

Self-regulation – shifting the paradigm

Seminar four – 7 January 2009



Co-regulation of place – cohering national, local and sectoral

Seminar report

1. The aims of the seminar were to:
 - review and elaborate the emerging propositions and areas for further work set out in the report *Seminars one to three – the emerging consensus*;
 - discuss the developing importance of place in the structures of government and public services and review the potential contribution of FE to its locality, and
 - consider how regulatory and accountability arrangements can cohere in the locality while meeting national requirements.
2. This report presents:
 - the discussion points from the review of the emerging consensus;
 - a summary of the input from Peter Housden, permanent secretary, Communities and Local Government – *Partners in place - creating the future*; and;
 - key points from the discussion following Peter's presentation.
3. Following feedback on this report, the emerging consensus will be updated to take account of the points covered.
4. The intention is to develop the report currently entitled *The emerging consensus* to capture the thinking over the course of the final two seminars, including elaborating the areas for further work. The final report will be provided to the Single Voice for Self-regulation – the body charged with representing the sector on regulatory matters – for deliberation on behalf of the sector. LSIS will support further work as determined by the sector.

Review of the emerging consensus

5. The following discussion points emerged as we reviewed the emerging consensus from the seminars to date.

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Co-regulation vs. self-regulation

6. The terminology of co- and self-regulation was debated. While the predominant view was in favour of the term co-regulation, this was not unanimous. However, in all our discussions there has been no argument for the sector to become totally self-regulating – this was discounted as an option where taxpayers' money is involved. The discussions have been about where self-regulation can helpfully be extended, about how regulation can be made more efficient and about how the sector can influence the regulatory framework as a whole. The term self-regulation does not express this range of issues but has become shorthand among those who have been close to the debate. The issue is whether the term has the right intrinsic meaning to assist us in furthering our discussions.
7. 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.
8. The term co-regulation aims to capture the need for co-design and co-ownership of the regulatory system between government, its regulatory agents and the sector¹. A negotiated agreement between these interests could achieve the best possible alignment of ambition and mechanisms between the key players, reducing resistance within the system. Co-regulation is an ambitious proposal since it implies that the sector is engaged as a partner with government in developing its regulatory standards and processes.
9. Indeed it was pointed out that for co-design and co-ownership of the regulatory system to be realised, the sector would need to develop both capacity and mechanisms to agree a collective view on a range of areas of policy. Building the strategic capacity and mechanisms to influence and shape policy development will be critical to realising co-ownership, and is reflected in the 6th principle proposed for the New National Improvement Strategy².
10. While the term co-regulation is simple to deploy, *co-design and co-ownership of the regulatory system as a whole*, and *increasing the elements of self-regulation within the regulatory system*, may capture more effectively the intended ambition.

¹ We have also recognised the need for the learners and customers of the FE sector to have a voice in determining quality standards and priorities (as implied by the *Excellence and Fairness* model for improvement). While individual providers will be responsive to their learners, we need to consider how the learner and customer voice can be made more directly audible at the strategic level.

² This refers to the need for arrangements *whereby the sector understands and identifies what it knows and translates its knowledge into advice and proposals to drive up quality and influence policy*.

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What should be regulated?

11. Much of the discussion focused on what measures and processes should be examined through the regulatory system. Previous discussions have identified an irreducible minimum of regulation related to safeguarding public finance and the public interest (captured in annex three of *The emerging consensus*). However we identified and discussed at least five dimensions that might provide the focus for regulation:
 - the quality of the outputs³ - success rates, qualifications and job outcomes;
 - the quality of the outcomes for learners or communities which may be less easily measured – for example, the impact on social mobility, on GDP or on aspiration in the community;
 - direct evidence from learners of their experience as well as the outcomes – for example their relationship and comfort with their learning institution can have an impact on outcomes such as self-confidence, success and willingness to progress to further learning;
 - the quality of the systems and processes designed to secure those outcomes – ie their design, efficiency and elegance; and
 - the quality of the implementation or application of those processes – ie how well they are deployed.
12. Some participants were strong advocates of an outputs-based approach to regulation – providers should be judged on the results of their work alone (qualifications, etc), and not on the processes or systems they employ to achieve them. It was argued that it is possible to have a perfectly correct menu of procedures and systems and still have horrific results (the Baby P case in the London Borough of Haringey was cited as an example). On the other hand, it was argued that systems-based audits require less work and therefore demand less resource – *if the machine is right, the outputs and outcomes will be right*.
13. Others questioned the relationship between success rates, value for money and the experiences of employers and learners; others discussed the balance between reliance on data and direct evidence through talking to learners about the quality of their experience – quality must be defined by the learners, not just by government and the professions. Others argued that there is little point in evaluating systems unless these are ‘fit for purpose’ and achieving a desirable outcome.

