

REPORT OF MINISTERIAL REVIEW OF GOVERNANCE AND ACCOUNTABILITY IN THE FURTHER EDUCATION SECTOR

Ministers have now concluded their Review of Governance and Accountability in the Further Education sector. This Report sets out the steps which Ministers intend to take as a result of the Review.

Background to the Review

The review included a public consultation¹ which Ministers announced in May 2002. The initial August 2002 deadline for the consultation paper was extended to 25 October at the request of a number of respondents. As well as analysis of the responses in order to take these into account in the development of policy proposals, there has been a further round of informal discussions with the key stakeholders about the measures proposed below.

Recognising the views which had been expressed by both the Auditor General for Scotland and the Audit Committee of the Parliament about the wider risks for the further education sector identified by the events which had taken place Moray College, the consultation exercise sought to address comprehensively those areas which had given rise to concern. These included the appointments process for college Boards of Management; the means to secure an appropriate mix of skills; the powers of Ministers to remove or replace Board members; the power of the Chief Executive of the Scottish Further Education Funding Council (SFEFC) to ensure propriety and value for money; and the powers of SFEFC to intervene directly in cases of poor governance.

The mismanagement problems identified at Moray College were serious in extent (involving a combination of difficulties: allegations of impropriety in relation to the Principal and persistent weaknesses in governance and financial control). Several other colleges have experienced severe financial difficulties in the past. A great deal has been done by the Department and other bodies in recent years on the basis of lessons learned from the experience of individual colleges in difficulty. Ministers expect and will support college Boards of Management to achieve and maintain the highest possible standards of governance and accountability. The setting up of SFEFC and the establishment and ongoing refinement of new and more rigorous financial monitoring arrangements within the sector have led to much more robust processes and early warning mechanisms.

¹ <http://www.scotland.gov.uk/consultations/education/govandaccfe.pdf>

The most recent stage in this development is the SFEFC campaign with colleges aiming to achieve financial security within three years. Another key initiative has been the establishment last August of a new 'FE Development Directorate' (FEDD) by SFEFC. FEDD is led by a serving college Principal, seconded to SFEFC on a part-time basis, and is staffed by a team of experienced professionals from a variety of disciplines from within the sector who have volunteered to work in FEDD, also on a part-time 'short secondment' basis which is determined by the nature of assignments. The role of FEDD is to help colleges develop and improve their financial stability by providing experienced, relevant management support.

In addition SFEFC, the Association of Scottish Colleges (ASC) and the Scottish Further Education Unit (SFEU) have consulted and are nearing the completion of a comprehensive Guide for College Board Members (which is already in day to day use as a working draft). This covers all the individual and corporate governance responsibilities of Board members, taking account of good practice and the importance of self-assessment by Boards. The commencement of these initiatives predates the recommendation of the Audit Committee that there should be a Review of Governance and Accountability. The Review has provided an important opportunity to build on the ongoing work to improve standards of governance and accountability; to confirm where things are being done right; and to identify where there is scope for improvement. It has attempted to address genuinely and robustly the concerns identified by the Auditor General and the Audit Committee.

Outcome of the Review

Ministers have taken significant account of the views expressed by respondents to the consultation exercise in framing proposals for the action which will result from the Review. In aggregate, however, Ministers considered that the consultation responses may have understated to some extent the need to demonstrate robustness in standards of governance and accountability in the way suggested by the Committee. Some of the measures indicated below therefore, while prompted by the Audit Committee's call for a Review, have resulted from Ministers' own consideration as well as from the consultation exercise.

The following - grouped under headings which correspond to the main concerns of the Audit Committee - are measures which Ministers propose to introduce as a result of the Review.

Length of Board membership: Ministers intend that, save in exceptional circumstances, members of college Boards will in future be able to serve a maximum of two terms (ie 8 years). There was substantial support for the view that the current limit, which can allow service of up to 12 years, is too long. Ministers consider that such a change would be consistent with the need to refresh and modernise more

widely the thinking of Boards and their ability to learn from best practice in other sectors and in industry and commerce. Ministers recognise that this may cause difficulties for some colleges, eg rural colleges, which sometimes find difficulty in attracting Board members. Ministers also recognise some Boards may see a shorter time limit on membership as contributing to the loss of vital expertise. Ministers consider that any need by a college Board to retain or attract specific expertise however - say at a key point in a relocation or building project - can be catered for through a Board's power of co-option to committees.

Appointments process: Many respondents supported a standardised approach to identifying and appointing new Board members, subject to adequate safeguards to ensure that guidelines are sufficiently flexible to take account of colleges who face special circumstances, eg rural and islands colleges. Ministers intend to ask ASC to develop appropriate guidelines to ensure that colleges adopt good practice for public bodies in their appointments processes. Ministers also intend to ask SFEFC to seek assurances from colleges that they have in place agreements with all college Boards which demonstrate that their appointments processes are consistent with good practice in public appointments.

