

Appendix C: Governance in the College Sector

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Working together in partnership



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1 Introduction and Background

1 This Appendix explores current issues in the governance of the colleges sector, and makes a number of recommendations mainly in answer to questions explicitly posed in the terms of reference for this review. It needs to be read alongside various other parts of the overall report, some of which is in both hardcopy and electronic formats and some of which is just available electronically. Particularly relevant for readers interested in college governance are:

- Section 3 of the main report on 'How Does the FE System Understand Effective Governance and Strategic Leadership?' (Hard copy and electronic).
- Section 4 of the main report summarises this Appendix on college governance and lists recommendations.
- Section 7 of the main report on 'Future Challenges Facing Governance and Strategic Leadership in FE' (hard copy and electronic).
- Appendix B provides an 'Overall Literature Review about Developments in Governance' for those readers unfamiliar with trends in governance and developments in other sectors (electronic only).
- Appendix G describes the methodology used in data collection for the review and the people/organisations consulted (electronic only).

2 So far as the structure and practice of governance is concerned, the college sector consists of three main elements:

- First, general FE colleges, land-based colleges, and art, design and performing arts colleges who have the same instrument and articles of governance, and whose corporations therefore have identical responsibilities. They constitute the largest part of the sector, and most of the discussion in this Appendix is about their governance¹.
- Second, sixth form colleges, who have their own instrument and articles and which differ mainly in their membership requirements, including for parents to be governing body members. Much of the discussion in this Appendix also applies to sixth form colleges, but there is a short section near the end which considers the particular governance issues they face².
- Third, the independent specialist colleges sector, which provides FE for learners with complex or severe learning difficulties and/or disabilities whose needs cannot be met in their local college. In terms of volume the sector is very small, and only approximately 3,600 learners are funded³. As their name implies, these colleges are independent, and their ownership and governance arrangements are a microcosm of the diversity found in the overall FE system. There are no statutory instrument and articles of governance as there are for other colleges, and specialist colleges are either charities, part of large healthcare groups, or privately owned. There is a separate section towards the end of this Appendix about governance in specialist colleges.

¹ For more information about the colleges sector see www.aoc.co.uk

² For more information about the sixth form colleges sector see www.sfcf.org.uk and www.aoc.co.uk

³ For more information about the specialist colleges sector see www.natspec.org.uk

In addition, there are four London-based specialist designated institutions - SDIs - (The City Lit, Mary Ward, Working Mens Institute, and Morley); the WEA (also counted as an SDI); and four residential SDIs (Northern, Ruskin, Fircroft, and Hillcroft) who are currently counted as colleges. A characteristic of the college sector is therefore considerable diversity, not just in size of institution, but also in mission, and whether colleges play a national, regional or local role - or a combination of all three.

- 3 So far as FE colleges are concerned, they are statutory bodies incorporated under the 1992 Further and Higher Education Act, and the governance of the corporation (the governing body of a college) is prescribed in considerable detail in the statutory instrument and articles of governance. The majority of funding typically comes from the Learning and Skills Council (LSC) who are the main regulatory body. Corporations agree an annual financial memorandum with the LSC, and are subject to detailed regulation, particularly in respect of finance and accounting. Ofsted inspects the quality of provision, including leadership and management (a category in which governance is included but not separately graded), and receives information about college governance from the LSC in various forms, including the results of an annual financial management and control evaluation (FMCE) (previously a self-review questionnaire - SARQ). The other main funding source for those colleges with HE provision is HEFCE, with different quality inspection arrangements through the QAA.
- 4 Colleges are also exempt charities, and this confers significant financial advantages for corporations, particularly from rate relief and VAT. In this capacity colleges are subject to the oversight of the LSC as the principal regulator rather than directly by the Charity Commission. At the time of writing, an important issue for corporations is with the demise of the LSC in April 2010 what body will take on the principal regulator role, and it is understood that this has not yet been agreed with the Commission. Specialist colleges are generally not exempt charities, and have to deal directly with the Commission in meeting its regulatory and reporting requirements.
- 5 Until relatively recently college governance took a fairly standard form, with governing bodies (corporations) typically meeting a minimum of three (or perhaps four) times a year and with extensive committee systems reporting to the main board. External independent members must be in a majority, and the corporation chair must also be external. The principal/chief executive has the option of being a board member, and it is understood that all are. Other holders of senior management positions are not permitted to be board members, an issue explored below. Administrative and advisory services to corporations are provided by a clerk, who plays an important support role.
- 6 In recent years there has been more innovation in college governance, partly driven by increasing internal interest in the topic and partly by a much greater awareness of the need for good governance in both the private and public sectors, and for FE colleges to respond accordingly (see Appendix B). For example, the membership of corporations has generally declined in size, some colleges have substantially reduced their committee system, and others have sought to introduce particular approaches or styles of governance. The result is increasing diversity not just in types of colleges, but in approaches to governance. Such innovation has been aided by increased flexibility in the instrument and articles of governance when reviewed in 2008, but an important

issue considered below is whether greater flexibility, and a reduction in prescription, would encourage more effective governance.

- 7 Finally, by way of introduction to the analysis which follows, it should be noted that very different views about the need for, and possibility of, - enhancing college governance were evident in the many consultative discussions held in undertaking this review. For many governors (including chairs), clerks, and principals/chief executives further enhancing governance in the sector is important, and should potentially lead both to better institutional performance and to greater freedoms under shared regulation. However, many others are tired of discussion of the topic, and disillusioned with both the demands of the regulators (particularly the LSC) and the constraints of a funding methodology perceived to be too short term, all compounded by the problems with capital funding and Train to Gain. In providing information to us, one respondent wrote that in the face of "constant government interference [my] main plea is leave us alone!" In the context of many other colleges which want change that may not be possible, the comment is an important reminder that amendments to governance should be considered, realistic, consistent, and generally command the support of the sector. The recommendations below are made in that spirit.

