

Self-regulation – shifting the paradigm

Final report - April 2009



Self-regulation – shifting the paradigm

Report of the LSIS seminar series held between October 2008 and March 2009

Published April 2009

This paper provided the basis for a discussion on 22nd April 2009 between DIUS, Single Voice and LSIS about the next steps to be taken. A joint statement will be published setting out the decisions made. The link to this statement will be provided when available.

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Key outcomes

Introduction

1. This draft of the final executive summary will provide the focus for the discussion between LSIS, the Single Voice and DIUS on 22nd April 2009. The summary presents LSIS's analysis of the key outcomes of the seminar discussions and the consensus reached. It also presents proposed actions in draft form for discussion with DIUS and the Single Voice in order to get as much agreement as possible on ways forward before finalising and publishing the report.
2. In a nutshell - the aim of the discussion is to be able to reach sufficient agreement to signal that concrete steps and actions are being taken that enable us to move to a new stage of development, away from the focus on self-regulation, to a focus on improvement and excellence, under-pinned by *shared regulation*. It is proposed that *shared regulation* be achieved by engaging the sector systematically as a partner with government and other relevant bodies and agencies in helping to shape the regulatory arrangements, in order to achieve a greater sense of co-ownership and shared responsibility. This might be described as co-design leading to *shared regulation*.

Background

3. The LSIS seminars on self-regulation were held between October 2008 and March 2009. The seminars were planned with the support of the Single Voice for Self-Regulation in FE and of DIUS, and involved an invited audience of leaders from the learning and skills sector, its associations, national partner bodies and government departments¹. LSIS's role has been to steward a progressive process, designing the programme and prompting and capturing the thinking and consensus across the seminars through stimulus papers and reports².
4. This section articulates a new ambition for regulation and identifies seven priority areas for action to achieve this ambition. It reflects how during the course of our discussions our ambition evolved. We moved away from the term self-regulation as it implied an unrealistic level of independence for a public service; many of us were taken for a while with the notion of co-regulation before realising it was potentially ambiguous; and finally alighted on the notion of *shared regulation*. This executive summary also takes account particularly of 10 emerging propositions developed across the seminar series that identify desirable features of a regulatory system (see section 2, starting on page 15).

¹ A full list of participants is included at the end of this report on page 33

² All of these papers are available on the LSIS website

<http://www.lsis.org.uk/PolicyServices/Discussion/SeminarSeries/ShiftingTheParadigm.aspx>

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The ambition

5. The ambition developed over the course of the seminar series is for *shared* regulation that:
 - empowers the learning and skills sector to be the best it can be;
 - encourages the sector's providers, individually and collectively, to take ownership and responsibility for their own performance;
 - is streamlined and efficient but robust, securing public confidence and political trust;
 - affords the sector greater discretion to be responsive to its customers – individuals, employers and communities; and
 - is based on performance measures and targets that command greater sector endorsement and do justice to the sector's diversity and to its contributions to social and economic priorities.
6. At the heart of this ambition is a desire from the sector³, for greater sector influence over the regulatory arrangements, to create a *co-designed and co-owned system*. In a co-designed and co-owned system, the standards, targets, measures and processes by which the sector is held to account would be negotiated and jointly agreed to achieve a closer alignment between the wishes of government and its agencies, of customers and of the sector itself, thereby reducing drag and resistance in the system. While recognising that government has responsibility for setting strategic priorities, the greater the shared ownership of these priorities by the sector, the stronger its commitment and sense of responsibility will be to their achievement.
7. For a period the term *co-regulation* captured our imagination – in addition to co-design and co-ownership, responsibilities for carrying out regulation would also be shared between the regulators and the regulated involving elements of self- and statutory regulation. Co-design and administration of regulation could enable a dynamic partnership approach capable of evolution as priorities change and performance improves, thus securing *shared regulation*. As internal regulation and governance by providers themselves improve, external regulation could be reduced, proportionate to performance, and closer to the irreducible minimum necessary for public accountability.

³ When we refer to views from the seminars, we are referring to a consensus among those present at the seminars. These ideas have no formal endorsement by the sector as a whole or by the Single Voice and its member associations.

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Seven areas for action

8. These seven areas for action address the most salient priorities and propositions identified through the LSIS seminars and aim to make progress towards the ambition described above, taking account of the emerging propositions (starting on page 15). The areas include steps to make short-term immediate improvements while putting in place systems for longer-term sustainable reform of the regulatory arrangements. Several of the steps proposed, aim to clarify and rationalise existing arrangements as a prerequisite for more systemic change.

1 - Clarify and review existing mechanisms and processes for developing policy related to regulation and performance management

9. At the final seminar we discussed a possible model and mechanisms⁴ for achieving co-design and shared ownership of the regulatory arrangements. However, the discussion highlighted 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. As a result the tendency is to suggest new bodies rather than considering how existing bodies might be revised.
10. DIUS has significantly increased sector engagement in policy development. This would be enhanced by a clear mapping of the bodies and mechanisms that currently exist and their membership in order that the sector has the full picture of its engagement and can ensure that its representatives are accountable. As long as the arrangements are not clear, concerns that the sector is not systematically engaged will persist, and the sector's engagement in those processes will be less authoritative than it could be. The imminent dissolution of the LSC and its replacement by the SFA and YPLA offer the opportunity now to design afresh the mechanisms for policy development and sector engagement for these new bodies.

Draft - Action for discussion

11. DIUS, DCSF and the associated bodies with regulatory functions (for example, LSC and Ofsted), map the existing boards, bodies and mechanisms that exist for sector-involvement in policy development on regulatory and performance matters, including emerging proposals for sector engagement in policy development and governance arrangements for the SFA and YPLA.
12. On the basis of the map of arrangements, DIUS, DCSF and the Single Voice members could review the scope of the mechanisms and whether they provide the basis for co-design and shared regulation as described above. They might also consider whether the voice of the sector's customers is sufficiently audible in these arrangements.

⁴ A new regulatory settlement for FE and skills - an aunt Sally was prepared as a stimulus paper for the final seminar. It is available on the LSIS website through this link - http://www.lsis.org.uk/Libraries/Policy/StP_SemSixAuntSally.sflb

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13. In addition, Single Voice and its members could consider how its contributions on these bodies and accountability to the sector could be improved. As well as increasing clarity and openness about policy-making processes in the sector, this review could help to improve the sector's own accountability mechanisms.
14. Greater clarity about the current arrangements may demonstrate that the priority areas highlighted below could be taken forward through an existing mechanism.

2 – Further streamline and simplify regulatory and performance management arrangements

15. We carried out an analysis of existing mechanisms with a regulatory function and set these alongside the purposes of regulation that need to be addressed to maintain the public interest (see annexe three, page 24). In addition, the paper *From Good to Great*⁵ presented to the final seminar, provided a model of the elements required for a shared regulatory system, summarised in the table below:

Status	Element
Currently exist, well developed	6 - standard financial control and reporting procedures 11 - ministerial letters of guidance
Currently exist, need further development	1 - fully effective governance 2 - revised financial memorandum (or contract) - including a requirement for openness and transparency; and requiring standards set by peers to be met as a condition of funding 3 – accountability data – including definition of the irreducible minimum required to secure public confidence 7 - quality inspection and value for money audit
New	4 - sector-wide coalition for self-improvement 5 – under-performance protocol - also included in a revised financial memorandum 8 - performance standards set by providers 10 - an ombudsman

⁵ *From good to great: An outline model for self-regulation in the learning and skills sector* was prepared as a stimulus paper for the final seminar. It is available on the LSIS website through this link http://www.lsis.org.uk/Libraries/Policy/StP_SemSixFromGoodtoGreat.sflb

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16. Performance standards, an under-performance protocol and the sector-wide coalition for self-improvement are discussed as areas for action in the following sections. Others such as an ombudsman role and elements classified as in need of further development (such as accountability data and a revised financial memorandum), require further work and discussion. Governance is already identified as a priority for LSIS and partners, including through the National Improvement Partnership Board.

Draft - Action for discussion

17. Further simplification could be achieved by examining current arrangements as a whole, reviewing the compound impact on providers and identifying how they can be streamlined, and defining the irreducible minimum for regulation. This could be taken forward by the existing Bureaucracy Reduction Group with involvement of other relevant bodies. The emerging propositions (see page 15) should inform this work, including for example the proposition that regulatory mechanisms should support self-improvement as far as that is possible without compromising their regulatory function.

