

Accountability in Further Education

**Response from the Further
Education Funding Council**

July 1998

**THE
FURTHER
EDUCATION
FUNDING
COUNCIL**

ACCOUNTABILITY IN FURTHER EDUCATION: RESPONSE FROM THE FURTHER EDUCATION FUNDING COUNCIL

INTRODUCTION

1 The Council welcomes the opportunity to comment on the government's consultation paper *Accountability in Further Education*.

2 The Council fully endorses the importance attached to good governance by the paper; and particularly the emphasis on the importance of good governance in enabling further education colleges to realise the achievement of the 'learning society' advocated in the recent green paper. By good governance, the Council means governance that can demonstrate both its probity and its effectiveness.

3 The publication of the paper marks an important development in the government's views about how good governance in the sector is best ensured and supported. The proposals about the composition of governing bodies will result in a fundamentally different model of corporate governance than that established by the *Further and Higher Education Act 1992*. The Council looks forward to working with the government and colleges to develop this model more fully. In particular, the Council welcomes the opportunity offered by the paper for local community members to take a more active role in college governance and for colleges to be more closely engaged with their local communities. This will build on the achievements of many colleges which increasingly act as key strategic partners forging local learning networks, and as brokers with other partners in the regeneration of their communities.

4 The Council acknowledges the merits of including in governing body membership individuals put forward by local authorities including elected members, individuals from local community bodies, staff and students. The Council recognises that, to date, many governing bodies have concentrated their efforts on their financial accountability. For the merits of the new model of governance to be fully realised, it will, however, be extremely important that the government, in making the changes proposed, continues to place value on the contribution made by business members.

In particular, colleges are run, in most cases, in a business-like manner and their ability to meet the disciplines of incorporation and challenging financial circumstances owe much to the work of their business members.

