in the days when FE colleges were responsible to local government, an argument about mission was empty. Colleges were expected to do what their democratically elected paymasters asked them to do”.
- 7.30 Some colleges reported that preliminary discussions with their local authority had highlighted substantial disagreements about future local FE provision, and in the worst case one reported that its local authority had acknowledged that there “were old scores to settle” from the pre-incorporation period. Such cases will probably only be a minority – hopefully a small minority – but the tensions caused may ripple through the whole sector. Even in the specialist college sector similar concerns were identified, with a feeling that the distinctive missions of providers might be threatened by some local authorities who might take a different view about how local services should be provided for those with learning disabilities.
- 7.31 More specifically, many colleges have concerns about local authority representatives being members of the corporation. Currently, such membership is optional and corporations report different experiences about its value: some find it useful and a strengthening of local relationships, and others do not. Many colleges expect local authorities to press for corporation membership, triggered by new powers for them to intervene in failing colleges (and thus replacing similar LSC powers). Indeed, an example was provided by one corporation when during initial discussions its local authority stated it expected one third board membership in future.

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63 Perry A, 2005. *Mission, Purpose and Specialisation*. See [www.dius.gov.uk](http://www.dius.gov.uk)

- 7.32 To many colleges who expressed an opinion on this topic, this is a threat to effective corporate governance. For example, in a typical comment one respondent observed that “there is a danger that the local authority may wish to become more strongly involved by having representation on college governing bodies. This must be strongly resisted ... It should be left to colleges to appoint a local authority officer or member should they so wish. This should not be mandatory” [their emphasis]. The conflict of interest that would result from local authority membership would potentially conflict with the principles of independent membership inherent in most governance codes, and arguably with the Nolan principles themselves. Moreover, corporations have, rightly, argued that staff and student governors must adhere to corporate responsibility and cannot represent their members, and the same principle must apply to all corporation members.
- 7.33 The dangers of such involvement happening in an unplanned way are evident from a study on governance in the post-16 sector in the USA. Kezar<sup>64</sup> notes the increasing politicisation of governance in public state funded institutions through the intervention of state legislatures, and that a distinctive element within the US public education system is that boards are not “independent decision making units” but part of broader local government arrangements. Her study found that boards with large numbers of externally appointed members (some with political affiliations) were likely to be less effective than those where appointment remained within the control of the institution. She also concluded that it is impossible to consider the operation of such boards without taking account of political relationships.
- 7.34 Corporations fear the financial consequences of the machinery of government changes, notwithstanding assurances about mitigation through the new agencies. Some of the issues here lie outside the terms of reference for this review (for example, the arrangements for funding learners from outside the area of the host local authority, the bifurcation of the main FE funding stream, and the funding of those providers who have a national role), however, in sum they may impact on the core responsibility of a corporation for ensuring financial health and sustainability. Couple this with a very difficult financial environment for local authorities who are likely to be reducing services in numerous areas, then corporations generally fear very challenging times. At worst, one reported that initial informal discussions had already taken place with its metropolitan local authority who had made it clear that they expected to include colleges within their local rationalisation plans.

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64 Kezar A, 2006. Rethinking Public Higher Education Governing Boards Performance in *The Journal of Higher Education* Vol 77 No 6.

- 7.35 When taken together, these are substantial concerns and the absence of reliable and consistent information from the earliest stages has contributed to substantial anxiety about the implications for effective governance in the sector. Of course, not all corporations will face such difficulties, and where good relationships currently exist between colleges and local authorities a sound basis may be created on which to base partnerships to address a range of local issues. If confidence is to exist, and appropriate action concerning future potential risk taken by corporations, it is particularly urgent that greater clarity is provided on how the governance implications of adopting the machinery of government changes will be addressed, and we recommend that this be undertaken as a matter of urgency.

