

Self-regulation – shifting the paradigm

Seminar six – 11 March 2009



From good to great: An outline model for self-regulation in the learning and skills sector

Introduction

1. The sister paper at this seminar argues for co-design and co-ownership of the regulatory system. This paper sets that on one side for the moment and suggests a cock-shy for the sort of system that such a shared process might generate. The two papers touch at many points but these are not all explicitly cross-referred.
2. In line with the analysis in *Excellence and Fairness*, the current state of performance in the sector ('good') is largely the result of a compliance-based approach to performance management of the sector. In the significant areas of control - quality, financial health, choosing strategic options, performance development, reporting of results - government and its agencies have tended to prescribe quite tightly the methods and options the providers must adopt. These prescriptions are inevitably 'national' in character.
3. This approach has led to good results in the national currency prescribed by government but it is hard to judge whether these good national results are actually the best for the country. This is particularly true in a time like the present economic downturn when national targets, for example for particular qualifications, may have limited relevance to individual businesses whose focus now and for the foreseeable future is entirely on survival. Furthermore, people live and employers operate in localities, each with its own peculiar circumstances, needs and rates of change. Further education itself is essentially a local service. It is arguable that people, businesses and employers more generally in each locality will be better served by thoughtful, highly skilled further education providers with the ability and headroom to respond to their changing needs rapidly and flexibly, in an intelligent and tailored way.
4. Again following the argument of *Excellence and Fairness*, a prescriptive compliance-based approach to performance management tends also to undermine the ability and desire of individuals at all levels to take responsibility for their actions and be committed to performing at the highest level. If they don't perhaps believe in what they are being told to do, if they have not been genuinely consulted, if they feel it really has little to do with them personally, people will not be committed to achieving a given result.

Self-regulation – shifting the paradigm

Seminar six – 11 March 2009

5. For these reasons, *Excellence and Fairness* is right to argue that now is the time for a switch from a compliance-based approach to a more self-motivated and professionalised one. In FE, this is encapsulated in the government's policy of self-regulation and self-improvement. Actually, the concept of sharing appropriately the responsibilities of regulation is likely to be a more realistic and achievable relationship. It is through this shift that a more mature sector can serve the needs of the nation, locality by locality, better.

1. What are the underlying purposes of regulation in the public sector?

6. Essentially, protection of the public interest, in 4 basic ways:
- safeguarding and accounting for public money;
 - securing quality services and value for money (vfm);
 - achieving public policy priorities; and
 - acting within the accepted standards of public service.

2. What would be the benefits of self-regulation?

- the public interest could be secured more efficiently, with less top-down monitoring;
- in addition:
- less top-down prescription would enable the sector to become more mature and capable;
 - genuine self-regulation would oblige providers to take ownership of and responsibility for their own performance; and
 - with less national prescription, providers could be more effective in responding to their communities and local employers.

3. What might be the elements of self-regulation?

7. Here is a cock-shy mapped against the underlying purposes of regulation set out above in section 1. The cock-shy is intended to present a comprehensive array of elements to address the purposes of regulation ie protection of the public interest in its widest sense. This means that it includes basic elements of control which would be common to any system however regulated.

Self-regulation – shifting the paradigm

Seminar six – 11 March 2009

8. Some of the elements are closely related and together serve a joint purpose, but they are separated out here to highlight that they deal with a specific piece of necessary regulation. One element not listed, but accepted as a given, is the funding agency acting on behalf of government. After 2010, this will be a combination of agencies with the Skills Funding Agency (SFA) having the main regulatory role. These agencies will inevitably regulate through the rules they establish for their funding methods and the SFA will have a particular role in elements 2 (financial memorandum) and 3 (accountability data). It will also want to keep a watching brief on the results being achieved by the other elements of the regulatory system.

Serving all four purposes

9. **Element 1.** Fully effective governance. This should:
- appoint a person well-qualified by aptitude, skills and experience to be principal and/or chief executive of the provider;
 - ensure an effective and balanced senior management team is in place, with the right skills and experience, attitudes, ambitions, energy and drive;
 - take responsibility for and oversee good and continuously improving performance, by setting strategic direction, approving performance standards and holding senior management to account for delivering them; and
 - cherish and safeguard the public interest, both of the taxpayer generally and of local communities and employers, by upholding the Nolan principles for public conduct and being open and transparent in all its dealings on the public's account.
10. **Element 2. A revised financial memorandum (or contract)** with providers setting out in principles the general standards of conduct and performance for which the governance function takes responsibility in return for public funding. There is considerable scope to ensure these documents set out in a non-prescriptive and intelligible way the full responsibilities of the governance function.
11. **Element 3. Accountability data** supplied to government and its agencies to track the volume of work done by the sector and to assess its impact, both for the purposes of holding to account and for policy development. This is the 'irreducible minimum' of regulation, specified by government and used by it as it sees fit. This could evolve from the current Framework for Excellence.
12. **Element 4. A sector-wide coalition committed to self-improvement** and the improvement of its members. Like a chain, the sector should regard itself as being as strong as its weakest link. As set out in the sister paper, there may be a role for the Single Voice here.