3 - Increase sector ownership of performance measures, standards and targets

18. There is a clear perception that the sector does not have a sufficiently strong voice in shaping the measures, standards and targets that drive its activity and through which its performance is measured. While this may be the result, in part, of the lack of clarity in the policy-making and consultation arrangements described above, the perception is important in terms of the sector's commitment to those drivers. The ambition set out in *Good to Great* referred to above is for the sector itself to set performance standards. As a first step, clear sector engagement in shaping the measures, standards and targets by which its performance is judged should ensure that the sector feels that its contribution is more fairly assessed. This engagement can also create ownership of the standards which generates real commitment and a sense of responsibility for their achievement.
19. The scope of this ambition for influence extends to funding policy which is critical in determining the level of discretion that providers enjoy to meet the needs of clients. While government has the primary responsibility for determining priorities for public spending, systematic consultation and engagement of the sector helps to ensure that strategies for implementation achieve intended policy outcomes, that the consequences of particular approaches are understood, and that the sector understands fully the policy intentions. A stronger understanding and commitment to achievement of these policy intentions could reduce the level of prescription deemed necessary to steer sector behaviours.
20. The seminars came to a clear view (proposition 7, paragraphs 73-77) that the performance management system should be capable of recognising the different missions and ambitions within the sector, and providers should not be constrained to describe their public contribution in terms of the lowest common denominator. It should be possible for providers to select from a range of indicators those that most appropriately describe their mission and purposes, enabling these to reflect more closely the priorities and characteristics of the local community and economy.

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21. We concluded that there should be a common core of indicators, ensuring a strong commonality at the heart of the sector, but with flexibility to choose others to reflect specific priorities and missions. A recurring concern was that these arrangements should enable not hamper the sector from playing a full role within their local community, acting alongside other public services to support national and local government priorities (see proposition 9, paragraphs 85-87).

Draft - Action for discussion

22. Work is undoubtedly being taken forward in this area already. Depending on existing activity, work or pilots to establish a set of core and mission-specific indicators could be undertaken involving the sector and the different families of providers. The outcomes could be brought together with the evolving Framework for Excellence and Common Inspection Framework in order to assess the fit and move towards alignment. Work on area for action 1 above (paragraphs 9-14) may identify existing bodies that could most effectively be used to take forward this work. In addition, the Single Voice members could define their own standards of excellence in order to challenge and raise aspirations and generate debate on this matter.

4 - Agree a protocol to address under-performance and avoid failure

23. While the incidence of inadequate performance is declining, any level of poor performance fails sector customers and undermines the reputation of the sector. As the existing arrangements change to take account of the abolition of the LSC and creation of the YPLA and SFA, a new protocol needs to be developed.
24. In line with the desire for the sector to take increasing responsibility for its performance, the protocol should be co-designed and agreed between the members of the Single Voice, government and relevant agencies to clarify how early signs of under-performance can be identified and effective support mobilised by the sector itself. Procedures need to be clear and rigorous, establishing the triggers for early identification and action, the roles of different actors and, critically, the timescales for improvement and the standards that must be achieved if external interventions are to be avoided.
25. The protocol will need to be tested to fit the arrangements that result from the abolition of LSC and creation of the YPLA and SFA, and the new role of local authorities in relation to 16-19 funding. It should also give consideration to supportively safeguarding the standards of the large number of new providers entering the system. Concern was expressed in the seminars about the effect on the sector's overall reputation should they perform to a lower standard than their more established counterparts.

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Draft - Action for discussion

26. A group should be convened by LSIS to develop a core protocol with the engagement of relevant bodies - Ofsted, LSC, the Single Voice members, DIUS and DCSF in the first instance⁶; and pilots are established with members of the Single Voice to develop approaches to maximising sector-led action to anticipate, identify and address under-performance.

5 – Develop further the roles and governance of the ‘sector-led’ bodies relevant to regulation

27. Over recent years, government has, through appointing principals as chairs, given the sector a leadership role in bodies such as *the information authority* and the Bureaucracy Review Group. A stimulus paper prepared for the final seminar⁷ suggested extending the scope and roles of these bodies designated by government as sector-led. It became clear in the discussion that sector knowledge of the role, membership, governance and impact of the sector-led bodies⁸, is limited.
28. We recognised that their designation as sector-led indicated the commitment by government to extend greater influence to the sector in shaping relevant elements of policy. However, the current lack of awareness of their role and lines of accountability undermines the level of ownership by the sector. This is not to disregard the valuable work that is being undertaken, but to recognise that they would command more authority if their governance, members and functions were more clearly understood and endorsed by the sector.

Draft - Action for discussion

29. An independent review should be undertaken with the sector-led bodies to develop options on how to evolve their governance and operational practices to secure greater influence and buy-in from the sector, and on how these bodies fit with the wider policy-making processes of government and its associated bodies (see proposals above). Issues that could be considered include the scope of their remits, the processes for appointing chairs and members, funding, reporting and accountability arrangements. The recommendations of the review should be considered by government, the Single Voice and the sector-led bodies themselves.

6 – Develop a fresh narrative and commitment to excellence driven by self-improvement

30. All our discussions confirmed that reform of regulation is not an end in itself, but a means to enable the learning and skills sector to be as effective as it can be. The actions described above aim to create a set of mechanisms and approaches that will allow evolution and improvement of the various elements that are broadly part of regulation – including performance management, targets and funding – and secure greater sector engagement and support.

⁶ Similar discussion may also be needed with DWP in the medium-term.

⁷ *A new regulatory settlement for learning and skills - an Aunt Sally* see reference above

⁸ The term refers to the Bureaucracy Reduction Group, the information authority, the FE Reputation Group and the Communications Gateway Panel

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31. Therefore, the publication of this report and agreement between partners on the actions identified above, could mark the beginning of a new phase of sector development that focuses primarily on the ambition for excellence driven by self-improvement. The narrative could locate shared regulation clearly as one of the enablers for excellence, recognising that improvement of the regulatory arrangements is necessary but not sufficient to enable the sector to flourish, and should take its place within a richer narrative and wider strategy to develop the leadership and culture needed to promote excellence.
32. The seminar series took place as a global recession took hold, precipitated in part by a failure of regulation in the financial services sector, a sector associated with self-regulation. Consequently, not only does a dominant focus on self-regulation not adequately express the ambition of the sector, it brings additional dangers in terms of public confidence. Moreover, a focus on self-regulation gives the miss-leading impression that the sector is focused inwardly rather than on addressing the exceptional needs arising from the current global recession.
33. The 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. That aspiration to a culture of self-improvement has the capacity to animate hearts and minds and energise professionalism across the sector in a way that discussion of regulation cannot. As we discussed in the seminars (see proposition 1 on page 15), the purpose of self-improvement is essentially in the hands of providers themselves. Sector leaders can empower and inspire their staff to create this culture of self-improvement to address their own priorities and meet local needs - it is within their own sphere of control. Professional bodies have a particularly significant role in promoting codes of conduct and standards and in empowering and inspiring individual professionals (see proposition 8, paragraphs 77-81 below and the background paper⁹ to seminar 5).

Draft - Action for discussion

34. Having set in train steps to systematically develop a more streamlined and co-regulated system, the Single Voice, government and partners could agree to develop a fresh narrative and commitment supported by consistent messages that focus on galvanising a national coalition for self-improvement for excellence. This narrative could for example celebrate the commitment to establish excellence and fairness through establishing a new balance between empowered citizens, new professionalism and strategic leadership from government, building on the current public service reform agenda¹⁰. In addition, the narrative would need to be alert to new approaches such as skills activism to build capacity to secure a robust economy beyond the recession.

⁹ *Professionalism and the role of Professional Bodies* – a stimulus paper by the Institute for Learning
<http://www.lsis.org.uk/Libraries/Policy/StPSemFiveIfLbackgroundpaper.sflb>

¹⁰ See the report of seminar one - <http://www.lsis.org.uk/Libraries/Policy/StPSemOneSelfRegulatingDiscussionReport.sflb> and the presentation by Ben Jupp, Cabinet Office - <http://www.lsis.org.uk/Libraries/Policy/StPSemOneEandFpublicServicesBenJupp.sflb>

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35. The National Improvement Partnership Board already has a key role in animating a culture of self-improvement through the combined roles of the professional and sector bodies and organisations involved. The Board members can consider how to embed the ambition set out in paragraph 5 in all their working practices – for example, enhancing sector responsibility, discretion and ownership.