2 The Quality of Governance in Colleges

- 8 The terms of reference for this study require a review of the quality of governance within further education, and three main sources are reviewed: existing literature and research on governance in the sector; Ofsted data; and information collected for this study as part of the consultative activities.
- 9 At the outset it needs to be stated that there is no simple answer to questions about the quality of college governance, and this is for two reasons: first, the substantial diversity of the sector; and second, the absence of sector-wide agreement about what constitutes the effectiveness of college governance and therefore how its quality can be measured. Although Ofsted inspection data exists (and is the only sector-wide information available), both its methodology and conception of what constitutes effective governance is challenged by some colleges. Accordingly, the data presented below brings together what information exists, but it does not allow 'simple' answers to be provided to 'complex' questions.
- 10 However, there is general agreement from all three sources indicated above that both the quality of college provision and the quality of its governance is improving, and has done so since incorporation. For example, in reviewing the quality of governance in 2002 in the light of incorporation, Davies⁴ noted a substantial general improvement in college governance and that "the majority of corporations have now developed a critical and challenging approach commensurate with proper and rigorous governance", and that overall "governance has changed in the broad directions intended by government and funding councils - albeit in many cases, there is still some way to go before the transition is complete".
- 11 Similarly, in a paper on governance and accountability commissioned for the Foster Review and based on comparisons with the Good Governance Standard in Public Services, Fresko and Rubenstein⁵ claimed that "it is unarguable that FE college governance has grown consistently more robust and capable in the period since incorporation". However, they also note that governing bodies vary considerably in terms of their capacity and capability to meet the equally important "strategic leadership" requirements falling upon boards.
- 12 The Foster Review⁶ itself supported this view, noting that "college governance has grown considerably more robust since the early days following incorporation", and going on to observe that "whilst there is variation in performance across the country, most governing bodies appear to be discharging their obligations in terms of stewardship, probity and accountability reasonably well". In answering the question "are existing college governance arrangements fit for future purpose?" Foster concluded that "no changes are recommended to governance at individual college level. Indeed we believe the greater clarity of role and purpose, together with a medium-term goal of self regulation... will strengthen the importance of the FE college corporation and give them a vital challenge to address". The Foster Review added two

⁴ Davies P, (2002), *The Changing Face of College Governance*, LSDA Research Report, LSDA

⁵ Fresko A and Rubenstein S, (2005), *Accountability, Authority and Leadership: a Governance Perspective*, Foresight Partnership, www.foresight-partnership.co.uk, page 1

⁶ Foster A, *Realising the Potential*, www.dfes.gov.uk/furthereducation

caveats: that the membership of corporations needed to be more diverse, and that greater clarity about the role of board members should exist including a role description for chairs. Both of these issues are addressed below.

- 13 Developments since the Foster Review (including the removal of some restrictions in the instrument and articles of government) have led to a higher profile for governance, and a recent report produced by the 157 Group claims that (based on Ofsted data) amongst its members governance is "strong, well informed, and appropriately challenging to management, with clearly defined functions for governors in setting strategic direction and acting as critical friends"⁷.
- 14 Ofsted generally appears to support these conclusions, and considers that it is clear that "the further education sector is improving", but nonetheless believes that "there are still too many colleges which remain only satisfactory and have not demonstrated significantly improved performance over time"⁸. Two Ofsted reports published in 2004 identify the contribution of governance to both successful and failing colleges. Inevitably these two reports identify factors that tend to represent 'two sides of the same coin', but the importance of effective governance is clear from both.
- 15 In 'Why Colleges Fail'⁹ Ofsted notes two main factors: first, that failing corporations invariably neglect to ensure that managers turn strategic plans into effective action, and that "there is no clearly established link between the college's operational plan and the strategic plan". Second, there is a lack of focus on delivering high quality provision to learners. In 'Why Colleges Succeed'¹⁰ Ofsted are clear that "another feature of all the [successful] colleges is their strong and effective governance", and it is worth quoting at length the associated characteristics: "In each of the 29 colleges [all awarded grade 1 (outstanding) for leadership and management] governors play a significant role in providing strategic direction and monitoring the academic and financial performance of the college. They share the vision for the college with senior managers and staff, and are active in pursuing their vision, being both supportive and acting as a critical 'friend'. The extent to which governors are involved in the curriculum varies; but in all cases governors are knowledgeable about the curriculum, have a detailed understanding of the strengths and weaknesses of the college and are well informed about students' achievements. In many cases, governors play a significant role in the college's quality assurance procedures, particularly through reviewing and evaluating self-assessment reports. Positive reports about the role played by governing bodies are perhaps the most consistent message emerging from this survey".
- 16 These early views of Ofsted are confirmed in a later publication, 'How Colleges Improve'¹¹, which reviews the characteristics of a sample of 15 colleges which improved their Ofsted rating between their first and second inspections. Those factors related to governance that they found were key drivers for change included: clarity of

⁷ 157 Group, (2009), *Governance and the 157 Group*, at www.157group.co.uk

⁸ Ofsted, (2008), *How Colleges Improve*, www.ofsted.gov.uk/Ofsted-home/Publications-and-research/Browse-all-by/Documents-by-type/Thematic-reports/How-colleges-improve, pp 1

⁹ Ofsted, (2004), *Why Colleges Fail*, pp 10

[www.ofsted.gov.uk/content/download/1403/10067/file/Why%20colleges%20fail%20\(PDF%20format\).pdf](http://www.ofsted.gov.uk/content/download/1403/10067/file/Why%20colleges%20fail%20(PDF%20format).pdf)

¹⁰ Ofsted, (2004), *Why Colleges Succeed*, pp 16

[www.ofsted.gov.uk/content/download/1404/10072/file/Why%20colleges%20succeed%20\(PDF%20format\).pdf](http://www.ofsted.gov.uk/content/download/1404/10072/file/Why%20colleges%20succeed%20(PDF%20format).pdf)

¹¹ Ofsted, (2008), *op cit*

vision and mission; leadership which promotes very high standards in a positive and supportive culture that aspires to excellence; effective performance monitoring; well-informed governors who "challenge managers vigorously on the college's performance"; and high priority given to building management capacity. Conversely, factors inhibiting change involving governance were cited as: growth without long-term strategy; no clear mission rationale for the curriculum offer; poor data and data management; a lack of accountability; governors not challenging management sufficiently; insufficient updating and training of governors to ensure that they fulfil their role effectively; and the absence of "a self-critical approach and lack of recognition of the need for change by governors and senior managers". They conclude that one of several priorities is to "build informed governance. Tackle underperforming governance. Train governors to be challenging, not just supportive, and to play their part in an informed way in shaping the mission".

