



Self-regulation – views from the centre

Report of seminar two 6 November 2008

Key messages

1. This section pulls out the most salient messages from the discussion and is intended to supplement the messages from seminar one, included on page 12.

The financial crisis poses new challenges for the self-regulation project

2. The crisis in the financial sector has created distrust in regulation and in self-regulation in particular and has generated debate about the ethics of the market-place. We need to take stock of the context and review the purposes and mechanisms of regulation in the context of the wider current discourse for public and private sectors. This will help to ensure that proposals for the FE system are robustly-based.

The FE sector can support economic recovery – regulation must help not hinder

3. The further education system already contributes significantly to supporting the economy and has the potential to do even more. It is imperative that FE steps up to the plate and that the regulatory framework supports and does not inhibit the sector's contribution. The sector has the capacity to make a larger contribution to improving employability and supporting economic regeneration. Currently the sector feels constrained in various ways in its capacity to respond.
4. We need to be clear where responsibility lies for these constraints, and the extent to which they are regulatory constraints, in order to direct our concerns appropriately. We may also need to acknowledge where our own timidity might be holding us back.

Discretions and headroom are vital

5. We must ensure that the regulatory framework provides the sector with the necessary discretions and headroom to optimise its contribution to the economy while maintaining the confidence of the government and the public.

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6. Self-regulation must be a major dimension of the regulatory model since excellence can only be generated from within the sector itself. However, the key objective should be to develop a system that maximises the sector's contribution to the public good.

Care is needed with the narrative for self-regulation

7. In a time of economic crisis and recession, we may need to nuance how we justify and present self-regulation. If the impression is given that the sector is prioritising self-regulation rather than supporting the economy and individuals and local businesses to ride out the recession, this could have a negative impact with government and with the sector's customers. Therefore the narrative about regulation should emphasise the need to ensure the sector is enabled to optimise its contribution to the economy and society, showing how the *self* of regulation helps to do this.

We need clarity about terms and definitions

8. We don't have an agreed language for the discussion. We need agreed definitions of key terms such as *self-regulation*, *autonomy*, and *accountability*. We also need to establish clarity about the purposes and mechanisms of regulation. An analysis and understanding of regulatory theory could assist us to test the self-regulation proposition and ensure that it is capable of attracting government and public support within the current risk-averse climate.

Summary of keynote presentations



Dr. Susan Pember, Director,
FE Learning and Skills
Performance Group, DIUS

9. Susan began her contribution with a brief history of the self-regulation project, starting in 2005 with the Foster Review, which first advocated self-regulation in the FE and skills sector. This led to Alan Johnson (then the education secretary) and his speech at the 2006 Association of Colleges (AoC) conference, calling on the sector to develop a self-regulation proposal.
10. The Government has consistently introduced reforms to increase autonomy and '*prioritised sector involvement in its own governance*'. New policies are implemented only after discussions with the sector, and the Government has tried '*very hard*' to reduce regulation, though not always successfully, as sub-national agencies may add new rules even as the centre eliminates them.