Comments on the Proposals

5 The Council makes a number of observations about the proposals:

- a. it is essential that, in implementing the proposals, the government emphasises that college governing bodies are corporate entities, that their members owe collective responsibility towards the corporation and that their primary duty, as members, is to the future of the college. It follows from this that the government needs to be clear about the nature of an individual's membership of the governing body. The consultation paper refers to 'nomination' of members by other bodies. The Council believes, above all, that members need to serve as members of the corporation, owing their allegiance to the corporation. It is essential that they are not seen, and do not see themselves, as delegates or representatives of the body or category from which they are drawn. In this context, it might be more helpful to refer to individuals as being 'put forward for', or as 'candidates for', membership rather than as 'nominees'; and also to allow for colleges which themselves want to identify local community members to be endorsed by local community bodies. A preferred alternative might be for outside bodies to put up several nominations to a search committee who make appropriate recommendations to the corporation;
 - b. the Council strongly endorses the proposal that corporations be the appointing authority for all members. Nonetheless, the government needs to be clear about the method by which members will be appointed. The Council strongly believes that it is essential that the corporation makes the appointment, using the search committee. All appointments should follow from the essential starting-point of a careful analysis of the needs, in terms of skills, experience and category, of the college. This was stressed by Lord Nolan's committee and the principle of appointing on merit is particularly important. This means that bodies which may, in future, make nominations
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- should be required to put forward a range of names and, where possible, to agree with the college the preferred candidate. The new model of governance will be unworkable and will fail if colleges feel that members are being imposed on them and that they do not reflect the needs of the corporation. Colleges must be able to reject nominations;
- c. the Council welcomes the emphasis placed on the role of staff and student members of the governing body. It recognises that staff and student members will be elected by their peers but, once elected, they too should be regarded as full members of the governing body and the Council would prefer that all members of governing bodies be regarded as having the same status. This would place considerable responsibility on those members as well as on the conduct of the corporation itself. Colleges may also need to consider whether there are other strategies to support student governors in taking on their responsibilities and to ensure that the views of students are heard effectively;
- d. it is essential to change the current requirement on college governing bodies to have a TEC nominee. In future, as expressed above, all members of governing bodies should be appointed on an equal footing by the corporation, rather than, in effect, appointed by an external body;
- e. all members should be required, by the articles and instruments, to be 'fit and able' to perform their duties. Currently, this requirement obtains in respect of removing a governor from office. In future, it might be helpful if this requirement was clearly applicable to appointments of members in all categories;
- f. the Council welcomes the statements about the voluntary nature of membership and the clarification about when expenses may be paid. It would, however, urge the government to offer guidance to local authorities to ensure that local government attendance allowances are not paid for elected members attending college governing body meetings or related college business;
- g. the Council would urge the government to introduce reciprocal arrangements for colleges so that college principals will be co-opted members of local education authorities and members of TEC boards;
- h. it is not clear why the requirement to have an academic board should not apply equally to sixth form colleges, as these bodies are known to have a useful function;
- i. the Council has some concerns about the proposal to relax the specification in the articles and instruments in respect of committees. Specifically, it would urge that the finance committee and remuneration committee should continue to be a requirement and that there should be a new requirement for audit and search committees. The audit committee is required by the Council's conditions of funding and the others are recognised as good practice. Their role and status could usefully be strengthened by making them a requirement of the articles and instruments. This would reflect best commercial practice, as recommended by the Cadbury, Greenbury and Hampel committees. This might complement the reduction of the formal input from business members. Consideration might also be given to governing body committees being able to include a limited number of co-opted members, within certain parameters. A number of college audit committees do this successfully, and it would be an additional and productive way of spreading the involvement in and expertise available to college governance. Finally, governing bodies might be helped considerably in the transition to the new model of governance and in accounting for decisions about membership if search committees were able to draw on independent assessors, similar, but on a suitable scale, to the role performed by the Public Appointments Unit;
- j. it would be extremely useful if the government could accompany implementation of its proposals with some further clarification of the nature of personal liabilities of members of governing bodies. This might be relevant to attracting a wider range of members;
- k. the Council welcomes clarification of those matters which can and cannot be delegated and recognition of clear reporting requirements;
- l. the government might usefully give further consideration to the need for guidance for colleges about the scope of those local and community groups from which members may in future be drawn.
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Additional Observations

6 In addition, the Council would make the following observations about governance which it hopes the government is able to embrace within its implementation of the proposals in the consultation paper.

Underpinning accountability

7 The Council suggests that other methods be adopted to help underpin college accountability to their local communities, in addition to changes to the membership of governing bodies. For example:

- a. a requirement that colleges consult local strategic partners, including local authorities and TECs when drawing up their strategic plans. This would help ensure that local views are received and that the plan fits with, is informed by and informs those of other local agencies. This partnership approach is preferred to the current requirement that the TEC approve the college's plan. The Council's view is that this requirement should be dropped;
 - b. a requirement that colleges publish their plans and hold an annual meeting at which they can account for their achievements against that plan. This is understood to be the practice in Scotland and in the schools sector;
 - c. the role of the clerk should be clarified. The Council considers that the clerk has an essential function; should have the right of access to the chair of the governing body; and must be able to act with sufficient independence from the college management. This should be specified in a job description agreed by the board. The clerk might usefully be required by the instruments and articles to be appointed by the board, for that part of their job, without the post being denoted necessarily as a senior post for that purpose. The Council does not, however, consider that the clerk needs to be drawn from outside the college staff, or that this is practicable or useful for many colleges. There is some concern that such a requirement, implied by the select committee's recent report (*Further Education: The education and employment committee: Report VI*), would be counterproductive and certainly contrary to good private sector practice. Nor does it consider that, if there are sufficient safeguards about status, role and independence, that it is incompatible for a clerk also to be a member of the college management. The Council's inspection framework currently considers the extent of the separation of roles where a clerk also holds another post within the college to ensure that this is appropriate. However, some positions such as the finance director and principal's assistant may not normally be compatible with the role of the clerk. The formal role of the clerk as 'whistleblower' should also be recognised formally, as it is now under the revised financial memorandum;
 - d. the Council would strongly support the introduction of an ombuds-function for further education, as recommended most recently by the select committee. This would do much to bring greater confidence to staff and students and would ensure some external scrutiny of certain complaints and grievances;
 - e. publicly available registers of interest and codes of conduct, together with formal published policies on the availability of minutes of meetings, would also contribute to a revised accountability framework. Many colleges have already adopted these voluntarily. The select committee report recommended that colleges should treat matters as confidential only where this was strictly necessary. It would help relationships within the college as well as between the college and its communities if minutes and other information were readily available. Whilst many colleges do this, others have rather weak arrangements for public access. A requirement that copies are placed in a library to which the public have access would be a useful way forward;
 - f. the Council would also support a requirement that colleges adopt procedures for whistleblowers and for their protection. Again, many colleges do this and the Association of Colleges has produced helpful guidance, but it is not universally adopted. The select committee also recommended this;
 - g. the current articles and instruments require the principal to make proposals to the governing body about the educational character and mission of the college. The government might wish to consider requiring that the governing body approve these, alongside the approval of the budget for income and expenditure, cashflow and its balance sheet, prior to the beginning of the year to which they relate.
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Supporting good governance