- 17 However, the variability of the quality of governance cited in all three sources is evident in Ofsted's own inspection data. The following table presents Ofsted grading for the leadership and management element in its inspection methodology for all those colleges subject to a full inspection in 2008. As can be seen, overall some 33 % were in the inadequate or satisfactory category, a result which needs to take into account the policy of Ofsted and the government to 'raise the bar' so that 'satisfactory' performance is no longer viewed as acceptable but is interpreted as 'coasting' and not good enough. However, although this is the only comparative statistical data available, its interpretation needs to be treated with care as governance is only one element in the leadership and management category and not separately rated. It follows that concerns about specific aspects of operational management might reduce the overall rating for otherwise effective governance. Conversely, it could be argued that now the Ofsted methodology is well established, any corporation of a college with a satisfactory or inadequate rating for leadership and management should have been able to 'raise its game' and is almost by definition ineffective in some ways.

Table C1: Ofsted Grades for Leadership and Management for Inspection in 2008

Ofsted Grade for Leadership and Management	FE Colleges	Sixth Form Colleges	Specialist Colleges	Total
1 = Outstanding	24 = 26 %	7 = 50 %	0 = 0 %	31 = 26 %
2 = Good	39 = 42 %	4 = 29 %	6 = 46 %	49 = 41 %
3 = Satisfactory	22 = 24 %	2 = 14 %	4 = 31 %	28 = 23 %
4 = Inadequate	7 = 8 %	1 = 7 %	3 = 23 %	11 = 10 %
Total ¹²	92	14	13	119

- 18 Moreover, rating governance in this way raises an interesting conceptual issue about what effectiveness means in practice, and its relationship to college achievement. Clearly the processes of governance can be so assessed separately, but increasingly effective governance is recognised to be about impact and added value. In this context, it is difficult to conceive of a corporation being effective (no matter how well

¹² Source: *Ofsted inspection reports 2008* at www.ofsted.gov.uk

run) in a college whose strategic intentions are not being fully realised. Conversely, it may be the case (irrespective of Ofsted and LSC beliefs) that given a high performing principal and executive team a college could have outstanding provision and an under-performing corporation.

- 19 Support for the conclusion about variability in the quality of governance comes from a number of other sources. It is an observation regularly raised by stakeholder bodies who are in a position to compare governance practice between colleges, and also in a separate study in Scotland, where a relatively recent independent review of colleges¹³ concluded that "in general, the standard of accountability and governance in Scotland's colleges is good" whilst noting substantial institutional differences ranging from 'average' to 'very good'. Although there are significant operational differences from the position in England, the overall approach to governance is similar enough to suggest that the position should not be particularly different in England.
- 20 In the consultation for this study we sought information from governors, principals, and clerks on the general strengths of and challenges to college governance in operation, recognising the diversity of the sector and therefore the difficulties of generalisation. The main issues arising are briefly noted, and then some are explored in more detail in this Appendix. When taken together they largely explain the variability suggested by the Ofsted data. The factors raised fall into two categories: those that are generic to governance in most organisations (for example, the centrality of effective working relationships between the corporation chair and principal or chief executive), and those that are largely specific to colleges. The following analysis mainly concentrates on the latter, although the importance of the former to the effective working of individual corporations should not be ignored.

Current Strengths in Governance

- 20 The following strengths in current governance were regularly cited, and appear to attract a reasonably high degree of consensus:
- As noted above, governance is generally felt to be improving, and governors largely perceive themselves to be doing a 'good job'.
 - When aggregated, the total experience of independent governors represents a huge potential resource to FE. However, views differ about how effectively this is used, and some feel strongly that much more could be done by using this group to encourage better management as well as governance, and also in communicating the achievements of FE to government, stakeholder bodies, employers, and local communities.
 - The increased flexibility offered by the 2008 revisions to the instrument and articles of government has been widely welcomed, particularly in relation to enhancing corporation membership (see Section 5).
 - Performance management systems are starting to be introduced in colleges with beneficial effect, and corporations are starting to adopt their own key performance indicators to assess institutional performance beyond those required by the LSC. One element of this is the adoption of staff performance

¹³ DTZ Consulting, (2007), *Report of Research by DTZ Consulting and Research*, at www.scotland.gov.uk/Publications/2007/02/05093435/0

management systems, and a review by Chapman and Carter¹⁴ notes that "successful colleges are likely to have adopted rigorous performance management arrangements and that such arrangements are positively correlated with the success of their organisation". However, they also noted that a quarter of colleges responding to their survey "admitted that although well documented and structured, their [performance management] systems were not always consistently and comprehensively applied"¹⁵, and more work needs to be undertaken for the full benefit of such systems to be felt.

- Effective audit committees and processes for ensuring monitoring and control systems are increasingly being introduced (although a number of issues remain - see below), and stakeholder bodies can have increasing confidence that basic governance compliance systems are in place.
- Despite a number of challenges and frustrations about the regulatory environment (see below) the motivation of individual members of corporations is generally reported as remaining high, and they gain satisfaction from their role. However, there are concerns about whether this will continue in the face of future challenges confronting the sector.

Current Challenges to Governance

- 21 Overwhelmingly, the dominant challenge perceived to threaten the effectiveness of college governance comes from the FE funding and regulatory environment. Almost without exception, those governors, clerks and chairs responding to this study, felt that current funding and regulatory arrangements - particularly of the LSC - were antithetical to effective institutional governance. These complaints are longstanding and were considered as part of the previous review of governance, but have become more acute with the tensions felt over the capital funding and Train to Gain. This is particularly since (as noted above) the move by DIUS towards increasing institutional flexibility in governance through the revised instrument and articles was widely welcomed.
- 22 These concerns have been substantially documented in the literature and are well known to the government and all stakeholder bodies, so are not considered in detail in this Appendix (except for a few more technical issues in Section 9). To take just one example, in a recent report on governance for LSIS, Gleeson et al¹⁶ observed that "government policy, as delivered by the Learning and Skills Council, has produced a sense of disempowerment which marginalised governors' contributions", and that "the impact of an audit culture is believed to dominate college governance to such an extent that it limits or acts as a barrier to more creative discussion and debate". Clearly the abolition of the LSC as part of the machinery of government changes provides an opportunity for building new and more constructive relationships, but - as noted in the main report - governors are generally not confident that this will be the case.