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11. The creation of the Single Voice has simplified relations between the Government and the sector, by creating a single body with which Whitehall can negotiate and interact. However, the sector itself must deal with multiple agencies of Government, with up to three departments (DIUS, DCSF and DWP) and six ministers of state having responsibilities related to FE. It is for DIUS to 'sponsor' the FE and skills sector, and with DCSF determine its regulation and relations with Government.
12. The machinery of government reforms, which foresee the division of the LSC into and the education system for up to age 19 and post-19 from 2010, will go along with the entrenchment of reforms on sector autonomy and voice. A Bill to implement the abolition of the LSC and the creation of its successor agencies will be laid before the House of Commons early in 2009 – later than originally anticipated.
13. The machinery of government reforms give the sector the opportunity to assign roles and expectations to the 'galaxy of stars' in the sector, determine how they interact, and thus devise how self-regulation will work. Susan emphasised the need to prevent duplication of quality management functions, which should be owned by the sector – no change can truly occur without FE staff including front-line teachers and trainers feeling that they own these changes.
14. Susan then discussed the role of the new post-19 education body, the Skills Funding Agency (SFA). It will be a 'silent partner' in the sector, maintaining the system behind the scenes, but not in the public view – she expressed a hope that the average FE learner would never have heard of the SFA! The public face of the sector will be the colleges and providers themselves, the adult advancement and careers service, the National Apprenticeships Service, as well as Train to Gain. The UK Commission for Employment and Skills (UKCES) will act as a strategic advisory body on skills needs.
15. DIUS expects that increasing areas of the system will be managed by colleges and providers themselves. There is a statutory duty to co-operate with local authority mechanisms and with Children's Trusts placed on bodies like the police authority, Jobcentre Plus, NHS Trusts and the LSC. This duty to co-operate, currently placed on the LSC, will shift to FE colleges in future. Multi-Area Agreements (MAAs) and Local Area Agreements (LAAs) are important mechanisms, and colleges will become the key strategic partners in these arrangements rather than LSC acting on their behalf - a '*much more slimmed-down way of working*'.
16. Government is keen for providers to collaborate for the benefit of the system as a whole. For example this might include supporting each other through staff development and peer review and assessment; collaborating in procurement networks to meet the full range of needs and other strategic alliances. Discussion is needed about whether inter-provider co-operation – through what are described as *self-managed networks* - needs to be legally mandated or simply encouraged.
17. The FSA will come into being in 2010, but to get the whole system fully operational is likely to take longer, but should be complete by 2012.

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Lesley Davies, Director,
Framework for Excellence and
Quality, LSC

19. Lesley's talk focused on the LSC's recently published intervention policy¹, and how this will link to self-regulation. Intervention based on minimum levels of performance has been seen as a *'fairly blunt instrument'* but in fact it comes at the end of a process. It follows a dialogue with providers and a process of support and challenge. Only if this support and challenge proves insufficient does the LSC remove provision from a provider or otherwise intervene – *'intervention is the last resort'*. The new intervention policy is *'quite extensive'* and more finessed to reflect improvements in the quality of provision.
20. Performance thresholds have been raised, and much unsatisfactory provision has been eliminated. In some cases, rather than work on improving provision, colleges have simply withdrawn provision with poor success rates. The LSC's intervention policies have successfully set up minimum standards. So where do we go from here?
21. The LSC will be introducing a qualified provider framework (QPF), moving to a single contract and three-year contracting arrangements for providers, one benefit being to reduce some bureaucracy around the procurement process. For this project to succeed, Lesley stressed that there must continue to be a rigorous inspection process to evaluate the quality of provision.
22. In the future, Framework for Excellence scores will be used as part of the commissioning dialogue and to assess providers as part of the qualified provider framework. The Framework for Excellence is being developed for piloting in school 6th forms from 2009, thus has the potential of offering a *'unified performance-management framework'* for all 16-19 provision. This QPF would help build capacity across the sector – with providers being able to apply for inclusion in the QPF at any point in the year rather than at set procurement points. Lesley stated that the QPF will streamline the way the LSC commissions and contracts for provision and remove barriers for new providers. However, Lesley also clarified that successful application to the QPF determined a providers' eligibility to apply for LSC funding but did not guarantee a contract. In a demand-led system funding follows learners, responding to customer demand.

¹ <http://readingroom.lsc.gov.uk/lsc/National/nat-statutoryinterventionpolicy-oct08.pdf>

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23. Lesley noted that the Single Voice's Self-Regulation Prospectus proposes something similar to the LSC's providers list, in its '*licence to operate*'. Care will be needed to avoid duplicate licensing arrangements. While recognising that there are concerns in the sector about the Framework for Excellence, could the indicators provide the basis for the sector's own self-regulating performance management system?
24. Too many providers are stuck at satisfactory, and could slip below this level without help. The capacity for self-assessment is increasingly important. *Prevention* rather than *intervention* should be at the heart of a self-regulating system. Lesley finished by saying that self-regulation is a great chance to reduce bureaucracy and drive forward quality improvement.