³ In this note, the term outputs is used to refer to numerically measurable results such as success rates, qualifications etc; the term outcomes is used to refer to broader outcomes such as increased self-confidence or aspiration. It became apparent that participants were using these terms with different levels of precision. This distinction is not universally recognised but was suggested by participants to help clarify discussion.

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14. Confidence in the reliability and value of data was also variable. One attendee felt that the key measure of value for money, and of performance, was institutional success rates. Others observed that success rates were relative measures – a good provider might have lower success rates in the current economic climate, in which for example many apprentices are being laid off without finishing their programmes. The view was also expressed that if the stakes are high enough there may be incentives to manipulate data. This was not felt to be common practice in the sector but arguably in a maturing and increasingly self-regulating and professional sector, should be acknowledged as a risk, and be openly discussed.
15. In addition, the role of professional judgement was raised as critical – one view of compliance systems is that they represent the triumph of systems over professional judgement. The regulatory and improvement role of professional bodies in this mix will be vital.
16. It was significant that there was no consensus on the desirable balance of these elements. Agreement on major dimensions of regulation in the short-term will need to be followed by further co-design to reach agreement on more detailed developments. This supports the view (see paragraph 9) that the sector will need to develop capacity and mechanisms for sustained discussion and dialogue to arrive at shared perspectives if it is to become influential in shaping the regulatory system.

Differential approaches

17. Two of the propositions in the discussion paper dealt with the diverse nature of the sector. Because providers vary widely in size, ambition, purpose, financial resources, geographical scope and governance structures, it may be necessary to adopt different regulatory processes for different classes of provider, although baseline standards should remain common. Providers without boards of trustees may need other mechanisms to fulfil similar regulatory purposes, for example. These propositions gained support.
18. Some felt that the FE regulatory 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. Framework for Excellence could evolve along similar lines, allowing institutions to choose the priorities most appropriate to them. However 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.
19. We noted that in a co-designed system, capacity to co-adjust measures would also be needed, but we 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. Such an indicator set might also focus attention on how to report the outcomes of learning that do not lead to qualifications.

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Self-regulation and improvement

20. The seminar returned again to the question of how regulation relates to improvement. There was general agreement that regulation aimed to ensure minimum standards and the safeguarding of the public interest, while improvement sought to coax providers to a level of performance above the minimum – to go *‘from good to great’*. It was noted that other professions (such as the legal profession) explicitly distinguish between these functions, and that FE can be said to do as well, with for example, Ofsted handling regulation and LSIS handling improvement.
21. However we also noted that there should be a symbiotic relationship between improvement and regulation. Proposition Five, which called for regulatory arrangements to support improvement where possible, was strongly supported and is clearly the direction of travel signalled by Ofsted’s recent consultation. However, it was also noted that regulation can lead to perverse incentives and activities that don’t bring about improvement – *‘regulators obsess about regulation, not about improvement’*.
22. The synergy between regulation and improvement is apparent at organisational level where activities can contribute to both. Self-assessment, for example, contributes to both regulatory processes and improvement strategies. It was proposed that the two concepts should be *‘underpinned by a common language’* or a common understanding of what is understood for example by *acceptable* and *excellent*.

Keynote presentation

Peter Housden, Permanent Secretary, Department for Communities and Local Government

Partners in place – creating the future

23. Peter spoke to the theme *Partners in place* and addressed⁴ three themes:
 - the next phase of public service reform;
 - the role of place in policy making; and;
 - the role and contribution of FE and how it fits into this evolving system.