7 - Single Voice renews the focus of its leadership role

36. Agreement on the steps towards shared and right regulation as described above, and a fresh focus on self-improvement for excellence would mark a new phase and context for the leadership role of the Single Voice. It will be important that the Single Voice through its members continues to progress and monitor the steps outlined above and takes a leadership role with the whole sector in creating a fresh narrative and ambition. This will be a significant communications exercise for the Single Voice and its members and will be more effective if messages are common and orchestrated.
37. Currently the Single Voice for Self-regulation is the body with the remit from provider associations for developing a collective view on regulatory matters. The Single Voice should now consider how its focus should shift to support the next stage of development, whether to explicitly adopt co-designed and shared regulation as its objective, or a broader role in securing a real sector-wide coalition for self-improvement and excellence.

Draft – Action for discussion

38. Members of the Single Voice should review the focus of its leadership role for the next phase of development and in particular the proposed shift from a focus on self-regulation to a focus on excellence driven by self-improvement, under-pinned by shared and right regulation. In order to establish its capacity for this next phase, the Single Voice should, for example, consider how to secure sufficient resource to support its effective operation so that its work is truly sector-owned, and develop an effective communication strategy via its members to establish sector ownership and engagement with its activity.

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Full Report

Section one – background, rationale and narrative

39. In 2004, a task force chaired by Sir George Sweeney issued the first call for ‘*self-regulation*’, as a way of reducing the regulatory burden on the further education and skills sector. Its potential was also recognised by the National Audit Office and the Foster Review and was an important theme in the 2006 White Paper, *Further Education: Raising Skills, Improving Life Chances*. In November 2006, the then Secretary of State, Alan Johnson, challenged the further education sector ‘*to develop a proposal for self regulation by spring 2007*’.
40. Led by Sir George Sweeney, a project team worked to develop a proposal and in December 2007, the Single Voice for Self-regulation (for Further Education) was created as a new representative voice on regulatory matters, owned and managed jointly by the main provider representative organisations.
41. When the seminar series was being planned in spring 2008, the detailed proposition for self-regulation was in the process of being developed by the Single Voice and was expected to be published in the summer. Our aim for the series was to support the development of a visible and robust consensus on, and wide ownership of the Single Voice’s proposition for self-regulation, as the basis for implementation. In October 2009, the Consultation Prospectus¹¹, was published, prepared by the self-regulation team on behalf of the Single Voice.
42. The Consultation Prospectus was not endorsed by the members of the Single Voice, but was issued for consultation with the sector. This meant that the agenda for the seminars was more open than anticipated originally and that there was a more limited consensus in the sector on which to build.
43. Therefore, during the course of the seminars we revisited a number of times our understanding of the purpose, benefits and meaning of self-regulation. The economic recession, precipitated in part by a failure of regulation in the financial services sector – a sector renowned for having an element of self-regulation – also transformed the world around us and changed fundamentally the public discourse on regulation. The shift in our ambition and the creation of a new narrative about shared regulation, was shaped by the following discussions.

¹¹ Available here http://www.feselfregulation.org.uk/pdfs/SV_081024%20Consultation%20Prospectus.pdf

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The public sector reform agenda – from good to great

44. At the first seminar we heard latest thinking from the Cabinet Office on the public service reform agenda as set out in *Excellence and Fairness: Achieving world class public services*¹². That discussion highlighted how the increased autonomy implied by the shift towards greater self-regulation is necessary to achieve the next phase of public service reform – the shift from good to great.
45. Whereas centralised prescription by government was arguably effective in dealing with inadequacy in public services, it won't help us to take the step to great services. It's now recognised that top-down targets can become counterproductive; too much centralised advice and micromanagement can stifle responsiveness to the particular needs of the community and customers. A highly centralised approach also disregards the talent and capacity within the sector to provide its own solutions. We need a different prescription.
46. *Excellence and Fairness* proposes that in order for public services to move from good to great, there needs to be a new settlement based on:
 - empowered customers and citizens;
 - renewed professionalism; and
 - government in a strategic leadership role rather than a prescriptive or micro-managing role.
47. The progression to excellence cannot be ordained from outside, but has to be grown and owned from within; it needs self-motivated and responsible professionals across the system with the operating space and room for manoeuvre to respond to and empower their customers and citizens; we need to be proactive professionals with the discretion and headroom to act in the interest of our customers and in pursuit of public policy outcomes.
48. The vision presented from this report indicated a new settlement of responsibilities and influence between sector professionals, our customers and citizens and with government. This set an aspirational context for our discussion about sector regulation that rested on a tripartite partnership between government, the sector/profession and our customers or citizens.

The current policies of DIUS

49. The commitment by DIUS to securing greater autonomy and self-regulation for the sector is clearly established. As articulated at the second seminar by Susan Pember, Director of the FE Learning and Skills Performance Group at DIUS¹³, the department and its predecessor, has consistently introduced reforms to increase provider autonomy and has '*prioritised sector involvement in its own governance*'.

¹² See http://www.cabinetoffice.gov.uk/strategy/publications/excellence_and_fairness/report.aspx

¹³ See the report of the second seminar, at <http://www.lsis.org.uk/Libraries/Policy/StPSemTwoSelfregulationDiscussionReport.sflb>

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50. Susan explained that the machinery of government reforms, which foresee the division of the LSC and the education system at 19 from 2010, will reinforce the commitment to enhancing sector autonomy and voice, and will give the sector the opportunity to assign roles and expectations to sector bodies, determine how they interact, and thus devise how self-regulation will work. Susan also stated that '*quality management functions ... should be owned by the sector*', and that '*DIUS expects that increasing areas of the system will be managed by colleges and providers themselves*'.
51. More recent announcements state that colleges and providers will have much greater flexibility to deliver the education and skills required in their local communities. They will not be constrained by detailed plans nor burdened with unnecessary bureaucracy or oversight by the system and will be able to use public funding to respond to local circumstances.
52. The commitment to self-regulation is also reflected in the LSC's Statement of Priorities. This states that LSC will '*consider the appropriateness of external versus self-regulation as we develop policies and processes that have a regulatory impact*' and engage with sector-led groups like the Bureaucracy Reduction Group and the FE Communications Panel '*to ensure that regulation is transparent, accountable, proportionate, consistent and targeted only where action is needed*'. The LSC will also '*support development of self-assessment and peer review mechanisms*' and adopt funding and commissioning mechanisms that offer providers more autonomy to meet local needs.
53. The new landscape emerging in 2010 provides a major opportunity to establish mechanisms and working practices that embody the notion of shared regulation.

The financial context

54. The FE sector has a particularly vital contribution to make to support individuals, communities and the economy through the economic recession and to prepare for the up-turn. The financial context requires the FE sector to be the best it can be at this critical time and therefore regulation needs to be as efficient, effective and enabling as possible, while commanding public confidence. Greater discretion could enable the sector to respond more effectively to local needs and demands it was argued. As stated earlier, by the end of the seminar series we had shifted our thinking to talk in terms of this being *shared regulation*.
55. At the same time we recognised the perception that the crisis in the financial sector was in part due to a failure of regulation and in particular of voluntary codes of conduct and self-regulation. As a result of the economic recession precipitated in part by this failure of regulation of financial services, appetite for light regulation and tolerance of risk have become extremely limited in the current climate. However, there is also less appetite for public resources to be wasted in unnecessary regulation or bureaucracy. This recognition was in part responsible for the shift in our narrative away from self-regulation towards shared regulation.

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The purposes of regulation in the public sector

56. To help clarify our discussions, at the third seminar, we stepped back to develop a common understanding of the purposes and mechanisms of regulation and in particular regulation in the public sector. We invited Professor Cosmo Graham, as an independent expert on regulation, to act as a critical friend and resource, in order to ensure that our analysis was grounded in current theory on regulation. He helped us to summarise the purposes of regulation in the public sector. We concluded that in order to safeguard the public interest, as a bare minimum, regulation must:
- safeguard and account for public money;
 - secure quality and value for public money;
 - achieve public policy priorities; and
 - ensure behaviour that meets the accepted standards of public service.
57. We reviewed the current arrangements and those proposed in the Consultation Prospectus under these purposes (see Annex three page 24). Commenting on this review and the arrangements for the learning and skills sector, Professor Graham observed that they are difficult to understand and lack transparency, contravening one of the principles of good regulation established by the Better Regulation Task Force (see Annex two, page 13) and validating the prevailing view in the seminar discussions that simplification is needed urgently.

Section two - emerging propositions

58. Regulation is highly complex with many versions and manifestations which reflect the circumstances and history of particular sectors. There is no single approach that we can use as a template to import into the learning and skills sector – instead we needed to build an approach that is fit for our current context and which has the capacity to evolve. We therefore endeavoured to build our own understanding, establish some common language for the debate, and to capture consensus. This consensus is summarised as the ten emerging propositions below which were modified and elaborated over the course of the seminar series. These can act as principles or yardsticks for developing a system of shared regulation.