¹⁴ Chapman R and Carter N, (2008), *Routes to Excellence: Performance Management Strategies for Organisational Improvement in General FE Colleges*, Centre for Excellence in Leadership, at www.lsis.org.uk page 15.

¹⁵ Chapman R and Carter N, *ibid*, page 13

¹⁶ Gleeson D, Abbott I and Hill R, (2009), *Creative Governance in Further Education: the Art of the Possible?*, LSIS at www.lsis.org.uk

23 Other major challenges to consistently effective governance -, considered in more detail in the sections below, include:

- A perception by many respondents that greater clarity and consistency is required about what constitutes the governance responsibilities of a corporation, and how they might be best implemented.
- Notwithstanding the increased flexibility in the membership of corporations introduced in the last changes to instrument and articles, there is a widespread view that greater freedom of institutional action is appropriate and that clarification of some resulting issues is required.
- Board size and other aspects of membership remain an issue, particularly in relation to: the recruitment of high quality governors for some but not all institutions; the need to increase the diversity of membership (particularly of black minority ethnic members which is a challenge for most colleges); and student and, to a lesser extent, staff participation.
- Some, but by no means all, corporations find it difficult to fulfil effectively their responsibility for determining strategy and relating this to educational character and enhancing the quality of provision. There are various reasons for this which are explored below.
- Some respondents recognise that demonstrating public benefit (a requirement of the Charity Commission) by corporations is a challenge, and although substantial activity takes place in building links with local communities more needed to be done, and seen to be done, in some cases.
- Although an understanding of the importance of effective governance amongst principals/chief executives is felt to be increasing, some colleges report that this may not exist at the next management level with consequent difficulties for effective reporting and monitoring.
- There is recognition that some corporations do not constructively challenge executive proposals as effectively as is desirable, and may be more comfortable providing support¹⁷.
- The role of the clerk is widely regarded to be crucial to effective governance, but there is evidence that not all colleges may be devoting enough time or resource to the role.
- As the external environment becomes more turbulent, the need for more effective information (including briefings and benchmarking) for governors grows. Some 'good' practice exists in meeting this demand, but governors report that more needs to be done in a way which avoids duplication and is simple to access. In particular, there is scope for much greater provision of effective practice information, even allowing for the fact that much 'good' practice is contextual, and what works for one institution may not work for another.
- There is a particular challenge for small colleges in ensuring effective governance, as many of the same tasks have to be undertaken with fewer resources available.
- Finally, there are concerns in some corporations about the operation of internal audit, and whether the potential value of the role is fully exploited.

All these issues are pursued below.

¹⁷ A useful guide to the challenge role of governors has just been produced by LSIS, see Field M, (2009), *Learning to Balance Support and Challenge*, LSIS at www.lsis.org.uk

- 24 In addition to this list of challenges specific to FE, corporations report facing a number of others generic to governance in many organisations. These include: ensuring effective working relationships between the corporation (and particularly the chair) and the principal/chief executive; managing risk effectively in a volatile environment; communicating effectively both externally and internally; and ensuring good team-working and dynamics without which no board can be effective. Again, there is scope for much more guidance and 'good' practice information to colleges in these areas.

Small Colleges

- 25 An issue which was raised several times in the consultation is governance in small FE colleges, and whether their size places constraints on them in relation to assuring effective and robust governance. It is incontestable that effective governance incurs cost, and requires expertise that may be expensive or difficult to obtain. Because of their size this may place a strain on smaller colleges, and since the sector as a whole has a vested interest in ensuring robust and effective governance, it is reasonable to ask: what are the special challenges facing governance in small colleges and is significant risk involved?
- 26 The factors which might be expected to cause particular challenges for governance in small colleges include: typically small colleges will have a modest administrative infrastructure to provide support to their corporation, and where their clerks are also employed on a minimal contract, obtaining the necessary expertise to inform a corporation may be difficult; the recruitment of high quality governors may be easier in larger colleges - a factor suggested by the 157 Group¹⁸; and the costs of simply 'doing business' may be proportionally very high (for example, legal advice, internal audit, etc).
- 27 However, such generalisations are unhelpful, and Ofsted has reported favourably on governance, leadership and management in some small colleges, whilst others have been noted to be at risk. Particular strengths may include: a particularly experienced and motivated group of governors (often found in relation to colleges with distinct missions or provision); greater teamworking between governors and the executive; a clearer focus on institutional strengths caused by a small range of provision; and that governance in small institutions is often simply easier to undertake than in large ones.
- 28 Such factors suggest that in practice, governance in many small colleges may be rather different from that in larger ones, and that corporation members may get drawn into fulfilling a number of 'hands on' roles that might not happen elsewhere, for example, acting as advisors to functional managers if their own field of expertise is relevant. Such involvement may increase governor motivation and appear to provide added value for a college, but there is a danger of the necessary separation between governance and management being breached and, in consequence, the necessary scrutiny and accountability being reduced. Accordingly, we think that generalisations about the impact of size on effective governance are difficult to make, and each case needs to be treated on its merits.