⁴ Copies of the accompanying slides are available on the LSIS website at XXX

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24. Upon entering office, Gordon Brown set a new tone for the public service reform agenda which aimed to engage positively with the public sector professionals and overcome alienation which hampered progress. The introduction of *new professionalism* as a plank in *Excellence and fairness*,⁵ his 2008 blueprint for public service reform, signals this new tone. The intention is to grant front-line professionals more discretion and influence to make arrangements appropriate to their localities, and to raise professional morale. Higher morale, in turn, will lead professionals to bring more energy and creativity to their work.
25. *Excellence and fairness* also calls for Whitehall to assume a ‘*strategic leadership*’ role. This is a way of defining, and limiting, the responsibilities of the civil service, to avoid the danger of it both developing reform policies and determining how they are implemented at the front line. It clarifies and restrains the central organs of the state and civil service. Empowering and linking up front-line professionals on the ground and across public services is vital to combating the current economic downturn.
26. *Excellence and fairness* does not directly address questions of place. The Department of Communities and Local Government (CLG) is working to create a better understanding in government about place in public policy. Empowered people on the ground, in localities, are essential to deliver lasting solutions to public policy priorities.
27. For local services to excel, they require ‘*legitimate local leadership*’. This does not mean that the centre just ‘*lets go*’ – there are as many problems with a totally bottom-up approach as there are with a totally top-down one. Rather, there needs to be a new accommodation or settlement between the centre and localities. How to nuance the relationship between the centre and local is an on-going negotiation.
28. Peter described how reform is taking place in local government. Local Strategic Partnerships (LSPs) provide the forum to create a shared vision and sense of priorities, and are underpinned by a *duty to co-operate* to ensure local agencies are engaged, and a *duty to involve* to ensure that local people have greater opportunities to influence priorities and decisions. Local Area Agreements (LAAs) set local priorities agreed between central government, local authorities and their partners, through the LSP. These agreements cover as many as 35 indicators from the national indicator set for local government, which the partnership commits to meeting together.
29. The partnerships are brought into being by the council, but must include government agencies (such as the police authorities and the LSC) that work in the area, and can include non-government actors, including colleges. LAAs offer a vital mechanism for strategic action in a recession.
30. Multi-Area Agreements (MAAs), which are similar in genesis and structure to the LAAs, cover several local authority areas and aim to empower action at that geographical level. These handle regional economic and training policy, and Peter suggested that they would consequently become much more important for FE. They enable groups of local authorities to work together to deliver shared priorities and negotiate additional freedoms and flexibilities.

⁵ See the LSIS Brief Guide to the paper at:

<http://www.centreforexcellence.org.uk/UsersDoc/BriefGuidetoExcellenceandFairness.pdf>

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31. Government now anticipates that post-recession, the economy will be less focussed on London and financial services, and that recovery and growth strategies will be based on the power of cities, cities regions and conglomerates. MAAs will play an important role in realising this economic vision.
32. It is critically important that local authorities facilitate the creation of '*vibrant local leadership coalitions*' in the locality with different players, including personnel from outside the local authority, taking a range of leadership roles. These personnel could naturally include FE professionals.
33. All of these partnership mechanisms will be evaluated through the Comprehensive Area Assessment (CAA), which will replace the current local government inspection system and evaluate both local authorities and their partners in their accomplishment of LAA objectives and other responsibilities. The FE accountability framework will provide a source of evidence for CAA, and colleges that are part of an LAA will be reported on through the CAA.
34. One tempting justification for a dirigiste, centralised approach to public sector reform is that it is the best way to combat under-performance and ensure equal access to good services across the country – it could be argued to guarantee the social and welfare rights of citizens. The sense that under-performance is less prevalent is critical to the shift to greater self-regulation, but we need to be sure that greater self-regulation does not imply a softer approach to under-performance. It needs to be clear where responsibility lies.
35. Peter referred to the work underway to re-shape regulation for the FE sector. It implies, he suggested, that the sector is willing to share responsibility for and co-ownership of the regulatory system as a whole, both in terms of the national education and training system, and within the context of local public services and the public realm. This illustrates the scope of FE's potential contribution to national and local economic and social imperatives. FE has traditionally seen itself as fundamental to social cohesion and as capable of kindling passion for learning.
36. However, Peter noted, FE also has a long history of antagonism with local authorities, stretching back to the days when FE colleges were under local authority control. For example, relations between colleges and their governing local authorities prior to incorporation were often fractious, in part because many large colleges were bigger institutions than the local council. Relationships since incorporation have continued to be variable, but it is time for FE to decide what it wants the new narrative of its relations with local government to sound like.
37. Peter challenged us to consider what story FE is telling itself about this history and about future relations with local government. What are the rubbing points and what's the narrative about the potential of FE in moving forward its communities with local government? FE and local authorities are co-dependent for the success of their communities. Does the story do justice to the long history of community leadership that FE brings to the local table?