Proposition 1 - the primary purposes of self-improvement and of regulation are distinct and should not be confused

59. It became clear that our discussions moved in a confusing way between activities which are about individual or organisational quality or professional development, and activities which are strictly regulatory. This has the effect of appearing to extend unnecessarily the range of activities which are part of the regulatory domain and reducing the domain of sector-owned quality improvement.

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60. Thus, when asked to comment on the purposes of regulation (see paragraph 53 above), colleagues initially argued that they lacked ambition, were not sufficiently focused on empowerment or social justice. However, Professor Graham advised that it is challenging to incorporate development and self-improvement into regulation – the normal approach is to set minimum standards rather than progression in quality. We do not need to view these all as part of the same domain. Regulation is essentially about *protection* of public interest, whereas improvement is essentially about *pride* and *aspiration* – distinguishing between them in our thinking liberates ambition.
61. We therefore agreed to distinguish between activities whose primary function is regulation and those that are primarily about quality, self-improvement and development. We came to a view that *'self-regulation and self-improvement should be separate'*, but that we should *'understand the interaction'* between them. The former will be primarily about achieving baseline standards and external accountability whereas the latter will be primarily for the providers' or practitioners' own priorities and within their own realm of control. The two activities – external regulation and self-improvement – clearly interact. For example, poor regulation can hinder or limit self-improvement, whereas good regulation can facilitate self-improvement. However, their primary functions are different.
62. The value of distinguishing between these activities is to clarify the range of activity that is primarily external and accountability-focused, while freeing up the scope for ambitious and self-motivated development and improvement activity that is sector-led. It is essential that self-improvement is not unnecessarily constrained by regulatory standards and concerns, but is set free to support the ambitions owned by the sector's professionals and organisations.
63. Therefore peer review and support processes which are energising and empowering approaches to self-improvement are not part of the regulatory process it was argued. An organisation's quality and accountability system will encompass this whole spectrum from self-improvement through to external regulation, but different levels of ownership and autonomy apply to their execution.
64. Professor Cosmo Graham also advised on the point: *It is also helpful to distinguish between what individual institutions, whether acting alone or collectively, wish to do, and what the regulatory system aims to do. The regulatory system aims to ensure that everyone meets minimum standards and deploys a variety of enforcement instruments to try and ensure this is the case. Institutions want to improve their performance, which might mean lifting themselves to minimum standards but, more usually, means improving beyond the minimum. The techniques used here are different from the enforcement techniques.*
65. *A regulator may well wish to see the industry improve its performance, but would do this through setting more demanding targets and allowing the institutions to decide how to achieve them, rather than micro-managing how they get to them. A regulator might ask for evidence or set a requirement, that institutions conduct adequate training or have procedures for reflecting on their performance but typically would leave some leeway for them to decide how to do this.*

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Proposition 2 – regulation can be carried out through approaches on a spectrum from external regulation, through co-regulation, to self-regulation

66. Professor Graham also helped our thinking on this issue. He explained that co-regulation normally refers to schemes that involve elements of self- and statutory regulation, with public authorities and industry collectively administering a solution to an identified issue. The split of responsibilities may vary, but typically government or regulators have legal backstop powers to secure desired objectives.
67. The notion of co-regulation was attractive as it promised a joint and negotiated arrangement with the responsibilities shared between the regulator and the regulated. Seminar discussions highlighted that the standards and processes by which the sector is held to account, should be negotiated and jointly agreed as far as possible between government, its regulatory agencies and the sector. The term co-regulation also implies a degree of joint administration of the regulatory mechanisms. At the final seminar thinking seemed to converge on co-design and co-ownership leading to *shared regulation*. This seemed to capture the possibility of a dynamic arrangement that could evolve over time to meet changing circumstances.

Proposition 3 – the sector should co-design the standards and mechanisms for regulation

68. Sector endorsement and ownership of the standards that are regulated – expressed through accountability and performance management frameworks – has emerged as a major objective. The aspiration is for the sector to have greater influence over the arrangements for both what is regulated and how the regulation is carried out (including by whom), in order to achieve co-ownership of the regulatory system as a whole. It was argued that so long as the standards and processes are co-designed and co-owned by the sector, the matter of who enacts them is less important, and can evolve over time, shifting more towards the sector as systems mature.
69. We noted the difference between being consulted about as distinct from co-authoring standards and mechanisms. The greater the co-ownership of the regulatory framework, the greater the understanding of the framework will be and therefore, the stronger the commitment by all parties, to comply with the framework and secure high standards. It is essential that meaningful measures are used to assess the sector; that the sector feels significant ownership of the FfE and the Common Inspection Framework; and that the regulatory instruments generate the right incentives.
70. We have also noted that for co-design and co-ownership of the regulatory system to be realised, the sector will need the capacity and mechanisms to agree a collective view on a range of areas of policy. The Single Voice for Self-regulation is the body with the remit from provider associations for developing such a collective view on regulatory matters. In addition, clear arrangements will need to be in place to enable the sector to engage with government and its agencies in effective dialogue about dimensions of the regulatory system. In a co-designed system, capacity to co-adjust measures would also be needed, and should recognise the importance of getting a balance between evolution of standards to ensure they reflect current priorities and the benefits of stability and the ability to track progress over time.

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Proposition 4 – regulatory mechanisms should be as efficient and stream-lined as possible

71. There are efficiencies that might be achieved by the sector working with government and external regulators to review the detailed mechanisms and where efficiencies can be achieved. Examples suggested included reduction of prescriptions around Financial Memoranda and the possibility of Ofsted inspections moving to verifying providers own internal systems. Sector representatives it was suggested need to sit down with the government departments and key bodies with regulatory functions to reach agreement on how systems can be evolved. (These are explored as areas for action 2, paragraphs 15-16)

Proposition 5 – regulatory mechanisms should support self-improvement as far as is possible without compromising their regulatory function

72. All the tools and methods should be as enabling and empowering of self-improvement as possible. So for example, inspection should major on informative feedback so that it maximises the use-value for the provider's self improvement strategy; performance assessment mechanisms such as the Framework for Excellence (FfE) should deepen a provider's understanding of its own performance and how to focus the next phase of its self-improvement strategy. If sector providers are only required to 'tick boxes', they can evade real improvement. But if they are required to meet certain outcomes and report back on how, they will be more inclined to take responsibility themselves for improvement.

Proposition 6 – while regulatory standards should be common across the sector the mechanisms may vary depending on the capacity and performance of different providers

73. We discussed the extent to which all providers would be subject to a single approach and on balance agreed that while the standards of regulation may be the same, the mechanisms may need to differ for different parts of the sector¹⁴ – public, third sector and private sector. As recipients of public money all sector bodies must adhere to largely the same standards – but regulatory mechanisms and degrees of self-, co- or external regulation may differ. We also need to consider whether public institutions have a distinctive role to private or independent providers which requires differential regulatory mechanisms.
74. There are important differences between the systems that apply to providers currently. Not all providers have their financial statements audited. Some companies with a turnover of less than £5.6 million are not required to file a complete set of externally audited financial statements with Companies House. The majority of independent providers contracting with LSC will be below this threshold. Different contracting arrangements aim to ensure they are regulated to the same standards. In addition, many are new into the system – some 600 new providers have entered the Train to Gain market in recent years. They are all at various stages in the improvement journey.

¹⁴ We discussed definitions of the FE sector and of the FE system a number of times. The outcomes of these discussions are set out in Annex one, page 24

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75. This strand of the debate suggested that regulation had to be *'differential'* – in other words, it had to be implemented in different ways for different providers. There is a risk that regulation may impose heavier burdens on some providers than others, and this needs to be taken into account. Furthermore, although performance in the sector as a whole is quite good, there are individual providers which are below standard, and their improvement will need to be addressed in a different way. Therefore whatever mechanisms are used, they are likely to need to be tailored to adapt to the different types of providers in the sector.