**Recommendation 13: As a matter of urgency, greater clarity should be given to providers on how the governance implications of adopting the machinery of government changes will be addressed.**

- 7.36 Finally, several respondents noted the apparent inconsistency between a policy espousing moves towards self and now shared regulation and the lack of consultation with colleges on the implications of the machinery of government changes. The fact that many think that the latter has been largely imposed on the college sector, almost inevitably means that shared regulation is seen as little more than aspirational. After all, as one respondent commented, if colleges are mature enough to be involved in their own regulation, why are they not mature enough to know how college based further education is best provided? Related to this is a feeling that arrangements are in danger of becoming unnecessarily over-complex (if they are not already), and a cry from many respondents in relation to the future requirements falling on corporations was “keep it simple!”

## The increasing emphasis on localism and ‘place-shaping’ in national policy

- 7.37 All the main political parties now appear to be advocating greater localism in service provision, and initiatives such as ‘Total Place’<sup>65</sup> are likely to become part of the mainstream policy agenda, irrespective of the results of the next election. FE is responding to such developments, and an important future challenge for corporations will be to encourage and support a range of local strategic initiatives. As a recent report by LSIS notes: “stronger engagement with local issues and priorities and increased partnership working, raises governance and accountability issues. College governors have a pivotal role to play – the endorsement of the college role within local strategies and partnership activities is essential to enable colleges to act collaboratively and with authority”<sup>66</sup>.

65 [www.localleadership.gov.uk/totalplace](http://www.localleadership.gov.uk/totalplace)

66 LSIS, 2009. *Identifying the Contribution of FE Providers to Local Priorities, Partners and Places*. [www.lsis.org.uk](http://www.lsis.org.uk)

- 7.38 However, this will not be straightforward, and Gibney et al<sup>67</sup> in a study of the contribution of FE to ‘place-shaping’ notes that “the FE sector has not maximised its purchase on the new place-shaping agenda” and that it “needs to better articulate its pivotal role”. They note a number of challenges, including that “the role of FE sector leaders at the local and sub-regional level is not solely restricted to ‘classic’ economic development and regeneration agendas, but is moving beyond these into other aspects that impact on local economy and society such as neighbourhood crime and security issues, and the more generalised agendas around improving health outcomes and the quality of life for local communities”. In doing so they acknowledge the challenges for FE colleges, in that “principals, their senior management and FE governors report that they are being stretched beyond their core learning and skills role” which itself is “characterised by heightened strategic and operational complexities”.
- 7.39 Of course, there are substantial barriers to effective local engagement of this kind, and Collinson et al<sup>68</sup> note that sometimes principals felt that colleges were not treated as important local partners, and may indeed even be treated as competitors by their local authorities. They conclude that “the mechanisms for local accountability were under-developed and the experience of many principals was of heavily bureaucratic and meeting-intensive structures. Although principals were anxious to work with local stakeholders, they were unsure how this could be translated into accountability arrangements”.
- 7.40 Clearly, there is opportunity for substantial leadership to be exercised by providers in this area, and the first requirement (as for many of the issues considered in this report) is probably better information about existing practice. Accordingly, we recommend that information on innovative practice in this area and the implications for providers be collected.

**Recommendation 14:** Information on innovative practice in the area of local engagement and ‘place-shaping’ and the implications for providers, should be collected and disseminated.

## The adoption of framework for excellence and the changes in the Ofsted methodology

- 7.41 The challenges in this area for most providers were generally perceived by respondents to be associated with the provision of robust and reliable information. Section 4 notes that within colleges the effectiveness of quality committees (or equivalent) is reported as being variable, and determining educational character in a strategic sense is a challenge for some boards. Respondents noted that corporations were often over-reliant on Ofsted data and processes, and that quality assurance of HE in FE was still not consistently well understood by governors.