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38. Peter finished by asking how this new settlement for a co-owned regulatory system will handle real-term cuts in public expenditure, which are certain in coming years⁶. How will greater self-regulation survive and evolve in this context?

The discussion

Leadership in the locality

39. Several participants saw themselves as having a leadership role within their communities – for example by influencing the local vision, raising ambition and contributing to social cohesion. They described LSPs as a useful vehicle through which to exercise this role. Some college principals lead on adult skills and employability in their localities and are appointed as non-executive directors on the LSP. There are also some 8000 governors of colleges in England who are often visible in the community and who can have a key role in brokering relationships between colleges and other partners.
40. However, not all local authorities are as open to such collaborative engagement with partners as others. The question raised was how FE should respond in such cases. Colleges must not abstain from taking an influencing and leadership role – they can help to foster openness and model the partnership approaches needed. *Who is the grown-up in an LSP? In many cases, FE will have to advocate for the greater good*, it was argued. FE leaders can play a key role in influencing the structures, atmosphere and culture in the locality. Moreover, the importance of building intangible assets should not be under-estimated – the nurturing of relationships and intelligence within organisations is invaluable.
41. While FE colleges and providers must take responsibility themselves for shaping the local context, we also asked what questions CLG asks of local authorities about their partnerships with FE. Could CLG do more to raise the profile of FE within the local government context? How is the quality of these partnerships measured? Often where outcomes are poor, this is a result of difficulties in the partnership; where they are working well, money goes further and it may be possible to manage with less money.
42. *Excellence and Fairness* does roll back national government from a determining role in the locality and public sector leaders need to fill that space – but through new forms of shared leadership which model the three dimensions of strategic leadership, citizen empowerment and new professionalism - at individual, organisational and system levels.

⁶ Under either Labour or Conservative governments – David Cameron has promised tight restrictions across most departments, limiting real-term growth to 1 percent.

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Procurement practice

43. Procurement or commissioning practice was identified as a barrier to strategic engagement. It was noted that some local authorities regard FE colleges primarily as a delivery partner to be commissioned rather than as a strategic partner. This could become even more significant when control of pre-19 education is transferred to local authorities. Where local authorities take this view, they are unwilling to engage colleges on LSPs as they regard this as compromising the procurement process by creating conflicts of interest. Or they may take the view that by doing so they will have to involve every possible contractor to ensure fairness.
44. So while colleges are keen to become strategic partners they are reluctant to do so if it compromises business opportunities and gives unfair advantage to competitors. On balance it was felt that local authorities should recognise that colleges are a key partner in both delivery and strategy and should find ways of accommodating this within their operations.
45. However there are currently many examples of where common sense is over-ridden by dogmatic adherence to rules in the area of procurement. For example, a view that *it's not fair to keep using a good provider*, can lead to an untried organisation winning a commission. The need to be able to encourage new providers while rewarding existing good providers of services, is a challenge for current practice in procurement, and is an issue that requires attention across the system it was suggested.

A changing context

46. It was argued that the skills world is crowded and shifting constantly, particularly in the current recession. The roles of particular bodies and the policy on business and enterprise are changing with Lord Mandelson's return to government. For example, Regional Development Agencies are becoming more strategic and focused on skills, enterprise and innovation rather than regeneration; city-based policy and the role of state intervention are all evolving in light of the economic recession.
47. Participants were also aware of the massive impact of the Baby P affair on the role of Directors of Children's Services, on the appetite for risk and on public trust in the inspection process. The competence and efficiency of our institutions is the unavoidable and first priority for all of us. Some thought that the new statutory duties placed on some elements of the local government system would lead to conflicts with other partners. This concern was specifically raised about children's services departments, as they will face a tranche of new rules and regulations in the wake of the death of Baby P.