Sir George Sweeney, Chair of the Single Voice

25. Sir George gave a brief update on the self-regulation Prospectus² prepared for the Single Voice by the Self-Regulation Project Team (which he chaired). Sir George and colleagues from the Single Voice were due to meet with the further education minister, Bill Rammell, in the first week of October. However, Bill Rammell was appointed a minister in the Foreign Office that week, and a meeting has not yet been scheduled with his successor, Siôn Simon.
26. The Single Voice has decided to go ahead with a consultation on the Prospectus, despite the lack of ministerial feedback. A final version of the Prospectus was signed off in the first week of November, and the consultation will run to mid-December. It will be sent to the sector with a covering letter from Sir George.

The discussion

What does the financial crisis mean for self-regulation

27. The FE self-regulation project was conceived well before the first signs of the crisis in the financial sector which has sparked a recession in the United Kingdom. The financial sector has elements of self-regulation, and a failure of governance is seen to have been a contributory factor to the crisis. This has created a cold climate for self-regulation and could have a profound impact on the FE self-regulation project and on regulation in general. There is likely to be increased caution and less appetite for risk. Whatever system we adopt must take account of the new climate. The proposal for self-regulation will need to be particularly compelling given the likelihood of increased public and government scepticism about increased self-regulation.

² Read it online at: http://www.feselfregulation.org.uk/pdfs/SV_081024%20Consultation%20Prospectus.pdf

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28. The financial crisis is already affecting the work of Government departments. Both the DIUS and the DCSF secretaries of state attend meetings of the new National Economic Council³ twice a week. This recession seems worse than previous ones – the Government and the Bank of England have been taking unprecedented steps to stabilise the economy.⁴ As a consequence, care is being taken about public messages to ensure that they show government focused on the economy and not distracted by less urgent matters. This has affected the public profile given to the international strategy for example, although the work is still recognised as important.

Reviewing the narrative for self-regulation

29. In this new climate, how should the proposals for self-regulation be presented? How can we avoid giving the impression that we are insufficiently focused on supporting local communities and business through the recession? *Is this the right time for self-regulation* we wondered... Although there was nervousness about the climate for self-regulation the overwhelming view was that the work should not be slowed but the narrative that accompanies the Prospectus needs to be carefully tailored.
30. In reality the regulatory framework determines the capacity of the sector to step up to the current challenge. As the government has effectively acknowledged by introducing increased flexibilities in Train to Gain regulations, providers need greater autonomy to effectively participate in local economic regeneration projects. Greater self-regulation – more room for manoeuvre - could help them to enhance their contribution.
31. While it was felt that the Prospectus should still be sent out, it was suggested that the letter accompanying it from Sir George should provide a careful narrative. This should stress the need for the regulatory system to be exemplary in order to give the sector the headroom and discretion it needs to optimise its contribution to the economy - while maintaining public confidence.
32. We also noted that the financial crisis doesn't just raise questions about regulation. It has also raised fundamental questions about the efficacy of markets. The market economy, which Leitch proposed to introduce (partially) into FE, has been partly discredited, and there is increasing discussion about the ethics of the market as media and opinion-formers ponder the causes and effects of the crisis in the financial sector. We may need to return to these ethical considerations as a dimension of self-regulation and the evolving narrative.

³ A committee of the Cabinet set up to deal with the economic crisis. It has 19 members and is chaired by the prime minister.

⁴ During the seminar, the Bank of England cut interest rates by 1.5 percent, to 3 percent. This is the lowest interest rate in more than 50 years.

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Self-regulation and local authorities

33. Local authorities are a major focus for action to support local businesses and communities – the FE sector needs to be an effective partner in this endeavour. How will self-regulation help? What new benefits will self-regulation bring that we don't get already? How will it help them to aid the local economy, support regeneration and alleviate unemployment in the locality?
34. Greater autonomy and freedom would enable FE to bring more to the table in these discussions – currently they are too constrained. The recession potentially affords the sector an opportunity to become established as a key partner in local economic regeneration. FE can definitively prove its vital importance to local communities as an agent of economic and social regeneration and improvement. Self-regulation is fundamentally about improving the sector's capacity to engage in these activities.
35. And it is not just about the provision of qualifications and skills, but about '*restorative justice for local communities*'. How can community responsiveness be strengthened within the performance management framework? Indeed, do the sector's regulatory and performance management frameworks provide the discretions and headroom needed for it to optimise its contribution to combating the recession?