The practice of Boards filling their own vacancies had also been highlighted by the Auditor General as being possibly inconsistent with transparency and impartiality. Having looked closely at the issue, Ministers do not consider that the ability of Boards to have a central role in appointing their own members, of itself, jeopardises standards of governance and accountability. Many colleges themselves, in their response, felt that this issue is strongly linked to college autonomy, and that any change in favour of a system of appointments by Ministers or other external agencies could impact on that autonomy. Ministers nevertheless are aware of the need to ensure the highest possible level of public confidence in the appointments process followed by college Boards, and intend therefore to consider further, along with ASC and SFEFC, the case for some form of external scrutiny or involvement, either in appointments decisions (perhaps through the involvement of an approved panel of independent advisers or assessors), or through regular audits of the outcome of appointment exercises.

Appropriate mix of skills: Ministers intend to encourage Boards to address skills gaps by making greater use of the co-option of specialist skills and expertise. It is important that Boards have access to an appropriate range of skills, which can be difficult in some areas of Scotland. There was support among respondents for the greater use of the existing power of Boards to create expert committees and to co-opt people with the skills which these committees might need, perhaps to assist with large tasks or special problems. The ability of Boards to co-opt people to their committees is already provided for in the legislation. It will be impractical to take a prescriptive approach to the circumstances in which Boards might take such steps,

but Ministers consider that Boards should ensure that these options are always fully explored. Ministers also consider that Boards should undertake regular skills audits.

Ministers also intend to take steps to better utilise the public-spiritedness and expertise of citizens who wish to join the Board of a further education college by looking, along with ASC, at the scope to invite applicants who are unsuccessful at one college to consider applying to serving on the Board of another college. The availability to Boards of the various specialist skills required for effective governance is dependent on appropriate individuals willing to serve on Boards. Some colleges have little difficulty in attracting good-calibre members, and indeed some have what almost amounts to a waiting list. Others - often rural colleges - have significantly greater difficulty. Given the voluntary nature of Board membership, the task of encouraging participation where there is a shortage can be a difficult one. Clearly, the chief commitment of many applicants will be to their own community, but equally there may be applicants who are prepared to offer their candidature to other college Boards. Ministers will also examine further the scope for making better use of the contribution which younger professionals might make at an earlier stage in their career.

With regard to the possible remuneration of Board members, Ministers have decided that no change should be made. There was no substantial call from consultation respondents for the introduction of remuneration for the normal activities of Board members, nor was there any strong view expressed that paying Board members would lead to improved governance and accountability.

Ministers intend to consider, in consultation with the ASC and COSLA, how we will relax or remove the current statutory provision which prohibits the appointment of a local authority employee or elected representative to the Chair of any college Board. This restriction has existed since the colleges were first incorporated under the Further & Higher Education (Scotland) Act 1992². Ministers consider that there may now not be the same need as was perceived in 1992 to isolate the leadership of college Boards from local authority influence. As matters stand, individuals such as environmental health officers and care workers are caught by the restriction, which applies to employees and councillors even of a different Council area to that of the college. Ministers consider that there could now be a case for relaxing or even completely removing the restriction, and that conflict of interest for any Board member should be addressed through declaration and transparency procedures, including the new codes of conduct which colleges are required to draft following the enactment of the Ethical Standards in Public Life etc (Scotland) Act 2000³.

² http://www.hmso.gov.uk/acts/acts1992/Ukpga_19920037_en_1.htm

³ <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2000/20000007.htm>

On the diversity of Boards, Ministers intend to encourage Boards to make stronger efforts to achieve a more diverse and representative balance in terms of the gender, race, age and disability status of their membership, and ask the ASC to explicitly address this issue in the design of their appointments processes. Though not a problem specifically highlighted by the Audit Committee, the issue of race and gender balance was raised as a concern in several consultation responses. Ministers wish to see colleges tackle any imbalances in a committed and genuine manner. The reduction in the maximum length of Board membership from 12 to 8 years should assist this process.

Facilitating improvements: Ministers intend to ask ASC and SFEU to examine the training arrangements for Clerks, and ask ASC to define the role and responsibilities of the Clerk in their guidelines to Boards. A number of consultation respondents emphasised the key role of the Clerk to the Board as a source of independent advice and guidance to Board members. While practice varies to some extent, Clerks to Boards are invariably college employees, usually within the line command of the Principal (often an Assistant Principal acts as Clerk). Some concern was expressed that Clerks might feel constrained in certain circumstances from giving robust advice to the Board, for example in its scrutiny of decisions by, or the conduct of, the Principal. There is no evidence that Clerks to Boards are significantly underperforming, nor that their line management relationship with the Principal of itself is leading to difficulty. Nevertheless, Ministers consider the role of the Clerk to be sufficiently important to warrant closer examination of their skills and training to ensure that the quality of advice which Boards receive from Clerks is of the highest possible standard.