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48. Some participants expressed concerns about the CAA – another new development - which aims to assess local services as an allied, collaborative whole working towards joint goals. In fact it was suggested that it is an *'amalgam'* of several inspections, allowing individual services to still focus primarily on their own services and jurisdictions (and the existing performance frameworks and priorities) rather than on composite local outcomes. As a result it was feared that little will change at the local level⁷. CAA needs to create a strong imperative to deliver shared outcomes. However others felt that since CAA is outcomes focused, it will force a new attention on partnership – in part because poor outcomes unearthed by CAA may be due to poor partnerships.

The role of independent providers

49. Although the role of colleges is critical because they are part of the public service family in the locality, we were also aware of the contribution to be made from other providers in the FE sector. However, the potential role of other providers such as independent training providers also needs to be debated and encouraged, perhaps through the proposed self-organised networks.
50. Participants asked how national providers, like large training firms, could engage with local authorities, given that they work across many council areas and have dozens of subcontractors. It was suggested that such companies could form good relationships with a small sample of local councils, say three or four. In some cases, councils will seek out these providers.
51. At the other end of the spectrum, some attendees examined the role of small independent providers. Although these providers may lack the broad responsibility for the public interest that FE colleges have, some are influenced by the notion of corporate social responsibility and wish to contribute more broadly to their communities. One approach from a local authority perspective might be to see FE colleges as core partners but giving space for small suppliers, innovation, etc. A feature of effective partnerships is the confidence in its members that no one body has to do everything.

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- ⁷ It is still early days to assess the impact of CAA. The area assessment will cover three *'main questions'*:
- *'How well do local priorities express community needs and aspirations?'* This will examine, among other issues, how well councils engage with local people, how well they address the needs of the vulnerable, and how well they meet their duty to involve local people in decision-making.
 - *'How well are the outcomes and improvements needed being delivered?'* This question covers issues of safety, health, community cohesion, economic performance, environmental sustainability, housing, inequality, and family/children's services.
 - *'What are the prospects for future improvements?'*

For more information see the LSIS Brief Guide at

<http://www.centreforexcellence.org.uk/UsersDoc/BriefGuidetotheCAA.pdf>

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Seminar participants

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

Keynote speakers: **Peter Housden, Permanent Secretary, Department of Communities and Local Government**

Participant	Job title	Organisation
Tony Alderman	Chair of Governors	Barnet College
Conrad Benefield	Programme Director	LSIS
Una Bennett	Head	The FE Information Authority
Alison Birkinshaw	Principal	York College
Alison Boulton	Chief Executive	Association of National Specialist Colleges
Verity Bullough	Regional Director	LSC
Reg Chapman OBE	Researcher and Independent Consultant	Lancaster University
Phil Cox	Programme Manager	LSIS
Mark Dawe	Principal and Chief Executive	Oaklands College
Tracy de Bernhardt Dunkin	CEO	West of England College
Sally Dicketts	Principal	Oxford and Cherwell College
Martin Doel OBE	Chief Executive	Association of Colleges
Paul Eeles	Director of Sector Reforms and 14-19	Association of Learning Providers
Toni Fazaeli	Chief Executive	The Institute for Learning
Maggie Galliers	Principal	Leicester College
Steven Garschke	LSC Contract Manager	Construction Skills
Geoff Hall	Principal	New College Nottingham
Lesley Hastings	Chair of Governors	Park Lane College
Marilyn Hawkins	Principal	Barnet College
Paul Head	Principal	The College of North East London
Melanie Hunt	Director of Learning and Skills	Ofsted
Chris Jeffery	Managing Director	Academy of Training
Sarah Johnson	Senior Project Leader	FE Self-Regulation Project

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Asha Khemka OBE	Principal and Chief Executive	West Nottinghamshire College
Sue Lovell	Interim Associate Programme Director	LSIS
Caroline Mager	Executive Director, Policy and Strategic Intelligence	LSIS
Ben Margulies	Policy Research Officer	LSIS
Linda Martin	Development Director	Hit Training Ltd.
Tony Nelson	Interim Programme Director	LSIS
Helen Pettifor	Executive Director of Leadership, Portfolio and Standards	LSIS
Bob Powell	Chief Officer	HOLEX
Dr. Ed Sallis	Principal and Chief Executive	Highlands College, Jersey
Alastair Thomson	Senior Policy Officer	NIACE
Jackie Wenham	Welfare, Work and Equality Delivery Directorate	Department for Work and Pensions
Dr. John Widdowson	Principal	New College Durham
Dr. Ann Williams	Principal	West Suffolk College