Self-regulation – shifting the paradigm

Seminar six – 11 March 2009

13. **Element 5.** An **underperformance protocol** should be co-designed and agreed between the sector and government. For example, there should be the clear presumption that underperformance will be identified by the governance function and corrected; but if not, it will be revealed by financial statements and/or an Ofsted report. There should then be a set period during which remediation is attempted with the support of LSIS and other mechanisms perhaps orchestrated by LSIS. If sufficient improvement is not evident within a set time period, the provider should be referred to the relevant funding body for a change of governance, and leadership possibly, or cessation of contract.

Serving mainly purpose 1: Safeguarding and accounting for public money

14. **Element 6. Standard financial control and reporting procedures** including internal control standards, audit committees, internal and external audit, published annual financial statements and accepted accounting standards all operated to accepted professional standards and codes of conduct.

Serving mainly purpose 2: Securing quality services and vfm

15. **Element 7. Quality inspection and vfm audit** provide independent external assurance by Ofsted and the National Audit Office (NAO), with published reports and the option of further examination by a parliamentary committee. The emphasis should steadily shift to appraisal of providers' ability and rigour in conducting self-assessment and their capacity for improvement. The governance function should take responsibility for both quality control and assurance, so that Ofsted becomes more like internal audit.
16. **Element 8. Performance standards set by providers** themselves. All providers together or families of providers define in a common and accessible way the characteristics and achievement levels of 'a damned good provider'. These definitions should be based on a common core of measures/descriptors and a wider range of mission-specific indicators. They should be supported by 'intelligent evaluation', ie assessing how a provider has performed against the (often conflicting) needs of its particular locality rather than solely against very broad national targets.
17. An alternative approach would be to create an essentially sector-led body which could be the guardian of standards, particularly for teaching and learning. Such a body might also play a part in validating foundation degrees (a potential problem for many individual providers) and generally advancing the professional maturity of the sector (as did the Council for National Academic Awards – CNAA - for the polytechnics).
18. **Element 9. A condition of funding that providers meet or exceed the standards set by their peers.** This element speaks for itself. There is a huge behavioural difference between a national prescription requiring providers to meet their own standards and a national prescription of the standards themselves.

Self-regulation – shifting the paradigm

Seminar six – 11 March 2009

19. **Element 10. An ombudsman** covering further education to hear complaints from aggrieved parties with the power to require redress and publish findings. This service could be shared with other areas of education or more widely in the public sector.

Serving mainly purpose 3: Achieving public policy priorities

20. **Element 11. Ministerial letters of guidance** which determine the policies for which funding will be provided. These requirements are additionally transferred to the sector via funding methods and circulars.

Serving mainly purpose 4: Acting within the accepted standards of the public service

21. **Element 12. Openness and transparency** should be a requirement of the financial memorandum when delivering publicly-funded work, and would include, for example, a requirement for each provider to publish (as appropriate) their assessment of local needs, their intended response and their performance in delivering that response, as far as possible, 'in their own words'. It would also include publishing self-assessments and the consequent plans for improvement to build the confidence of government, learners and the public more generally. In this way, providers would be more accountable to their communities, learners and employers, as well as to government via the accountability data (element 3). The core components of these accountabilities would need to be standardised and consistent.

Comment

22. Many of these elements are identical or similar to processes operated routinely in both the public and private sectors and may be considered to be fundamental processes which will always be required. But there are often different ways of carrying them out and the choice of way will affect the extent to which a provider perceives that it has ownership of its activities and performance. Examples include the balance between self-assessment and external assessment; who appoints external auditors; who sets performance standards, and; whether reporting is compliance-based or 'in the provider's own words'. The more the governance function itself takes responsibility for protecting the public interest, the more it will be engaged with and own the performance of the provider for which it is responsible.
23. An important factor in all of this is the minimisation of unnecessary bureaucracy. It is argued that two dimensions are particularly significant. One is that often it is the 'who to' that engenders the perception of bureaucracy as much if not more than the 'what'. We might expect the move towards self-regulation to be accompanied by a switch of emphasis from external flows to internal flows. Secondly, it is the duplication of data requests by multiple users which is often the most burdensome. The sector-led information authority can play a big part in simplifying this.

Self-regulation – shifting the paradigm

Seminar six – 11 March 2009

Summary of changes that would be required

24. The table below categorises these elements in terms of the amount of change that would be required to implement the full set.

Status	Element
Currently exist, well developed	6 - standard financial control and reporting procedures 11 - ministerial letters of guidance
Currently exist, need development	1 - fully effective governance 2 - revised financial memorandum (or contract) 3 - accountability data 7 - quality inspection and vfm audit 12 - openness and transparency
New	4 - sector-wide coalition for self-improvement 5 - underperformance protocol 8 - performance standards set by providers 9 - condition of funding to meet standards set by peers 10 - an ombudsman

Roger McClure, Chief Executive, LSIS
March 2009

Caroline Mager, Executive Director, Policy and Strategic Intelligence
caroline.mager@lisis.org.uk Telephone: 020 7297 8438