

A Review of Governance and Strategic Leadership in English Further Education

Implications of shared regulation and the introduction of the machinery of government changes in 2010

Summary Report



Working together in partnership



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 in England 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 This report has been made available for a wide readership in FE; those involved in governance should also consult the main report and associated appendices available electronically at www.lsis.org.uk/governancereview and www.aoc.co.uk/en/college_governors/review-of-governance/
- 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 them about governance are difficult to make.
- 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 which influence practice and regulation. Section 3 of the main report 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 effective 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 is itself subject to substantial ambiguity.

FE colleges

- 4 So far as FE colleges are concerned, there is general support for the view that the quality of governance continues to improve, and has done so since incorporation. The report notes numerous strengths in the operation and conduct of governance, which have been broadly confirmed by Ofsted data. In general, the sector is now perceived to be more mature in its governance, as recognised by the encouragement of the government 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 or governing bodies are strategic in outlook and provide leadership for change.
- 5 The report notes a number of specific challenges facing corporations, including those concerned with recruiting governors, providing greater support and development for members, enhancing the roles of the corporation chair and clerk, developing the strategic capacity of boards, and the need for them to demonstrate effectiveness not only internally and to regulatory bodies but also to the communities and learners they serve.
- 6 In considering such challenges the report makes numerous proposals for action, and gives ten specific recommendations on college governance which would strengthen practice across the sector – all of which are consistent with adopting shared regulation. Some may be contentious, and the report proposes that before implementation there should be widespread consultation with all key stakeholder bodies, including the AoC Governors Council and the Clerks Network. 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.

- 7 The report considers how such actions might be introduced, and how judgements would be made on the institutional maturity of colleges to adopt the proposed new arrangements. This includes the possibility of a risk-based approach that would give increased freedom of action to those providers that could demonstrate effective governance and strategic leadership.
- 8 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 operating on a comply or explain basis. There are also sound arguments for clarifying the roles of the corporation chair and clerk on a voluntary basis, and draft role descriptions are provided in Appendix C of the report.

Work-based learning providers

- 9 Within the private work-based learning (WBL) sector, corporate governance and strategic leadership is provided in different ways depending on the nature of the provider, but the most common approach is that of a private sector board. Here the issues are largely identical to those concerning general corporate governance in companies or small and medium enterprises (SMEs), and are well known in the literature on the subject. The main issue is at the regulatory and contracting interface with the Learning and Skills Council (LSC) and its successor bodies, and the report identifies a lack of consistent awareness amongst providers of the structural changes taking place in the FE system and their influence on accountability.
- 10 For the convenience of readers from private work-based learning providers, a separate publication on strategic leadership and accountability has been edited from the report, and is available at www.lsis.org.uk/governancereview



Adult and community learning providers

- 11 The position concerning governance for adult and community learning (ACL) providers is different again, and there is no consistent approach across the local authority and third sector organisations involved. Within this sector there is the feeling that moves towards a shared regulation agenda have been too dominated by colleges, with the danger that any changes to arrangements may not be appropriate for them.
- 12 A separate publication on strategic leadership and governance in the ACL sector has also been edited from the report, and is available at www.lsis.org.uk/governancereview

The future

- 13 The report considers in some detail the implications for FE governance and strategic leadership of five main future issues:
 1. The challenges to general assumptions about effective governance caused by the failure of governance in the banking and finance sector
 2. The move towards shared regulation
 3. The introduction of the machinery of government changes
 4. The increased emphasis on localism and so-called ‘place-shaping’
 5. The adoption of the Framework for Excellence and changes in the Ofsted methodology.
- 14 While there is considerable support for some of these measures, there are also significant fears among some governors and principals. In some cases the absence of reliable and consistent information about the progress and implementation 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.

- 15 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 might 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.
- 16 The report notes that if there is to be confidence among those responsible for providing governance and strategic leadership, it is particularly important that there should be greater clarity about the implications of adopting shared regulation and the machinery of government and other changes, and the report recommends that this is undertaken as a matter of urgency. Failure to do so is likely to lead to a lowering of morale, particularly among college governors, with consequent implications for recruitment, retention and succession planning.

Further information:

To find out more about the review or to download the full report please visit:

www.lsis.org.uk/governancereview
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Recommendations

- 17** In total, the report makes 15 recommendations (summarised below) on how governance and strategic leadership in FE might be enhanced. In addition, the report makes many proposals for action 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.
- 18** To help achieve this, it is suggested that the 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.

- 19** The changes to the policy and regulatory environment in April 2010 offer a significant opportunity for FE providers to influence the practice of governance and accountability for the better, and – in cooperation with key stakeholder groups – to enhance further the quality of governance while reducing the regulatory burden. The report proposes that the sector seizes the opportunity in a constructive and creative way.

Recommendations for FE colleges

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.

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.

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.

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.

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.

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 adopted by colleges on a voluntary basis.

Recommendation 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.

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 adopted by colleges on a voluntary basis.

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.

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

Recommendations for private work-based learning providers

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.

Recommendation for adult and community learning providers (local authorities, voluntary organisations etc)

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.

Recommendations for all FE Providers

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.

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.

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

Send your comments to:

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An interesting model that emerged from examining governance across the types of organisations that make up the learning and skills sector.

Figure 1: Different primary purposes for governance



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 in this frame of reference, and some FE corporations also see this as their primary purpose.

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.

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 rather than 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 collaboration rather than competition is exercised. Staff and student participation (and that of parents in sixth form colleges) in governance may work best within this approach.

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Learning and Skills Improvement Service

The Learning and Skills Improvement Service aims to accelerate the drive for excellence in the learning and skills sector, building the sector's own capacity to design, commission and deliver improvement and strategic change. This will help realise our vision that every learner acquires the skills, knowledge and appetite for learning, living and working and that every provider is valued by their community and employers for their contribution to sustainable social and economic priorities.

Strategic Ambitions, which we published in July 2009, demonstrates how we will contribute to delivering core improvement principles and sets out our new ways of working to engage the sector in everything we do to make LSIS a truly sector-led organisation. You can find this document and other information about LSIS activities and services at www.lsis.org.uk

The Association of Colleges

The Association of Colleges (AoC) exists to represent and promote the interests of Colleges and provide members with professional support services. As such, we aim to be the authoritative voice of Colleges – based on credible analysis, research, advocacy and consultation with Colleges – and the first choice destination for guidance and advice for members.

The AoC Governors' Council promotes the role of governors and governance in the College sector. AoC also represents the views of Clerks to the Corporation through the National and Regional Clerks' Networks.

AoC was established in 1996 by Colleges themselves as a voice for further education and higher education delivered in Colleges at national and regional level. You can find out about this document and other information about AoC activities and services at www.aoc.co.uk

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This document can also be supplied in large font, audio or braille on request.