¹⁸ 157 Group, (2009), *ibid*

3 Institutional Approaches to Governance: Clarifying Responsibilities

- 29 A challenge to effective college governance perceived by many respondents during the consultation has been the lack of agreement about what constitutes the main governance role and responsibilities of a corporation. At first, this might seem a slightly puzzling observation, after all the articles of governance define six responsibilities¹⁹ for corporations, and both Ofsted and the LSC are making judgements about governance as part of their review processes. Moreover, despite increasing innovation, there continues to be substantial similarity between governance processes in most colleges. However, closer examination suggests that, in practice, there are several factors which taken together are likely to lead to different understandings about the responsibilities of corporations.
- 30 The first factor is a conceptual one, and that is the tensions created by the issues raised in Section 3 of the main report. Those tensions are not repeated here, but the consequence is continuing confusion about whether corporations are governing independent social businesses to provide further education, or governing public service organisations with broader social remits. Colleges themselves differ on this, and the government gives out conflicting signals. On the one hand, the encouragement of private providers to deliver work-based learning has been because of the operational advantages that they are seen to deliver with governance systems to match (see Appendix D). Conversely, colleges are told to be entrepreneurial but with different (and less nimble) governance systems and other operating constraints.
- 31 Second, in practice the LSC and Ofsted are perceived to have different - and sometimes conflicting - expectations of corporations in relation to good governance. The LSC approach as set out in the financial memorandum and associated annual financial management and control evaluation (FMCE) (previously a self-review questionnaire - SARQ) is widely seen in the college sector as narrow, procedural and compliance focussed, and largely unhelpful. Conversely, Ofsted is seen to be moving towards a more rounded view of governance which is increasingly focussed on impact, and the institutional capacity to improve. Add into this the different expectations of HEFCE concerning HE in FE provision (generally welcomed for being less burdensome), and the ambiguities created by the forthcoming machinery of government changes (see Section 7 of the main report), and the scope for giving different messages about corporation responsibilities is obvious. This was summed up - slightly abruptly - by one respondent who commented "it would be nice if they [the various stakeholder bodies] could agree what they wanted from us!".
- 32 Third, and more practically, the six elements of responsibilities formally defined in the articles are, in reality, only a small part of the overall role of the corporation, and if adopted literally would mean only part of the role of a governing body would be undertaken. There are at least two solutions to this: to define all responsibilities in the

¹⁹ In summary they are: determining and reviewing educational character; approving the quality strategy; the effective and efficient use of resources; approving annual estimates; HR matters for senior post-holders and the clerk; and setting a pay and conditions framework (paragraph 3 of the articles of government 2008)

articles (which is probably undesirable), or to simplify and introduce an overarching responsibility supplemented - as necessary - by additional information. For example, the Governance Code of Practice for higher education contains the phrase that the governing body "is unambiguously and collectively responsible for overseeing the institution's activities" and then proposes that more detail is set out in individual institutional statements of corporate responsibilities.

- 33 Fourth, and generic to governance in many organisations, is the inevitable tension in some colleges between the corporation and the senior management, arising from possible differences of view about the scope of the responsibilities of the corporation in relation to the executive. In such circumstances it is likely that the ambiguities created by the factors listed above, simply amplify different perceptions of governance within institutions.

Institutional Approaches to Governance

- 34 The welcome growth in innovation in approaches to governance within colleges has also highlighted the different ways that responsibilities can be prioritised and undertaken. Two main types are evident in colleges (and are described in more detail in Section 3 of the main report): so-called 'stewardship' and 'agency' approaches to governance. The former is the dominant style of governance in the college sector, and is based to varying degrees on cooperation between governors, managers, and other parties involved (for example, students, and parents in sixth form colleges). The operating premise is that the interests of all involved are shared, and that managers will behave in the interests of stakeholder bodies because such actions will also be in their own interests. The membership categories as defined in the instrument and articles tend to reflect this approach.
- 35 It follows that there should be no inherent problem in executive motivation or need for close control. Therefore although a separation between governance and management may be attempted, in practice there may be some overlap and potential ambiguity. Typically, corporations with this approach operate through a committee system (often substantial), with senior managers participating in meetings as active observers. More recently, some colleges have decided to reduce both the size of boards and the committee system whilst retaining the 'ethic' of this approach. Overall, this system of governance has a number of obvious advantages, particularly in a sector where collaboration is perceived to be desirable. However, there are some drawbacks, most notably in terms of efficiency of operation, and whether genuine constructive challenge of management is consistently possible in practice where collaborative working is involved.
- 36 'Agency' approaches to governance are very different and long standing. They stress the separation of governance from management, and the control of the former. The increasing influence of this view was noted in the Higgs Review²⁰ where board effectiveness was "assumed to be a function of board independence from management, trust relations are formally discounted and the 'control' role of the non-executive is emphasised". As a result this view is increasingly found in many

²⁰ Higgs D, (2003), *Review of the Role and Effectiveness of Non-Executive Directors*. Department of Trade and Industry, London

governance codes (including aspects of the Financial Reporting Council's [FRC] Combined Code²¹), and the approach is likely to gain popularity because of the problems with governance in the banking industry.

- 37 Recently a version of the agency approach has been popularised by the work of John Carver²², whose 'policy governance' model is based on the assumption that the owners (or shareholders) of organisations have different interests from its managers, and as the owners do not have control over daily operations it is the role of the board to act in their best interests. A number of FE colleges have implemented variations of the Carver model, and there is significant interest in the sector (particularly amongst clerks) in a so-called 'adapted Carver' approach. A number of advantages are perceived including:
- A rigorous separation of governance from management, with a corporation being responsible for the former and concentrating on organisational 'ends' (mission) whilst leaving managers to concentrate on the 'means' to achieve them. It is argued that this almost forces corporations to focus on the strategic, and to spend much less time on operational issues.
 - Avoiding delegation to committees which risks confusion about 'who is responsible for what'. As a result corporations using this approach meet regularly (perhaps monthly) and limit committees to the minimum required under the instrument and articles.
 - Having formalised scrutiny systems involving regular reporting to a corporation by the principal/chief executive.
 - Greater governor engagement and a clearer understanding of their responsibilities.
- 38 For example, one college²³ cites the influence of Carver in enhancing the quality of its governance and in encouraging substantial organisational change. This college has eliminated all corporation committees other than audit and search, and the corporation meets ten times a year. Interestingly, it identifies the 'owners' of the college (in Carver terms) as the local community, and therefore sees a primary role of the corporation as holding the college to account for its delivery of local services. This approach to governance has been strongly encouraged by both the principal and clerk, and - indeed - would not be possible without the active support of both.
- 39 However, although of interest, no college is reported as fully implementing the Carver approach - indeed to do so would be difficult given the regulatory constraints facing corporations. Moreover, the model is explicitly hierarchical (and can be criticised as such), and the board "represents the owners and would fail in that stewardship if it allows staff to be on an equal level"²⁴. The approach therefore explicitly disapproves of the common private sector approach of senior managers being on boards, and many clerks would also be concerned about Carver's view that board secretarial services should usually be provided through the CEO's office as part of the accountability of that role to the board. For such reasons some colleges have explicitly

²¹ The Code can be found at www.frc.org.uk/documents/pdf/combinedcode.pdf

²² The work of John Carver has been influential on much recent board development, and details can be found at www.carvergovernance.com

²³ See www.westherts.ac.uk/SiteSections/aboutus/corporation/corporation.aspx

²⁴ See www.carvergovernance.com/faq1.htm

decided not to adopt the Carver approach, some noting Carver's own strictures that the approach may be more difficult to implement in a highly regulated environment when external requirements mean that corporations have to spend more time on compliance issues than is desirable.