Guidance, Induction, Training and Development: Ministers intend to ask ASC, SFEFC and the SFEU to build on their recent work on a good governance Guide by devising and implementing a national training programme for Board members. The commencement of work on the production of the Guide predated the Audit Committee's call for a Review of Governance and Accountability, but addresses many of the areas which the Committee and the Auditor General indicated should be examined further. As indicated, the Guide is already in day-to-day use in working draft form. A series of Board training events, including discrete training for Board Chairs, would complement the Guide but would have a broader focus on standards of conduct and behaviour expected of board members, rather on the specific contents of the Guide. The Guide sets out a clear standard for Boards and individual members, and addresses a number of criticisms that Board members may not be fully clear of their role. Ministers consider that it would be a logical step for the agencies which compiled the Guide to continue their collective work with a view to developing national training arrangements for Board members.

Ministers' power to remove members: Ministers do not intend to seek further powers beyond those currently in the 1992 Act. Current powers allow Ministers to dismiss a Board, or individual Boards members, if it appears that they have mismanaged the affairs of the college, and to appoint a replacement Board (Ministers have further powers to issue specific Directions to Boards). A substantial number of consultation respondents concluded that there was no case for extending the powers of Ministers, with many pointing to the fact that the powers to remove/replace a Board or give a Direction had never been used. Some felt that the greater use of Ministerial powers could result in weaker, rather than stronger, governance and accountability.

SFEFC powers to intervene: Ministers intend to consider giving SFEFC a new power to attend, at its discretion, and be heard at meetings of any college Board. This is likely to require legislation. In the meantime Ministers will ask SFEFC to consider the scope to provide for attendance by SFEFC at Board meetings as a condition of grant or through other administrative arrangements. There was agreement among respondents that there may be occasions where SFEFC attendance at meetings of a college Board could be appropriate, though this is likely to occur only in exceptional circumstances. One of the main concerns of the Audit Committee was that SFEFC should intervene earlier and more firmly where a college gets into difficulty.

The Audit Committee was also concerned that Boards, in time of difficulty, should have access to all available advice and guidance. SFEFC has in place and is continually enhancing rigorous financial appraisal and monitoring arrangements to oversee the financial health of colleges. Central to that activity is the early identification of colleges in financial difficulty together with the provision of assistance to address the problems and speed up recovery. The direct intervention of SFEFC at Board meetings, on occasions where that was judged to be appropriate, would provide greater assurance that the Board fully understood its role and responsibilities, and specifically the requirement on Boards to move out of deficit in no more than three years.

Powers of SFEFC's Accountable Officer: No substantial case was identified in the consultation for any extension of the powers of SFEFC's Chief Executive as suggested by the Auditor General, nor was there support for the delegation to SFEFC of the powers which currently rest with Ministers to issue statutory directions to Boards or to dismiss Boards. SFEFC highlighted in its own response that increasing its powers of intervention in this way risked undermining the accountability of Boards. Ministers intend to ask SFEFC to consider further, as part of its own review of the Financial Memorandum to which colleges are required to adhere, the role which SFEFC might have in the appointment of the college Accountable Officer. There was no clear single view among consultation respondents, with some taking the view that this

should remain the responsibility of the college Board, and others in favour of greater SFEFC involvement.

Ministers also wish to see formal training and continuous professional development activity for Accountable Officers and will ask SFEFC, ASC and the SFEU to commence early work to devise and implement such a programme. The introduction of formal training arrangements which make clear the duties and responsibilities of the Accountable Officer will be a positive step and will serve to reinforce at the outset the extent of the responsibility placed on the Principal.

Other issues: Ministers wish to make clear that they see robust, modern arrangements for dealing with 'customer' complaints as integral to good governance, and intend to introduce procedures which allow complainants who remain dissatisfied to have their complaint independently considered. Ministers will also give further thought to the merits of redesignating Boards of Management as 'Boards of Governors' in order to give a more accurate reflection of their role.

Future Review

Ministers intend to keep under ongoing review governance and accountability arrangements in the further education sector. Given the range of measures which are proposed a result of the current Review, and others which are already in train, Ministers see it as important to assess the impact of these and to make any further necessary changes in the light of that. Ministers therefore will further review the impact of the above package of changes after two years.