Proposition 7 – the performance management system should be capable of recognising the different missions and ambitions within the sector

76. Regulation may need to be sensitive to different missions and purposes. The purposes of institutions in the sector differ – some see themselves as strategic partners with a strong community role; others have a narrower focus. For example, it was argued that there is an expectation that colleges carry out a community leadership role and make an economic contribution which is poorly described by the term 'provider'. Their strategic role needs to be recognised. The sector should not be constrained to describing its public contribution by the lowest common denominator. It should be possible for providers to select from a range of indicators those that most appropriately describe their mission and purposes.
77. Some felt that the learning and skills system should evolve along lines similar to the Local Area Agreements (LAAs). The LAA allows local partners to select up to 35 of the 198 local government measurements as special goals for the locality, and thus tailors the targets to the policy agenda for each area
78. Local Area Agreements (LAAs) enable joined up action at local level to tackle difficult and long-term problems. They were identified as a helpful model for a system in which leaders from across public services in the locality can select, through negotiation and collaborative mechanisms, the indicators they wish to focus on. Thus the indicator set from which priorities are selected, provides a means to craft a local agenda - one owned and accepted by the major players in the community. For the learning and skills sector we concluded that there should be a common core of indicators, ensuring a strong shared commonality at the heart of the sector, but with flexibility to choose others to reflect specific priorities. It was suggested that this commonality could help to bridge the gap that might be created by the machinery of government changes between 16-19 and post-19 provision.
79. It was suggested that the FfE could evolve to become the equivalent of a flexible national indicator set for learning and skills. Beyond the core, providers could select additional indicators that are most appropriate to their local context and devise meaningful strategies to achieve them. Such an approach would still provide a means of explaining and accounting for what the sector will deliver for government. Data could be aggregated at national level.
80. It was also argued that the learning and skills sector exists to *'make a difference'*. A new regulatory system could devise *'new metrics'* to measure that difference, because merely accounting for money does not tell us what impact we are having on the lives of learners and communities. It could be within the gift of the sector itself to determine its own additional metrics.

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Proposition 8 – professional bodies can promote good practice across the spectrum of quality and accountability frameworks – self-improvement, self-regulation, co-regulation and external regulation

81. The professional bodies, including their codes of professional conduct and their emphasis on professional empowerment, can make a significant contribution to self-improvement and excellence. The culture of compliance engendered by New Public Management theory has sapped the agency and self-determination of the workforce so that we must now consider how to renew that sense of professionalism. *'We can only make a reality of self-regulation through the action and agency of individuals'*, it was argued. We need professionals who take responsibility for engaging in professional dialogue to influence and shape policy and practice. It was argued that *'we need to reconstruct professional dialogue'* and that *'dynamic resistance and contestation must be part of it'*.
82. The sector takes real pride in its professionals, and to date we have not celebrated sufficiently the range of professionals working across the further education sector¹⁵. In particular, our teachers, trainers and assessors across further education are professionals and already 182,000 are members of their own professional body, the Institute for Learning (IfL). In addition, there are other professionals such as finance directors who are likely to be qualified accountants and belong to and be active in their own professional bodies, marketing and communications staff are likely to be members of relevant professional associations and so on. There is a strong professional base for the sector which can be celebrated and built upon.
83. We need to ensure that the spectrum of activities associated with regulation and self-improvement do not duplicate what professional bodies are doing already. For example professional bodies usually have a strong focus on continuing professional development and have codes of professional practice or conduct which are drivers for improvement. We should build on these as a real long-term and sustainable strength of the sector and as a way of promoting the reputation of the sector beyond its borders.
84. It was suggested that the learning and skills sector should establish a *'common professionalism'* throughout the sector workforce - its own professional code and identity, separate from any other profession. This professionalism would enshrine a set of permanent, abiding values within a framework that can shift and change to meet the changing environments that the sector faces. Professional and membership bodies can contribute to the formation of this learning and skills-based professionalism, which would not exclude membership in or collaboration with other professional bodies represented among the sector workforce.

¹⁵ *Professionalism and the role of Professional Bodies* – the background paper to seminar five by the Institute for Learning lists over 100 different professional bodies operating in the sector - <http://www.isis.org.uk/Libraries/Policy/StPSemFiveIfLbackgroundpaper.sflb>

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85. In addition to professional bodies with individuals in membership, there are also representative membership bodies for colleges and providers (such as those in membership of the Single Voice) which play a significant role in the further education eco-system, with the potential to drive change and improvement. It was agreed that the role of membership and professional bodies is under developed in our thinking so far about regulation and self-improvement. There was strong support for advancing our understanding and locating membership and professional bodies more centrally in this debate, clarifying their potential contribution to both regulatory and improvement activities.

Proposition 9 – the learning and skills sector needs to consider how to manage accountability to its local community and locality alongside the national regulatory requirements

86. Our discussions turned on a number of occasions to the increasing localism in public policy and the evolving approach to public service delivery in the locality. The evolving structures and partnership mechanisms (such as Local- and Multi-Area Agreements) that are being co-ordinated by local authorities, working with the NHS, police, education and other services in the locality, are now steering policy agendas and can be a powerful force for change. It was suggested that a new approach to regulation should not focus on the learning and skills sector in isolation but must accommodate the reality of collaborative working for composite outcomes at the local level.
87. The Ofsted consultation - *A focus on improvement: proposals for further education and skills system inspections from September 2009*¹⁶ - cites one of the drivers for change as ‘the rising importance of locality leadership for many providers in the FE and skills system – especially colleges – where they are key players in the delivery of local priorities expressed in local and multi area agreements; this will require inspection outcomes that will relate to a provider’s contribution to the priorities of local areas’. Therefore the new Comprehensive Area Assessment (area-based inspection) already points towards integrated assessment of performance in the locality.
88. Thus current policy trends appear to point towards increasing importance of the locality and of the capacity to be responsive to local communities. Consideration should be given to how this might be reflected in measures that evaluate providers’ contributions to priorities in their local communities. It was also noted that the transfer of the 16-19 budget to local authorities added a further imperative for new arrangements to take account of the evolving reality of local government and local authorities.

¹⁶ See:

<http://www.ofsted.gov.uk/content/download/7861/79493/file/A%20focus%20on%20improvement%20proposals%20for%20further%20education%20and%20skills%20system%20inspections.pdf>

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Proposition 10 – regulation should not be relied upon to achieve key priorities for the sector

89. There is a danger that we begin to assume that regulation is the natural way of achieving all priorities. However, the sector itself can take determined action to achieve particular outcomes, without needing the permission or endorsement of regulation. Indeed, regulation is not necessarily the most effective approach to achieving change – this is the case on issues of equality and diversity. The FE workforce is growing older and whiter, while the demographic profile of learners is moving in the opposite direction. However, it is within the gift of the sector and especially the employers who recruit staff, to address this issue.
90. At the final seminar, we discussed the nature of accountability and concluded that it is not settled simply through regulation. Regulation holds sector bodies to account for public money, but learning and skills providers are also accountable to their own communities and for their own objectives it was argued. *We need a degree of humility about what can be achieved through regulation* – it is not a sufficient means of managing our relationships with the citizenry we serve. Just as regulation and self-improvement have different purposes, so too, regulation and accountability are distinctive. Regulation only describes a small part of the transactions and considerations that leaders need to address.

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Annex one

Definitions - the *FE* sector and the *FE* system

91. We discussed what we mean by the *FE or learning and skills sector* a number of times, and agreed an inclusive and '*broad definition*', accepting that questions of implementation and of tailoring implementation can be handled at a later stage of the discussion. Ofsted's current consultation on inspection for the sector offers a definition of the sector as '*colleges, work-based learning providers, adult and community learning provision, offender learning and skills, nextstep and Department for Work and Pensions-funded provision, including employability programmes*'. This provides a very helpful working definition.
92. Participants also agreed that the term *FE or learning and skills system* be used to refer to all those involved in delivering, supporting or regulating the sector - the providers, government departments, agencies, professional bodies and associations - as well as the individual, communities and employers learning in the sector.

Annex two

Principles of Good Regulation

As defined by the Government's Better Regulation Task Force, these are that regulation be:

- Proportionate: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- Accountable: Regulators must be able to justify decisions, and be subject to public scrutiny.
- Consistent: Government rules and standards must be joined up and implemented fairly.
- Transparent: Regulators should be open, and keep regulations simple and user friendly.
- Targeted: Regulation should be focused on the problem, and minimise side effects.

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Annex three

The purposes and mechanisms of regulation

1. Safeguarding and accounting for public money

93. The public sector is subject to long standing mechanisms designed to safeguard public interest. For bodies funded by national taxation these mechanisms provide ultimate accountability to Parliament and for local government these mechanisms provide ultimate accountability to the inhabitants of the local authority. Local authorities are subject to independent external audit by the Audit Commission and as part of this process the inhabitants of the local authority can demand the production of any voucher supporting the financial statements. Bodies funded by national taxation have to appoint an accounting officer (or an equivalent post) who can be held responsible for any expenditure.
94. There is a chain of accountability established by financial memoranda which leads back to the Permanent Secretary of the sponsoring department of government and ultimately to Parliament itself. Financial memoranda, remit letters, 'dear accounting officer' letters, ministerial directives and other guidance govern the behaviour of national public bodies. The national public bodies produce a wide range of financial, statistical and audit information to their sponsors. All national public bodies are required to have systems of internal audit and are subject to external audit by the National Audit Office and scrutiny by the Select Committee on Public Accounts.
95. The further education sector is subject to this regime with the LSC being directly accountable to the permanent secretary at the Department of Innovation, Universities and Skills. Colleges and other providers are in turn accountable to the LSC. The LSC can penalise colleges and other providers who misuse public funds and in extreme circumstances, such as fraud, misuse of public funds may be subject to criminal proceedings.