- 40 Overall, the benefit for some colleges of Carver's model appear to be not so much for any unique insights it identifies about governance, but rather the fact that it provides a convenient framework which colleges can use to review the working of their corporations in times of change. That none appear to have implemented the model in full suggests that it does not provide any kind of simple panacea for FE, but rather it raises some questions for corporations to consider. Simply answering them by reducing board size and the number of committees probably does not warrant applying the nomenclature of an 'adapted Carver' approach to a corporation (and indeed it may devalue the full potential of the model when implemented in appropriate settings).

Clarifying Corporation Responsibilities

- 41 Since the evidence for this review was collected, our conclusions that clarifying corporation responsibilities is a necessary step to enhancing governance in the sector have been confirmed by the recent publication of the Gleeson et al study²⁵. Based on a case study analysis of six colleges, they conclude that "a key message arising from the study is that the nature and purpose of college governance remains unclear". We agree. The issue, then, is how to proceed?
- 42 We think that three measures are necessary: first, greater consistency across the sector in identifying what is meant by effective governance and how it is to be judged (see Section 3 of the main report); second, the development of an FE Code of Governance; and third, greater 'good' or innovative practice information about how governance is being exercised.
- 43 So far as greater consistency is concerned, Gleeson et al state the need well: "creative or strategic college governance is restricted by invasive audit cultures, changing funding regimes and a proliferation of government agencies and departments that do not operate through a single voice. There is a need for greater partnership and consistency in the way external agencies coordinate their activities with colleges in improving governance and accountability in the sector". We agree. In order to make sense of this environment, corporations struggle to come to terms with the resulting ambiguity, but often feel aggrieved by apparent inconsistencies.
- 44 Second, for such coordination to exist it needs to be based around something substantial, and not just a temporary agreement by stakeholders to be forgotten in due course. Moreover, if shared regulation is to have any substance then it needs to be based on agreement by all parties on what is being shared. We think that a practical way forward is for the production of an FE college code of governance, setting out the primary responsibilities of corporations and operating (as with other similar codes) on a comply or explain basis. The code should be short and succinct, borrowing where relevant from other established codes including the FRC one, and

²⁵ *Gleeson D et al, (2009), op cit*

that used in higher education. It should be drawn up by a working group consisting of all key relevant stakeholders, in which the voice of chairs of corporations is central. Once agreed, it should be the basis for consistent regulation by all key groups in the sector, including the successor bodies to the LSC.

Recommendation C1:

That a code of governance for FE colleges be drawn up by a working group consisting of all relevant key stakeholders, and that once agreed it should be the basis for consistent regulation by all key groups in the sector.

- 45 It is important to note that this recommendation is not intended to increase regulatory compliance, and it needs to be considered in the context of other recommendations for increasing flexibility in governance made below. To simply introduce a code and then maintain all existing arrangements would not be desirable.
- 46 Third, much greater 'good' or innovative practice information about how governance is being exercised needs to be made available within the colleges sector. This should have no element of prescription, rather it should document a range of interesting practice for colleges to determine themselves what - if anything - they wish to adopt. A recommendation to this effect is made below.

4 Instrument and Articles

- 47 As noted above, the instrument and articles of governance for colleges were last revised in 2008, and will need revision again by April 2010 to take account of machinery of government changes. This section explores whether further changes are required, and if so what timescale might apply.
- 48 The instrument and articles set out the statutory framework within which corporations operate. For FE colleges they are detailed, defining for example how meetings of the corporation should be constituted as so on. Some aspects of the 2008 revisions were widely welcomed by colleges as increasing flexibility, particularly in simplifying who could be external members of corporations, and also in removing some of the prescription around the conduct of disciplinary procedures which had previously been fairly tightly defined. Such changes have been widely welcomed in the sector, and clerks report that in many cases it is easier to find high quality governors than before.
- 49 During the consultation for this review, a number of points were made about the existing instrument and articles and whether further changes are desirable. Each issue is explored below, and recommendations made. In addition, some of the other recommendations in this report may have implications for the instrument and articles.
- 50 Essentially there appear to be two views within the sector about whether substantial changes are required. The first is that although there are areas where they could be improved, it is not a priority, and that colleges should be given time to adjust to the 2008 changes. The second view (which we perceive to be a majority) is that further changes would be welcome, as a sign of commitment to the shared regulation agenda, providing they were introduced in consultation with colleges. We agree with this second view, and make recommendations accordingly.
- 51 The first, and most important, issue is to question whether it is time for a different kind of instrument - much shorter and enabling rather than the current and relatively restrictive one. Other than the amendments made over time, the basis of the current instrument and articles was the need to ensure a robust and consistent framework for colleges at the time of incorporation, when governance was less developed. Since then colleges have - for the most part - undertaken their regulatory roles diligently. Indeed the membership changes permitted in 2008 were made in recognition of this growing maturity.
- 52 A pared down framework (particularly the instrument) would only seek to define and regulate those core elements which were essential to maintain, and much of the current content of the instrument could become guidance, with some perhaps being included in the proposed code of governance. The tone of the instrument could also change and be permissive rather than controlling.
- 53 Such a measure would have a number of advantages:
- It would permit more innovation in governance, and be a strong signal that government is committed to shared regulation.