8 The Council actively supports good governance. The requirements of incorporation have established a demanding discipline for governing bodies. The Council has published, in collaboration with the sector, the *Guide for Governors* and *College Governance: A Guide for Clerks*; as well as a range of short documents for governors on aspects of the Council and colleges' work. The chair of the Council meets chairs of governing bodies annually in a series of regional meetings. The Council holds a successful annual general meeting for which chairs are the key audience. Inspection reports on individual colleges are sent to the chairs of governing bodies. The chief inspector's annual report provides an analysis of the findings from inspections of governance and management. Members of staff speak at governors' and clerks' events and respond to queries from individual colleges.

9 The Council's inspection framework has been particularly important in supporting the development of good governance since incorporation. The Council has this year revised its inspection framework to place greater emphasis on governance and management and has brought together its inspectors and auditors to deliver comprehensive analysis and judgements to colleges. The new inspection framework awards a grade specifically for the quality of college governance.

10 The evidence about the quality of governance in the sector has been encouraging. Inspection reports testify to the support offered by good governors, especially in ensuring that financial matters are addressed. The chief inspector's annual report for 1996-97 states that

. . . highly committed governors bring to the sector valuable expertise and useful contacts with local industry and the community. They are good advocates for the college and give of their time generously . . . only a few have developed effective indicators to measure their overall performance. Governors of most colleges have a good understanding of their financial responsibilities but these have sometimes absorbed too much of their attention. Governors are less comfortable in determining the educational character of their college and in monitoring the quality of the provision . . . most . . . are not well enough informed about students' achievements or the academic standards of the college.

Quality and Standards in Further Education in England 1996-97, paragraph 40.

11 Given this evidence, the Council has some concern that the government's consultation paper, in referring to governing bodies, as 'ripe for reform' may be misinterpreted as a general criticism of governing bodies, rather than a reflection of a desire to change their nature and focus and to introduce a new model of governance. The Council believes it will be important for colleges to continue to harness the support and goodwill of their business members and the business community, and to be able to draw fully on those qualities which many governors with business backgrounds bring to their work.

12 However, there are clearly challenges for college governing bodies, as the expectations upon them develop. The Council shares the government's analysis that colleges are crucial to realising a lifelong learning society and to achieving essential social and economic regeneration. The Council's response to the green paper elaborates on the evolving role and capacity of colleges in this context.