Tracking tyrants

36. Self-governance and self-regulation can only work if we have discretions – room for manoeuvre, headroom, capacity to act independently. We should be careful to 'track our tyrants' – that is we must be clear who is responsible for particular rules and regulations, policies or developments that inhibit our responsiveness, so that we direct our comments and challenges to the right organisations and people. In a more complex environment, it is sometimes difficult to identify which department, which secretary of state, which agency is actually responsible – or is it our own timidity that holds us back? We must assign responsibility fairly and accept when responsibility lies with our own failings.
37. Discretion and autonomy for individual teachers is also vital. The biggest tyrant for professionals is lack of time as a result of the time-consuming diktats handed down from funding, planning and awarding bodies and sometimes from *management* in general. How can teachers' professional autonomy be increased through self-regulation to ensure that their time and professional expertise is spent wisely on the core work of excellent teaching, training and learning – and not squandered, for example on any unnecessary paperwork and administration?
38. This illustrated vividly the view that we should think of *freedom from* bureaucracy to give us the *freedom to* do the things that really matter for our learners. An acid test for us is how freed-up are the individual teachers and trainers to do their core work with learners well, as a consequence of a more self-regulating sector.

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Inevitable dimensions of self-regulation

39. Although consultation is needed about mechanisms set out in the Prospectus, there are elements of it that are *context free* – that is, they will be features of any model. These include peer review processes and increasing professional and organisational autonomy.

Networks and co-operation

40. The next phase of sector development includes a strong emphasis on providers co-operating with each other for a range of purposes related to both pre- and post-19 - to deliver sub-regional priorities; to achieve local and national economic goals; to deliver 14-19 entitlements; to get commissions for skills delivery; and to support self-regulation through peer-assessment and review. It was stated that such co-operation was necessary for the sector to provide a potent and effective response to the financial crisis. Through collaborative networks the sector can create a national, regional and local strategy powerful enough to overcome scepticism about self-regulation and make FE indispensable in a time of recession, it was argued.
41. These partnerships are described as '*self-organised networks*'. Whether these networks should remain voluntary or become statutory is currently under discussion. Participants noted the need for the membership of networks and coalitions to be sufficiently fluid to respond to different policy initiatives and local priorities, suggesting that a statutory approach might lead to unhelpful ossification.
42. The government's preference for networks also raised questions about how they would sit alongside the competition agenda introduced by Leitch. Competitors do not generally co-operate in a market economy. It was noted that the Government saw competition as a mechanism to drive up quality and expected competitive behaviour, and not '*cartels*'.
43. Some suggested that HE might provide a model for co-operative approaches to working with local authorities. For example, the universities located in Kent and the Medway have formed a consortium and apportioned representative responsibilities among their members to maintain relationships with for example the local authority and with regional bodies. These nominees relay information back to their partners.
44. We also discussed collaboration in the Local Authority context where named partners are under a duty to co-operate with each other in the process of establishing Local Area Agreements. The named partners are local public bodies such as local authorities, NHS Health Trusts, Jobcentre Plus and Police authorities⁵. The Learning and Skills Council is also a named partner, but this is now being changed to be a duty on FE colleges, in recognition that LSC will no longer exist, and that a more autonomous sector should be a clear strategic partner in its own right.

⁵ The joint duty to co-operate can only apply to organisations which can be clearly identified in legislation. However, many other players such as business and voluntary and community sector bodies have a key contribution to make. The duty to co-operate does not preclude involvement of organisations not named.

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Lists of qualified providers

45. The introduction by LSC of a list of qualified or accredited providers could complicate the system it was suggested, as other local, regional and national lists already exist.
46. There may be a single united list for SFA and YPLA, but the different commissioning model used by the DWP suggests that alignment would be unlikely since they operate through a lead contractor that manages all the complexities of sub-contracting to deliver the agreed outcomes. Will there be a desire in SFA to reduce the number of contractors along similar lines?
47. Local authorities hold separate lists, which for some specialist providers, means ensuring that they are part of 190 local prospectuses. There were also questions about how providers would be accepted onto these lists and in particular whether local authority systems would be consistent and fair.
48. Others worried that establishing lists of accredited providers would create confusion in other ways. The qualified providers that would get large public contracts under such a system would then sub-contract out parts of the work to smaller institutions or concerns. These providers would also be seeking their own contracts directly from the central or local government, creating a confusing tangle of business relationships.