- It would be compatible with similar approaches in other sectors, where the use of governance codes to replace lengthy and restrictive statutory documents is becoming increasingly common.
- In particular, it would place colleges on a broadly equal footing with higher education, where the instruments of post-1992 HEIs are currently being substantially revised, simplified and shortened, and the publication of the new form of instrument is expected shortly. Since DIUS and the Privy Council are thought to have largely agreed to this approach in HE, it is not clear why it would be thought to be inappropriate in principle for FE.

54 However, there are three main risks:

- First, the variability noted above (and in Ofsted data) about the consistent quality and rigour of governance must lead to questions about whether all corporations are mature enough to operate within a revised instrument. Nevertheless, the adoption of an FE governance code to operate on a comply or explain basis might be an adequate guarantee providing (as in other sectors) this was subject to annual reporting and backed by appropriate audit arrangements.
- Second, the adoption of such an approach would require enhanced arrangements in the role of the clerk, who in some colleges would need to become much more proactive. Full-time clerks would (over time) probably become the norm in order to respond to the need for more informed and professional governance support. This clearly has a cost, and colleges will need to determine for themselves whether they are prepared to meet the additional costs of greater flexibility in governance.
- Third, given the size of the college sector the innovation in governance practice that might result could possibly lead to occasional problems, where inappropriate judgements had been made by corporations notwithstanding the checks and balances offered by the comply and explain process. This risk is an inevitable consequence of increased freedom of action, and all stakeholders will need to determine whether it is worth running. If carefully implemented with appropriate checks, we think it is.

55 To substantially revise the model instrument and articles this would mean time for the content to be agreed and for legal advice to be procured and then further time to enact. Such a revision should be the subject of substantial discussion in the sector, with the intention of getting agreement from all key parties. One possible route would be to involve the same working group proposed above for drawing up a code of governance. The complexity of this would mean that it could not be completed for enactment by April 2010, so would follow at a later date.

Recommendation C2:

That the model instrument and articles of governance be made shorter and enabling, and only seek to define and regulate essential core elements, with much of the current content of the instrument becoming guidance.

56 A judgement needs to be made on how such a recommendation would be implemented, and there appear to be two main options: either a complete cross-sector introduction (which runs a significant risk in relation to the issues set out in paragraph

50), or a phased introduction with those colleges who can demonstrate maturity and effectiveness in governance being given greater flexibility at an earlier date. How this might be done should be a matter of debate within the sector if there is general agreement about the recommendation.

Other Matters

- 57 There are numerous other specific issues concerning the current instrument and articles that might be the subject of amendment, although if the above recommendation were accepted it would be a matter of judgement whether they should remain in them or be included in any guidance notes or the new code. Three are briefly considered.
- 58 The instrument and articles define the position of 'senior post-holders' in relation to particular powers resting with nominated senior individuals (particularly for purposes of taking disciplinary action). The main issue to consider here is whether such a stipulation is any longer required, and whether it should simply be part of the proposed code of governance with any necessary powers being defined in a schedule of delegation that all colleges should be expected to adopt as 'standard' good governance practice. This would permit greater freedom about such matters as the management and discipline of staff, which in any case needs - as with all organisations - to be undertaken in a way that complies with the law of the land. If this proposal were not adopted, then the designation of the clerk as a senior post holder may need to be considered in a consistent way across colleges.
- 59 Second, there is no requirement in the articles for colleges to have a remuneration committee, which is an element in most governance codes, and is now standard practice in most other sectors. The case for such a committee in providing some independence in setting senior staff reward is widely recognised and does not need to be articulated here, but what is less well known is the strategic leadership on HR issues that many private sector remuneration committees now provide. This is particularly important where there is no HR committee. Some colleges may argue that senior staff remuneration and strategic HR is a full corporation matter and that a separate committee is not required, but that argument has not found favour in the FRC code. Indeed arrangements for introducing yet more rigour into the work of remuneration committees is likely to emerge as a general response to the banking crisis. Accordingly, we propose that the new code require corporations to introduce remuneration committees, whose terms of reference, membership and conduct should be determined in accordance with generally accepted good practice elsewhere. If they do not wish to do so they should explain why not.
- 60 Third, it is likely that in the next few years there will be substantial interest in using IT to operate electronic corporation or committee meetings, and there are already some colleges who wish to trial such an approach. Currently the wording of the instrument is such that it would not be permitted (reference is to physical meetings), which is unlikely to be the intention of government given its advocacy of e-developments. This is an example, where an unintended consequence occurs through over-prescription, and where simplified regulations have much to commend them.

5 Membership and Recruitment

- 61 Ensuring an appropriate board membership is probably the most crucial aspect of creating the basis for effective governance. Without motivated governors with the necessary skills, experience and independence effective governance is simply not possible. The importance of ensuring high quality membership will increase as corporations get smaller, and as the demands on corporations increase. This is widely recognised in the sector, and clerks and chairs spend a good deal of time in trying to recruit suitably qualified potential governors. In this section a range of issues which constitute effective membership are briefly reviewed: recruitment; the contribution of staff and student members; and training, development and support for governors. Related issues of reward and possible remuneration are considered in the next section.
- 62 There are no robust or reliable data on corporation membership and governor recruitment in the college sector. There is no national database, and the last comprehensive survey was undertaken in 2002²⁶. There is, however, data on black and minority ethnic (BME) governors which is presented below. However, by general consensus, college governance largely remains the preserve of those who have the time to devote to it, and - so far as independent members are concerned - have the experience and skills that corporations are seeking. Given the skewed nature of the working population at senior levels, this inevitably means a dominance of white, middle-class, retired men. However, many colleges are seeking to address this by active recruitment from other groups.

Diversity

- 63 Although there is no current data on corporation membership, there is data on diversity in governing body membership. Two studies in 2005 provided some initial information, and one by Ellis and Brewis²⁷ sought the views of college clerks on diversity issues, and reported that a majority thought their corporations were either 'very' or 'quite' representative of the local community. The other was a survey by the Network for Black Managers²⁸, whose work has recently been developed and extended by Lifelong Learning UK²⁹ and is summarised below. Overall, many - although not all - colleges report difficulties in recruiting governors from non-traditional groups, particularly from BME communities. Sometimes this is reported to be related to local population characteristics, but more often may be to do with perceived difficulties of attracting applications. However, other colleges report more success, and there may be a correlation with institutions that report highly proactive approaches to governor recruitment generally.