67 Gibney J, Yapp C, Trickett L, and Collinge C, 2009. *The ‘New’ Place-shaping: the Implications for Leaders in the Further Education Sector*. LSIS at [www.lsis.org.uk](http://www.lsis.org.uk)

68 Collinson D (ed), 2009, op cit.

- 7.42 In this context the changes in the Ofsted methodology, and in particular the move towards a more risk based approach raises questions for providers. Ofsted proposes a six-year interval between inspections of good and outstanding colleges, a proposal made “as a justifiable response to an increasingly mature sector”<sup>69</sup>. Whilst many colleges welcome such a step, not all welcome such a long gap, and some see it as a challenge for corporations to ensure that rapid action is taken if standards slip. Ofsted proposals for three yearly ‘health checks’ may assist corporations in providing useful information, but in a sector where self-improvement is still in its relative infancy it may be difficult for some corporations to switch from being reactive in relation to seeing quality in compliance terms for Ofsted, to being more proactive.
- 7.43 This may be particularly important in relation to the greater emphasis being placed on outputs in assessing quality, and reviewing the student experience. Respondents generally saw the challenge as being not only to supply data to boards to enable them to monitor quality effectively, but also to develop the understanding by board members so as to enable them to understand fully some of the key measurement issues associated with the range of learner performance taking place. Without the latter in place providers might not be able to demonstrate how they have understood and responded to learner views.
- 7.44 The Framework for Excellence raises similar issues, although its full use only comes into force in September 2010, and it is not currently required for all providers. During our consultation, many respondents voiced concerns to us about how it will be used, and about what is generally perceived to be its complexity. In addition, there is a range of technical issues associated with particular indicators that are not considered here, but need to be addressed in a manner consistent with moves to shared regulation. To take two by way of example: first, whether the Framework accurately measures the position of colleges who have primarily a national role; and second (as detailed in Section 4 and Appendix C) whether the financial control element of the Framework is consistent with aspects of good internal audit practice. There is also evidence that private providers are unsure of how much of the Framework will apply to them.
- 7.45 If the Framework is to command the support of the provider community it is important that such issues are dealt with in as consultative a way as possible, and providers report feeling that the LSC has been relatively unresponsive in working in such a way. Accordingly, there is hope – but not much expectation – amongst responding governors that the two new agencies will be more open to constructive discussion.

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69 Ofsted, 2009. *Responses to Ofsted's Consultation on Proposed Changes to Further Education and Skills Inspections: an Evaluation Report*. [www.ofsted.gov.uk](http://www.ofsted.gov.uk)

## Dissemination

- 7.46 When taken together, these are major challenges to FE, indeed some question whether an FE 'sector' will actually exist at all under the new arrangements, with just a range of providers of types of learning existing and not a discrete 'FE sector'. It follows, that if the FE sector does not exist, then a self-regulatory framework for an FE sector could also not exist. There are major policy issues here that go well beyond the terms of reference for this study, but will nonetheless have a major impact on future governance and strategic leadership.
- 7.47 One lesson from the banking debacle is clear: robust, integrated and coherent arrangements for ensuring oversight, accountability and leadership must be in place in FE from the outset under the new arrangements, and must not be an oversight to be addressed once the new systems are in place. Accordingly, the issues considered in this report deserve substantial – and relatively immediate – discussion amongst all the stakeholder groups concerned. We therefore recommend that a substantial process of dissemination of the findings of this report be undertaken as soon as possible.

**Recommendation 15:** A substantial process of dissemination of the findings of this report should be undertaken as soon as possible.

## 8. List of recommendations

The report makes the following recommendations. When considering the actions that might be taken in implementing them, reference should be made to the relevant sections of the text, where various conditions may be identified about the applicability of aspects of the recommendations to various parts of the FE system. In particular, sixth-form colleges and independent specialist colleges will need to consider the appropriateness for them of recommendations concerning general FE colleges:

	Recommendation	Page
1	That a code of governance for FE colleges be drawn up by a working group consisting of all relevant key stakeholders, and that once agreed it should be the basis for consistent regulation by all key groups in the sector.	26
2	That the model instrument and articles of governance be made shorter and enabling, and only seek to define and regulate essential core elements, with much of the current content of the instrument becoming guidance.	28
3	That as part of the preparation for shared regulation, the current arrangements for the development, training and support of college governors and clerks be reviewed, and more integrated arrangements introduced for delivery.	32
4	That data on membership and other aspects of governance practice should be collected regularly by an appropriate sector body for use by colleges.	33
5	That – subject to discussions between the Charity Commission and appropriate bodies in FE – corporations be given the power to introduce remuneration for independent members if they wish, although there should be no requirement to do so. Corporations wishing to do so should be able to demonstrate clear, robust and evidence-based cases for remuneration.	34
6	That a role description for the chair of a corporation be agreed, after wide discussion by chairs and other interested parties, and then be adopted by colleges on a voluntary basis.	35
7	That a study be commissioned on how the role of the clerk to corporations in colleges is undertaken and how this relates to the performance of corporations, and that this should involve the Clerks' Network.	36
8	That a role description for the clerk to the corporation be agreed, after wide discussion by clerks and other interested parties, and then be adopted by colleges on a voluntary basis.	37
9	Where they do not already exist, corporations should consider adopting public benefit and corporate social responsibility strategies to guide their engagement with the public and local interest groups.	40

Recommendation	Page
10 Clerks in all FE colleges should review Appendix C in detail, and produce a suggested action list of issues relevant to their own corporation.	41
11 Possible further research on strategic leadership in the work-based learning sector needs to be considered alongside the implications of the machinery of government changes once these are known. The starting point for this might be discussions with providers and the Association of Learning Providers at any dissemination event on this study held for the sector.	45
12 Further research may be needed to look at the practical implications of shared governance and strategic leadership in ACL providers, particularly when set in the context of developing interest in localism, local partnerships and 'place-shaping'. The starting point for considering such possible research might be dissemination events on this study held for ACL providers.	52
13 As a matter of urgency greater clarity should be given to providers on how the governance implications of adopting the machinery of government changes will be addressed.	64
14 Information on innovative practice in the area of local engagement and 'place-shaping' and the implications for providers, should be collected and disseminated.	65
15 A substantial process of dissemination of the findings of this report should be undertaken as soon as possible.	67

## 9. Key references

Appendices C, D and E contain a full list of references cited in relation to the three main areas reviewed for this study: colleges, work-based learning and adult and community learning. However there are a small number of key references (all produced by LSIS) that might usefully be read in conjunction with this main report. They are:

**Collinson D (ed), 2009. *Researching Self-Regulation in FE Colleges*. LSIS at [www.lsis.org.uk](http://www.lsis.org.uk)**

A study based on interviews with 21 college principals seeking their views on the challenges of self-regulation.

**Gibney J et al, 2009. *The New Place-Shaping: the Implications for Leaders in the Further Education Sector*. [www.lsis.org.uk](http://www.lsis.org.uk)**

A review of how FE colleges are engaging with local communities as part of their strategic roles.

**Gleeson D et al, 2009. *Creative Governance in Further Education: the Art of the Possible?* [www.lsis.org.uk](http://www.lsis.org.uk)**

A review of FE college governance and a call for more creative ways of enhancing governance.

**LSIS, 2009. *Self-Regulation – Shifting the Paradigm*. [www.lsis.org.uk](http://www.lsis.org.uk)**

A report of a series of LSIS seminars on self-regulation held between October 2008 and March 2009.

**McEvoy-Robinson D and Marples P, 2009. *Self-Regulation and Private Providers in Work Based Learning*. LSIS at [www.lsis.org.uk](http://www.lsis.org.uk)**

A useful review of the challenges facing private providers in preparing for self-regulation. The study provides an important context for the analysis in Section 5 of this report.

**Yarroll I, 2009. *Exploring the Leadership and Governance Implications of Self-Regulation for Local Authority and Third Sector Providers of Adult Learning and Skills*. LSIS at [www.lsis.org.uk](http://www.lsis.org.uk)**

A useful review of the challenges facing adult learning providers in preparing for self-regulation. Much of the analysis is used in Appendix E of this report.



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## Learning and Skills Improvement Service

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