Reputation and new entrants

49. The culture and practice of self-regulation should also work to protect and enhance the sector's reputation. What would the sector's role be in relation to the many new providers entering the sector each year? The Prospectus for self-regulation asks how new entrants should be supported in a self-regulating system. Government is committed to encouraging new entrants to refresh the provider base and encourage diversity. New providers (and 600 new providers have entered the system in the last two years) do not have the track records to guarantee that they are '*quality providers*'. How will they get onto the list? Will they have an interim status? Care in stewarding new entrants and ensuring they do not damage sector reputation will be vital.

The challenges for small providers

50. Participants made several comments on the consequences for small providers of the self-regulation proposals and the new arrangements being developed to implement the machinery of government changes. Some felt that the proposals were too centred on the concerns of colleges and other large providers. For example, the proposals require providers to engage in networks and contribute to a range of activities with peers. It is naturally harder for small providers to work in such networks and contribute to peer review and development processes, due to their limited resources of time and funding.

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51. The self-regulation model will need to take account of the different capacity of providers in the sector to contribute to such processes. By implication, a single model of peer responsibilities may not be sustainable.
52. A statutory requirement to be part of peer and other networks could unduly burden smaller providers. However it was also argued that small providers should plan to form coalitions at sub-regional level to deliver niche priorities and get commissions from the new SFA. Others suggested that, although all providers should co-operate, only large general FE colleges should be legally required to do so since they are a civic resource and part of the public sphere.
53. In the local authority context, and with Children's Trusts, a duty to co-operate requires local authorities to enable small organisations to participate in discussions so opportunities to contribute should be available – *local authorities have to find ways of talking to small providers*.

Ownership of performance measures

54. There was some discussion about what measures would be used to evaluate providers in a self-regulating framework. It was suggested that the LSC's Framework for Excellence might provide a measurement system, but others expressed concern that the framework isn't '*owned*' by the sector. How can self-regulation work with performance measures that the sector does not whole-heartedly endorse?
55. The extension of Framework for Excellence to schools offers an important prize in terms of a common set of performance measures, but poses a dilemma. What is more desirable – performance measures that are common with schools but imperfect for the FE sector; or measures that are collectively determined and owned by the sector but do not allow easy comparison with schools?
56. The creation of the '*independent data service*' was noted as an important step forward since this will generate standardised reports on provider quality, and may help to overcome the dilemma about common performance measures.

Clarity of terms and definitions

57. Participants felt there was still a lack of clarity about many of the terms and concepts that surround self-regulation – terms such as *accountability*, *regulation* and *governance*. What does *autonomy* mean, for example? Is *self-governance* the same as *self-regulation*? For some providers, without governing bodies, self-regulation makes sense, whereas self-governance lacks resonance. We need a set of terms and definitions that we understand and with which we are comfortable.
58. We also need to be clear about the purposes of regulation and consider the implications of the current public debate about regulatory failure in the financial sector. An understanding and analysis of regulatory theory could assist us to test the self-regulation proposition and ensure that it is capable of attracting government and public support within the current risk-averse climate.

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Self-regulation and young people

59. The economic context dominated our discussion. We focused largely on FE's contribution in terms of adults – adults facing or at risk of unemployment, needing re-skilling, etc; businesses – facing challenges with finance, debt scheduling, HR matters etc; and communities as a focus for mobilising resources and support. However we were also mindful of FE's contribution to the priorities of DCSF in supporting excellent local services for young people and the need to ensure that this is part of the narrative about self-regulation. We need to articulate how self-regulation can enable colleges to enhance their services to young people.