In the self-regulation Consultation Prospectus

96. The Consultation Prospectus proposes the FE providers be responsible for '*appointing their own auditors and acting as a single source of audit information for all public accountability purposes*'. It also proposes the creation of a sector-owned Further Education Authority (FEA) which will use auditors' reports as a way of evaluating provider performance. The Consultation Prospectus also highlights the importance of effective governance.
97. The Consultation Prospectus also sees self-regulation as a means to safeguard public funds: '*Our self-regulating system ensures that only those providers which achieve specified standards and undertake specified responsibilities are licensed to be eligible for public funds*'.

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Responses to the Consultation Prospectus

98. In their responses to the consultation, FE providers, sector bodies and other participants expressed doubts about the value of such an authority, arguing that it was only acceptable if it replaced other existing bodies. It would not be acceptable if it simply added to the existing bureaucracy.

2. Securing quality and best value for public money

99. Regulation also ensures that an industry or profession delivers goods and services at a certain level of quality. Quality regulators may also work to encourage improvement in the sectors they regulate. Ofsted for example collects and disseminates examples of effective practice to encourage improvement.

100. Quality and value for money in the FE sector are regulated by:

- Ofsted, the independent inspectorate¹⁷, assesses the quality of service delivery. The Education and Training Act 2007 requires its inspections to focus on a provider's capacity to improve, to be user-focused, and to '*be efficient and effective*'. Ofsted is consulting on revisions to the inspection framework for FE, to take effect from September 2009, which will introduce '*a common set of principles*' for inspections across the sector. This will bring added emphasis on learner and user experience, '*assessing particular groups of learners*', and value for money targets. Ofsted will also pay more attention to a provider's capacity to improve, in light of the FE proposal for self-regulation;
- Framework for Excellence (FfE) is a performance-assessment framework that sets *clear and unambiguous standards of excellence that all providers will want to achieve*; '*making clear a universally accepted definition of excellence*'. Dimensions covered include success rates and Ofsted inspection judgements (relevant to this purpose - quality of service); responsiveness to learners and employers (relevant to this purpose and to 3 – public policy priorities), and financial health (relevant to purpose 1 – safeguarding and accounting for public money).
- Ofqual¹⁸, *the new regulator of qualifications, exams and tests in England ...* will regulate both awarding bodies and standards in qualifications. It will for example have the power to confer

¹⁷ Regulatory agencies are often kept at arm's length from control by the executive branch of government. For example, to quote Ofsted's website: '*We do not report to government ministers but directly to Parliament (and to the Lord Chancellor about children and family courts administration). This independence means you can rely on us for impartial information*'.

¹⁸ The Qualifications and Curriculum Authority (QCA) is in the process of splitting into two bodies: the Qualifications and Curriculum Development Authority (QCDA), which develops qualifications, and Ofqual, which regulates them. The two new bodies are now operational, but because the Act of Parliament formally splitting the QCA has not yet been passed, the two new bodies currently operate as divisions of the existing QCA.

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awarding body status on colleges and other bodies (City College Norwich was the first FE college to obtain this status)¹⁹;

- The power to award degrees is conferred by the Privy Council²⁰. Recent legal reforms have made it possible for the Privy Council to award FE colleges the right to confer Foundation Degrees (FDs). However, the majority of FDs are in fact awarded by universities.
- The Learning and Skills Council has the power to intervene in the operation of colleges or providers who are deemed 'inadequate'. This power will pass to the Skills Funding Agency (SFA) from 2010 for providers of post-19 education.
- The National Audit Office (NAO) has two roles. The first is to ensure that the LSC submits a correct account of its use of public funds. The second role is more wide-ranging. The NAO can follow public funds wherever they go to find out whether the taxpayer is receiving value for money. The NAO conducts '*value for money studies*' on particular themes (eg student retention) and publishes its results. The published reports will lead to a hearing by the Select Committee of Public Accounts and the relevant department of government has to produce and publish its response to these hearings.

In the self-regulation Consultation Prospectus

101. The FEA would enforce an 'FE Code', which '*sets out what an individual provider agrees to do as a member of the self-regulation system including the values, standards and behaviours, as described in the FE Code, which a provider commits to and recognises as its responsibility*'.
102. Provider responsibilities for performance review and development at professional and organisational levels would be at the heart of the Code. Providers would also work collaboratively to regulate and improve their performance through processes such as peer review and development. A systematic approach to tackling underperformance and managing performance risk would be critical features of provider responsibilities and those of the FEA.
103. The FEA would also issue, and have the power to revoke, a Licence to Practice, which would be based on adherence to the FE Code. Since it would control the Licence to Practice, and have the power to revoke it, the FEA would naturally have intervention powers. These powers would not supersede the statutory powers of the LSC or SFA; instead, the Consultation Prospectus proposes a 'Strategic Accord' between the sector and the government that would determine the division of regulatory responsibilities.
104. Ofsted would continue to perform the role of an inspectorate. As the capacity for self regulation develops, the role of Ofsted would increasingly focus on '*sector-wide performance management rather than inspection of individual providers*'. The Government would conduct 'last resort' intervention when the sector's own activities have not succeeded in tackling under-performance.

¹⁹ Ofqual has recently announced that it is undertaking an efficiency study on the qualifications system, '*in order to develop a better understanding of how the system operates and to focus on how we might look to improve its efficiency in future.*'

²⁰ The monarch's formally constituted body of advisors. The Cabinet is a committee of the Privy Council. The Council has a variety of executive and judicial functions.

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105. The Consultation Prospectus advocates the development of a single performance assessment framework that will satisfy the accountability requirements of government, the inspectorate, and funding bodies and be sufficiently responsive to diverse missions of providers working in the FE system. For this purpose it is proposed that the framework should be based on a relatively small number of Key Performance Indicators (KPIs) that are primarily output-based and used for setting minimum levels of performance. Beyond these KPI's, providers will set performance goals that are responsive to their own organisational and collaborative missions.

Responses to the Consultation Prospectus

106. The sector broadly backed the FE Code, though some respondents said it should be voluntary and others mandatory. However, *'the majority of respondents wanted the Framework as a whole to be reframed in the light of MOG changes and new organisations' roles, whilst keeping some of the elements'*.

107. The Common Performance Assessment and Key Performance Indicators were also endorsed by the consultation. Some felt they should include measures around employer and learner experience, and also around equality and diversity.

3. Achieving public policy priorities

108. It is for the government to determine broad public policy outcomes – the government possesses democratic legitimacy, and thus is the only actor in society that has the authority to make decisions for the nation as a whole. The state usually enforces its desires directly. Sometimes, this is done through *'command and control'* regulation, which attaches criminal or civil penalties to disobedience.

109. The government increasingly aims to build public consensus for policy directions. As a result, managing public policy debate, creating a climate for change, and winning hearts and minds to particular courses of action is a high priority.

110. The primary mechanism for achieving public policy in FE is through funding. For example the government determines what qualifications it is prepared to fund and which classes of student it will support. Ministerial grant and guidance letters provide more detailed direction to government agencies such as LSC, and indeed LSIS; Grant Advice notes and guidance from LSC and relevant departments are also used to expand on and provide more detailed interpretation of policy intentions.

111. In addition there are a range of other softer devices such as ministerial letters and speeches about policy priorities which often provide signals in advance of hard legal requirements. Ministers also consult increasingly with groups of sector representatives to test out policy at a formative stage. Indeed, part of the debate about the next phase of public service reform does acknowledge the need for the experience of the front-line professionals and of customers themselves to be more fully utilised in determining public policy priorities.

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112. The Leitch and machinery of government reforms will change this regulatory framework to some degree. Funding for 14-19 education will be controlled by local authorities, who will control the funding and commissioning mechanisms that in turn determine provision. Post-19 education will be regulated by the market – that is, consumers will decide what is offered, at least in theory. However, consumers' choices will be influenced by government policies on funding qualifications – for example, consumers will be more likely to opt for full Level 2s if they know Government will pay for them.

In the self-regulation Consultation Prospectus

113. The Consultation Prospectus proposes that a Further Education Strategic Accord should be agreed with government setting out the rights and responsibilities of the sector with respect self-regulation, including public service objectives and targets.