13 The Council will support colleges as they develop governance arrangements that underpin the proposals in the consultation paper. In particular, the Council believes that it is timely to review the guidance available to colleges and governors and to bring it up to date. Some recent events, and particularly the publication of reports on Glasgow Caledonian University and St Austell College, suggest that some governing bodies would welcome further guidance. Consequently, the Council has announced that it will establish, jointly with the Further Education Funding Council for Wales and the Association of Colleges, a working group to develop new guidance on good governance. It is anticipated that this guidance will offer information on good practice as well as the formal requirements of governance. It will be important for any revised guidance to take full account of the new expectations on governing bodies following implementation of the government's proposals. This will enable colleges to develop further their abilities to engage with their local communities and to demonstrate their accountability. The Council looks forward to the government's contribution to the working group.

Council's powers of intervention

14 The Council has considered how it can best enforce the reforms to the composition of governing bodies and other measures which might usefully underpin accountability and good governance. It is clear that the four levers introduced by the Council (the inspection and audit framework; the funding

methodology; the strategic planning framework; and data collection requirements) have not only exerted a strong discipline on corporations, but have also supported the development of good governance. The emerging evidence from the latest inspections of colleges, where the requirements on governance and management are arguably higher than under the previous inspection framework, is very encouraging.

15 However, there can be occasions where guidance and the impact of the four levers described above do not seem to be sufficient to ensure that colleges have the quality of governance that they need, or where guidance does not sufficiently inform their activities. It follows, using the definition of good governance adopted earlier, that these colleges will find it difficult to demonstrate to their stakeholders – or to the Council – their probity or effectiveness. In these circumstances, the current accountability framework can sometimes seem inadequate to allow suitable action to be taken. The current framework depends heavily on the use of two powers. The first is the secretary of state’s power to intervene, on the Council’s advice, to remove the governing body. The second is the Council’s power to withdraw funding or attach other funding conditions to a college’s allocation.

16 Increasingly, the Council has been concerned that these powers may not enable it fully to discharge its own accountability to parliament and government, and may not provide sufficient protection when matters are going astray. In particular:

- the use of the power to attach conditions of funding or withdraw funding always needs to be balanced by the need to discharge the duty on the Council (but not on colleges) to secure facilities for further education which are sufficient and adequate. Making that balance will usually favour discharging the duties towards students
- the secretary of state’s power to remove the governors is very much a power of last resort and has been used very sparingly.

17 This has prompted the question as to whether there is a gap in the powers of intervention, and whether other changes are needed to consolidate the enhanced accountability to which the consultation paper aspires. This question has been explored recently by the education and employment

select committee, which noted in its report that, in the event of mismanagement:

... in the interests of promoting a clear understanding of the role played by the FEFC in ensuring the probity of the sector, we recommend that the FEFC’s duty to intervene is clarified and strengthened. The FEFC needs to intervene at the first danger signal.

Select Committee Report VI paragraph 164.

18 There are difficulties here in envisaging and delivering a more interventionist approach on the part of the Council. Any such approach would need to continue to respect the proper autonomy of colleges and to take account of necessary practical limitations. Whilst it is likely that emerging government priorities will challenge the reach of the Council’s four levers, it will always be important to hold on to the principle of college autonomy and not to subvert the proper role of a funding body. Colleges need a considerable degree of autonomy in order to retain their flexibility and responsiveness. The sector’s capacity to respond quickly is one of its defining characteristics. The Council believes strongly that this capacity should not be hampered by extensive additional constraints or requirements, nor that the Council should, or should be required to, substitute its own judgement for that of colleges.

19 Nonetheless, the Council, with some reluctance, considers that there would be merit in adding to the range of its mechanisms for intervention. In particular, consideration could be given to:

- the Council’s being empowered to nominate assessors for a stated period of time to college governing bodies and having the right to address governing bodies
- a power of direction, falling short of the power to attach conditions of funding and related solely to concerns about the proper use of public funds and possibly, compliance with the articles and instruments
- a power for the Council to appoint a small number of governors to a college for a specified period and purpose.