Caroline Mager
Director for Strategic Policy, LSIS

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Seminar One - Emerging messages and areas for further discussion

- self-regulation should be primarily about improving the performance of the whole system not merely the *rescue* of failing providers; it's about helping all providers however good they are to become better;
- self-assessment and self-improvement, embedded in the culture of individual professionals and organisations, should be key pillars for self-regulation in the learning and skills system;
- for many sector organisations, excellent public trusteeship and governance should be a cornerstone of self-regulation; for those providers without boards, robust arrangements for public accountability need to be in place;
- for self-regulation to succeed the professionals working in the sector must be trusted, and the sector overall must act with self-confidence, operate with greater autonomy, be willing to innovate, manage risk and be honest about failures without fear of retribution;
- peer review and development and other forms of collaborative working have a potentially key role to play in developing the capacity for self-regulation and self-improvement. Further consultation will be necessary to establish the scope and status of collaborative approaches to review and development within a self-regulating system;
- the model of self-regulation must be capable of adapting to new priorities, systems and structures as these evolve;
- the political concern that self-regulation should be capable of dealing with under-performance must be addressed, whilst recognising that this is an issue for a small minority of providers;
- a wide view of the scope of the learning and skills sector should be adopted, keeping an open mind as to the extent to which a single approach to self-regulation will be appropriate for all providers;
- if the sector is to take responsibility for regulating its own performance, it must take collective ownership of the regulatory standards, including the key measures and indicators against which performance will be assessed;
- the performance measures and indicators should reflect a reasonable settlement between the three dimensions set out in the Cabinet Office's Excellence and Fairness - the aspirations of the sector's learners, customers and communities (*empowered citizens*); the professional views of the sector (*new professional*); and of government's priorities (*strategic leadership*);
- the performance measures and indicators should be capable of reflecting organisational mission and capacity, local context and priorities; and
- the performance management system needs to take account of the evolving approach to public service delivery in the locality which increasingly requires collaborative action by public services to address local priorities, without compromising the greater autonomy required to operate in a demand-led system; the proposed Comprehensive Area Assessment (area-based inspection) already points towards integrated assessment of performance in the locality. Should a common framework be developed that facilitates collaborative delivery by local players, rather than a discrete system for learning and skills?

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Seminar participants

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

Keynote speakers **Dr. Susan Pember, Director FE Learning and Skills Performance Group, DIUS**
Lesley Davies, Director, Framework for Excellence and Quality, LSC

Participant	Job title	Organisation
Sue Baldwin	Director, Young People's Participation & Attainment Group	DCSF
Margaret Bennett	Group Director, Communication and Partnership	LSIS
Keith Brooker	Group Director, Policy & Institute Affairs	City & Guilds
Tracy de Bernhardt Dunkin	Chief Executive Officer	West of England College
Reg Chapman OBE	Researcher and Independent Consultant	Lancaster University
Sue Dutton	Deputy Chief Executive	Association of Colleges
Paul Eeles	National Development Manager	Association of Learning Providers
Toni Fazaeli	Chief Executive	The Institute for Learning
Peter Garrod	Head of Service	Lancaster Community College
Steven Garschke	LSC Contract Manager	Construction Skills
Marie Harris	Director of Employer Services	Central Sussex College
Marilyn Hawkins	Principal	Barnet College
Paul Head	Principal,	The College of North East London
Christine Jeffery	Managing Director	Academy of Training
Caroline Mager	Director of Strategic Policy, Learning and Skills Improvement Service	Caroline Mager
Ben Margulies	Policy Research Officer, Learning and Skills Improvement Service	Ben Margulies
Chris Minter	Interim Service Director, Safer & Stronger Communities	Leicester City Council
Helen Pettifor	Executive Director of Leadership Portfolio & Standards, Learning and Skills Improvement Service	Helen Pettifor
Lucy Pollard	Membership and Registration Officer	The Institute for Learning
Bob Powell	Chief Officer	HOLEX
Dr. Ed Sallis	Principal and Chief Executive	Highlands College, Jersey
Lynne Sedgmore CBE	Executive Director	157 Group
Dame Ruth Silver DBE	Principal (also chair of LSIS)	Lewisham College
Penny Silvester	Divisional Manager, Learning and Skills	Ofsted
Sir George Sweeney	Chair	The Single Voice and the Self-Regulation Project Team

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Christine Tyler	Consultant	Association of School and College Leaders
Debbie Watson	Director of Policy and Innovation, Finance & Resources Group	LSC
Diana Watson	Marketing and Communications Director	LSIS
Jackie Wenham	Welfare, Work and Equality Delivery Directorate	DWP