114. The Consultation Prospectus is advanced as a model of self-regulation that can support the national agenda for community and social cohesion, the Leitch priorities, personalised learning and other key strands of government policy. In doing so it advocates not only greater autonomy and flexibility for providers, but a strengthening of the collective voice of professionals and citizens in shaping services within the sector. Under self-regulation front-line professionals would be given the status and opportunities to lead the development of innovation and change necessary to establish high quality, responsive services. Learners, employers and communities would also have a greater say in the design and delivery of services that meets their needs, with better powers of representation for doing so.

Responses to the Consultation Prospectus

115. The sector supported the concept of an FE Strategic Accord, saying it *'was considered to be essential to the efficient running of a self-regulatory sector'*. Many who submitted replies to the consultation also stressed that the self-regulation model should integrate with current Government structures and policies.

116. The responses also expressed a strong desire for sector professionals to obtain a strong position of autonomy, to better shape services and put the sector's case before Government.

4. Ensuring behaviour that meets the accepted standards of public service

117. Acting within the law and observation of relevant legislation such as health and safety and equal opportunities, would of course be an assumed baseline for behaviour. These may, but do not always, enshrine the highest standards of ethical and professional conduct that should characterise the public sector. To this end, professions are governed by codes of conduct to ensure and police appropriate behaviour.

118. These codes also provide a way for the public to evaluate the behaviour of professionals, and usually allow consumers to make complaints should a member of the profession breach the code. Regulators may also maintain lists of professionals who are in good standing; members who breach the codes of conduct may be struck off these lists.

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119. In the public sector, the Committee on Standards in Public Life is an independent public body which advises government on ethical standards across the whole of public life in the UK. The Committee identified seven principles of public office: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. (These were established in the Nolan Report which was named after the committee's first chairman). Its terms of reference are *'to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life'*.
120. The committee consists of a chair and nine other members – three appointed by the prime minister on the advice of each of the three major parties, and politically non-aligned persons appointed by the prime minister. The committee publishes statements and commission reports or inquiries on ethical and standards issues in public service. It holds informal meetings with practitioners and public hearings, and takes both oral and written testimony, which is publicly available through the committee's website.
121. Although the committee is not a statutory body, and cannot directly enact standards for any sector of the public service, its reports and opinions are still hugely influential. The Nolan Report's seven principles have been incorporated into the Codes of Practice of many public bodies, and some parts of the Seven Principles are contained in the new Civil Service Code, which is part of the Civil Service Bill pending before Parliament. Thus, the committee's work serves as a standard for all public service conduct.
122. For FE providers that are funded by the LSC, the Institute for Learning (IfL), a membership body, sets the code of professional conduct. The *'IfL Council has agreed and adopted a code of professional practice, in consultation with members, and has established arrangements for upholding the code'*. The institute is *'the professional body for teachers, trainers, tutors and trainee teachers in the further education and skills sector, including adult and community learning, emergency and public services, further education colleges, Ministry of Defence and the armed services, the voluntary sector and work-based learning'*. All teachers working for LSC-funded bodies *'are required to register as members of IfL, undertake CPD each year and abide by the IfL Code of Professional Practice'*.
123. In addition, Lifelong Learning UK, the Sector Skills Council, develops professional standards for various parts of the FE workforce. *'Lifelong Learning UK (LLUK) is the independent employer-led sector skills council responsible for the professional development of all those working in community learning and development, further education, higher education, libraries, archives and information services, and work based learning across the UK. We represent the interests of the 1 million+ individuals working in lifelong learning in England, Northern Ireland, Scotland and Wales and are the voice of employers in this sector on skills issues.'*
124. The standards set by LLUK provide the basis for designing professional qualifications such as Qualified Teacher Learning and Skills (QTLS) and the Principals Qualifying Programme (PQP).
125. The mechanisms described to safeguard public money described above (paragraph 94) are also typically used to require colleges and providers to observe best public sector practice.

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In the self-regulation Consultation Prospectus

126. The published self-regulation Consultation Prospectus devotes a great deal of attention to professional conduct, and suggests responsibilities for individual practitioners that are both regulatory and non-regulatory (ie professional development/self-improvement). The responsibilities are described as follows:

- *acting within a Code of Professional Conduct and Practice in keeping with the requirements of the Institute for Learning and other relevant professional organisations;*
- *assessing their own practice, individually and with colleagues;*
- *identifying their own development needs, and taking steps to meet them;*
- *acting with others to tackle under-performance including satisfactory but not improving performance;*
- *taking part in collaborative activities with staff in other providers to improve what they do by sharing and learning from each other;*
- *engaging in their organisation's review and development activities, including self-assessment;*
- *contributing to a culture of self-improvement;*
- *listening and responding to what learners, employers and community representatives say about their education and training.*

Responses to the Consultation Prospectus

127. As stated above, there was general support for a code of practice for the sector. Most replies also support the idea of collaborative self-improvement. However, there was some concern that the partnerships involved in this process would be time-consuming, or come to be dominated by large providers. Some respondents expressed a belief that proposals in this area need to be further fleshed out. There was also disagreement over whether these activities should be mandatory or voluntary.

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Annex four

Responses to the Consultation Prospectus

128. In February 2009, the Single Voice published a summary²¹ of the 66 responses it had received to the self-regulation prospectus. These responses emphasised several points.
129. There was a strong belief that self-regulation should act to reduce bureaucracy in the sector, and *'a strong view that the Single Voice should make reduction of bureaucracy a key priority in its next stage of work.* They also said that the full benefits of self-regulation would not be enjoyed until bureaucracy was in fact reduced.
130. There is *'overwhelming agreement'* that the sector has the capacity to be self-regulating, and that the sector should indeed act as if it is already autonomous – it should practice *'assumed autonomy'*, rather than assuming it had to be *'earned'*. The sector continues to support the self-regulation project and *'shares the Single Voice's vision of a sector of 'respected, autonomous, responsive organisations acting individually and collectively within a self-regulating system to deliver high quality provision for the benefit of learners, employers, communities, and the nation – a respected partner of government'.*
131. Respondents felt that the values underpinning the prospectus's vision of self-regulation were reflective of the sector, though some wanted more emphasis on equality and diversity, and on the role of professionals.
132. There was a consensus that the self-regulation proposals should be re-worked in light of the machinery of government reforms. These reforms created new bodies which perform some of the functions of the bodies proposed in the prospectus. For example, the licensing function proposed under the FE Code will now be the responsibility of the Skills Funding Agency (SFA). The prospectus should therefore be re-shaped. They also felt that the proposals should take more account of the role of Ofsted.
133. Possible benefits of self-regulation include *'more effective influencing of government policy, stronger stimulus for systematic collaborative working, greater transparency about provision so that learners and employers could make better informed choices, and greater empowerment of professionals'.*

²¹ Available through this link

http://www.feselfregulation.org.uk/pdfs/SV_090209%20Single%20Voice%20Analysis%20of%20Responses.pdf

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134. Respondents urged the Single Voice to *'give extra thought to the diversity of the sector, intensifying its efforts through provider representative organisations to bring all the parts of the sector 'up to speed'*. They expressed the opinion that sixth form colleges, adult and community learning providers, land-based colleges and other components of the system would have to take different paths towards participating in a self-regulating system. Sixth forms especially felt *'they were not yet located clearly enough within the self-regulation framework; the new relationship between sixth form colleges and local authorities was still emerging'* Smaller providers, including small land-based and specialist colleges, *'pointed out that the costs to smaller colleges of self-regulation, changing existing processes and procedures, and of collaborative self-improvement were disproportionate to them in comparison with the costs to larger providers'*.
135. The consultation also found that respondents wanted more attention paid to the role of governors and board members, and *'how governors/board members might best develop the knowledge, skills and understanding they needed to undertake their new roles'*. Some proposed that governors or board members might be paid.
136. Respondents also believed that the proposal should pay more heed to the new agenda in the locality, including *'the commissioning roles of local authorities, local area agreements, Children's Trusts, safeguarding responsibilities, school/college/training provider partnerships and other 14-19 initiatives'*.
137. Regarding the specific structures proposed in the report:
 - **The Framework for Performance Management and Improvement:** This was felt to be *'a 'sound, simple, sensible' outline of provider responsibilities under self-regulation, which built on current best practice'*. Respondents said it should focus more on teaching and learning, and asked how it would mesh with Ofsted requirements. They also had *'some reservations about the sector-wide responsibilities especially in relation to the support governors/board members would need to undertake these'*.
 - **Collaborative self-improvement:** This was welcomed by most respondents, though there was disagreement among them over whether it should be a voluntary or a mandatory activity. Some expressed concern about how improvement partnerships would work, worrying that they would be dominated by large providers or be too time-consuming. Some felt the proposals in this area were not systematic enough.
 - **The Framework for Accountability:** Also referred to as the FE Code, this was also broadly supported as a *'sensible'* measure, though there was again disagreement over whether it should be mandatory or voluntary. However, some of the functions, such as licensing, that the code would entail now rest with new Government bodies, and *'the majority of respondents wanted the Framework as a whole to be reframed in the light of MOG changes and new organisations' roles, whilst keeping some of the elements'*.
 - **FE Strategic Accord:** This would delineate the division of responsibilities between the self-regulating FE sector and the Government. Respondents said it *'was considered to be essential to the efficient running of a self-regulatory sector'*.
 - **The FE Authority:** *'The most contentious'* of the proposals, it was seen as a new accretion of bureaucracy, duplicating some of the functions of other bodies. It was only considered

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acceptable if it replaced other bureaucracies, and not if it added to the sum total of bureaucratic organisations.

- **Common Performance Assessment Framework and Key Performance Indicator:** *'The pursuit of a single assessment framework and new KPIs was welcomed by most respondents; simplification and appropriateness were the main concerns'*. Many argued that employer and learner experience should be included in the indicators, as should equality and diversity concerns.

Conclusion

138. The consultation responses reflect, to a large extent, the consensus that has emerged in the seminars. Both sets of opinions call for a reduction in bureaucracy and a pro-active approach to gaining more influence and autonomy for the sector. Both recognise the importance of the sector in the local environment, and acknowledge the diversity of the sector, and the need for certain flexibilities to be built into the regulatory regime to take account of this diversity. Both identify the importance of ensuring that the regulatory regime can mesh with the reformed delivery model. The consultation responses add more specific inputs about the proposed mechanisms in the prospectus, and also contribute some new proposals around the role of governors.

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Annex five

Seminar participants

Seminar series chair: **Claire Ighodaro CBE, independent director and trustee**

Participant	Job title	Organisation
Tony Alderman	Chair	Barnett College and LSIS Council
Conrad Benefield	Programme Director	LSIS
Margaret Bennett	Director of Communications and Partnerships	LSIS
Una Bennett	Head	The FE Information Authority
Angela Berryman	Strategy and Policy Advisor	LLUK
Alison Birkinshaw	Principal	York College
Dr Elizabeth Brookfield	Professional Standards Manager	Institute for Learning
Keith Brooker	LSIS Board	
Alison Boulton	Chief Executive	The Association of National Specialist Colleges
Nick Brown OBE	Principal	Oldham Sixth Form College
Sir Walter Brown	LSIS Board	
Verity Bullough	Regional Director	LSIS
Reg Chapman OBE	Researcher and Independent Consultant	Lancaster University
David Collinson	National Research Director	LSIS
Phil Cox	Programme Manager	LSIS
Sue Crowley <i>Keynote Speaker</i>	Chair	Institute for Learning
Tony Craven	Chair	FE Bureaucracy Reduction Group
Vic Croxson	Chief Executive	Landex
Lee Davies	Deputy Chief executive	Institute for Learning
Lesley Davies <i>Keynote Speaker</i>	Director Framework for Excellence and Quality	LSC
Mark Dawe	Principal and Chief Executive	Oaklands College and LSIS Council
Meredydd David	Principal	Reaseheath College and LSIS Board
Sally Dicketts	Principal, Chair, Network of Women Managers and Chair FE Communications Gateway Panel	Oxford & Cherwell College
Fintan Donohue	Principal	North hertfordshire College and LSIS Council
Martin Doel OBE	Chief Executive	Association of Colleges
Sue Dutton <i>Keynote Speaker</i>	Regulation Project Team & Deputy Chief Executive	Association of Colleges
Marilyn East	FE Reform Unit	DIUS
Paul Eeles	Director of Sector Reforms & 14-19	Association of Learning Providers
Toni Fazaeli <i>Keynote Speaker</i>	Chief Executive	Institute for Learning

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Maggie Galliers	Principal	Leicester College
Steve Garschke	LSC Contract Manager	Construction Skills
Ali Hadawi	Principal	Southend Adult Community College
Geoff Hall	Principal	New College Nottingham
Lesley Hastings	Chair of Governors	Park Lane College
Marie Harris	Director of Employer Services	Central Sussex College
Marilyn Hawkins	Principal	Barnett College and Treasurer, 157 Group
Paul Hannon	Principal	Hadlow College
Paul Head	Principal	The College of North East London and LSIS Board
Barbara Holm	Head of Service	Westminster Adult Education Service and LSIS Council
David Hunter	Chief Executive	Lifelong Learning UK
Graham Hoyle OBE	Chief Executive	Association of Learning Providers, Joint Chair, LSIS Council
Peter Housden	Permanent Secretary	Department of Communities and Local Government
Melanie Hunt	Director Learning & Skills	Ofsted
David Igoe	Executive Chair	Sixth Form Colleges Forum
Chris Jeffery	Managing Director	Academy of Training and LSIS Council
Graham Jones	Chair	the information authority
Mary Joyce <i>Keynote Speaker</i>	Director of Planning, Standards and Performance	Lifelong Learning UK
Sarah Johnson	previously Senior Project Leader - FE Regulation	Bedford College
Ben Jupp <i>Keynote Speaker</i>	Senior Adviser, Public Services and Democracy	Cabinet Office
Dr Jean Kelly	Director of Professional Development	Institute for Learning
Priscilla Kendall	Programme Director	LSIS
Asha Khemka OBE	Principal and Chief Executive,	West Nottinghamshire College and LSIS Board
Susie Knight	Head of Executive and Governance Development	LSIS
Robin Landman <i>Keynote Speaker</i>	Chief Executive	Network of Black Professionals
Donna Loney	Membership Services Assistant Programme Director, Leadership Skills for Governance	Institute for Learning
Sue Lovell		LSIS
Ben Marguiles	Policy Research Officer	LSIS
Caroline Mager <i>Keynote Speaker</i>	Executive Director, Policy and Strategic Intelligence	LSIS
Linda Martin	Development Director	Hit Training Ltd
Di McEvoy-Robinson	Partner	Aspire Advance LLP
Roger McClure <i>Keynote Speaker</i>	Chief Executive	LSIS
Joy Mercer	Senior Policy Manager, Quality and Regulation	LSC
Jean Morgan	National Operations Director	Rathbone
Sir Bill Moorcroft	Principal	Trafford College and LSIS Board
Tony Nelson	Interim Programme Director	LSIS

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Dr Susan Pember <i>Keynote Speaker</i>	Director FE Learning and Skills Performance Group	DIUS
Helen Pettifor	Executive Director, Leadership Portfolio & Standards	LSIS
Bob Powell	Chief Officer	HOLEX
Sue Rimmer	Principal	South Thames College and LSIS Council
Ann Robinson	Board LSIS	
Dr. Ed Sallis	Principal and Chief Executive	Highlands College, Jersey
Helen Sexton	Principal and CEO	National Star College & Chair Natspec
Lynne Sedgmore CBE	Executive Director	157 Group of FE Colleges
Penny Silvester	Divisional Manager	Ofsted
Simon Shimmens	Commercial Director	Department for Work and Pensions
Robin Shreeve	Principal and Chief Executive	City of Westminster College
Dame Ruth Silver DBE	Principal	Lewisham College and Chair, LSIS
Carole Stott	Chair of Governors	City Lit
Sir George Sweeney <i>Keynote Speaker</i>	Chair	The Single Voice for self-regulation
John Taylor	Director	Self-Regulation Project Team
Alastair Thomson	Senior Policy Officer	NIACE
Tracey de Bernhardt Dunkin	CEO	West Of England College
Alan Tuckett	Director	NIACE
Alison Twiney	Regional Performance Manager	Lifelong Learning UK
Christine Tyler	College Specialist	Association of School and College Leaders
Debbie Watson	Director of Policy and Innovation	LSC
Diana Watson	Strategic Associate	LSIS
Frances Wadsworth	Principal	East Surrey College
Jackie Wenham	Welfare, Work and Equality Delivery Directorate	Work and Equality Delivery Job Centre PI
Jill Westerman	Principal	The Northern College for Residential Adult Education Education & LSIS Council
Dr. Ann Williams	Principal	West Suffolk College
Dr. John Widdowson	Principal	New College Durnham and Chair, Mixed Economy Group
Linda Wilson	Programme Director	LSIS
Simon Withey	Managing Director	VT Education and Skills and LSIS Board
Rob Wye	Director of Young Peoples Learning and Skills	Learning and Skills Council