²⁶ Davies P, (2002), *The Changing Face of College Governance*, Learning Skills Development Agency. This reported that 30% of governors were female; 1%-6% were registered with a disability; a majority were between 40-59 years; 88% of chairs were male; and 98% of chairs were white British.

²⁷ Ellis A and Brewis G,(2005), *Issues of Diversity and Recruitment Among FE Governors*, Institute for Volunteering Research

²⁸ Network for Black Managers, (November 2005), *Black and Minority Ethnic Governors in the Further Education Colleges Sector of England*, at www.nbm.org.uk

²⁹ Lifelong Learning UK, (2009), *Annual Workforce Diversity Profile 2006/07* at www.lluk.org

- 64 The Lifelong Learning UK data is itself based on earlier work using trend analysis by the Centre for Excellence in Leadership (CEL)³⁰. Using a sample of approximately 13 % of college governors, 38 % were from private sector backgrounds and 35 % from the public sector. Age profile was highly concentrated in the 56+ range with 47 %. Only 6 % of governors reported a disability, and so far as ethnicity was concerned 90 % were white, with BME governors constituting 9 %.
- 65 The initial CEL analysis of such data continues to be current, and provides a more detailed exploration of the issue than is possible here. In particular, that study noted a number of specific barriers to increasing diversity in FE governors including: the nature of some college recruitment; a lack of knowledge about governor roles; a lack of confidence in some potential governors in applying to undertake the role; time pressures; and the absence of remuneration (see below). When compared to practice in other parts of the UK public sector, such barriers might account for a conclusion by that study that "the recruitment of FE governors may be more exclusionary than in other sectors". However, some care needs to be exercised in drawing such conclusions because of the slightly different roles played by governing bodies in different sectors, the different size of their membership, the extent to which they are explicitly drawn from the communities they serve, and so on.
- 66 An important factor to consider in relation to the diversity of boards in colleges - and particularly representation from local communities - is how corporations attempt to answer the questions posed in Section 3 of the main report about what kinds of boards they want to be. In particular, do they seek to recruit independent governors with extensive commercial experience in order to try and maximise institutional performance, or is the main focus on recruiting community governors in order to reinforce the local roles of colleges? Without taking such tensions into account it is easy to draw false conclusions. For example, Ellis and Brewis³¹ suggested there was a discrepancy between the minority groups identified as necessary to make corporations more representative of the local community and those groups that were actually targeted for recruitment. However, such a conclusion would only be true for those colleges that placed primacy on local recruitment, and could not apply to those who tried to recruit governors more widely.
- 67 A major theme of this report is the need for the enhanced sharing of innovative practice in governance amongst colleges - and particularly their clerks. This also applies to issues concerning enhancing diversity in corporation membership.

The Recruitment of Independent Members

- 68 The diversity of the sector means that there is no agreement about the extent to which the recruitment of independent members is or is not a consistent problem across colleges. Some institutions claim that because of their particular circumstances the recruitment of suitably qualified governors is difficult due to such factors as geographical location or competition for governors from other public bodies (some of whom remunerate board members). Other colleges find no such difficulty, and claim

³⁰ Collinson D, Collinson M, and Turner L, (2007), *Overcoming Barriers to Diversity in FE Governor Recruitment* at www.centreforexcellence.org.uk/default.aspx?Page=StrategicDocument

³¹ Ellis A and Brewis G, (2005), *op cit*

to have a pool of potential future members from which to choose. A conclusion arising from some of the consultative workshops was that - in general - successful recruitment is strongly related to several factors: the effort that colleges (and particularly the clerk) put into governor recruitment; the status and experience of existing governors and therefore the professional networks available to them; and the status and reputation of the college in the communities it serves.

- 69 However, almost all colleges appear to have found benefits in the removal of restrictions of categories of independent members in the 2008 amendments to the instrument and articles of government. The greater freedom that this change has provided has been particularly welcomed, and in some colleges is reported as increasing the all round quality of corporation membership.
- 70 Approaches to governor recruitment (and the effort involved) appear to vary widely in the sector. Both in the consultative workshops and in the survey of Landex members (see Appendix F), a range of recruitment methods was described³² (including press advertising - in one case specifically in the BME press to encourage diversity in membership; radio advertising; targeted mailings to relevant professional groups; and the use of college websites; etc), but the most common method (also frequently described as the most successful³³) is through word-of-mouth and using existing professional board level contacts. However, sole reliance on such an approach may have unintended consequences (acknowledged by some colleges), in perpetuating the involvement of particular types of governors, and restricting opportunities for recruiting more widely. There are also clear diversity implications here.
- 71 Almost all colleges report the use of skill sets to help select independent governors, typically based on functional expertise (eg a qualified accountant). This is now recognised as routine practice, and those colleges that do not do so should consider adopting such an approach. However, fewer colleges report extending the skill set approach to a fuller person specification which sets out the broader qualities required in a new governor. This has a number of advantages, most obviously taking account of the overall characteristics of the individuals required, and not merely assuming that the possession of a particular qualification or work experience makes them necessarily suitable as a board member.
- 72 Colleges also vary in the amount of information they make available to prospective governors about the role that they are expected to play and the commitments (particularly time) involved³⁴. Indeed, during the consultation several chairs and clerks observed they deliberately under-estimated the actual commitments in providing information to prospective governors for fear that they would not take on the role. Although perhaps understandable, this is generally poor practice, and full information about the role at the recruitment stage should be an expectation. Indeed, it is the starting point for any attempt to ensure openness and transparency in corporation affairs.

³² For a description of interesting practice in recruiting governors in one college which has used a wide range of approaches (including the production of a video and leaflets on becoming a governor) see www.westherts.ac.uk/SiteSections/aboutus/corporation/becoming.aspx

³³ See also Ellis A, (2005), *Board Diversity in FE Colleges: a Survey of Clerks*, Institute for Volunteering Research

³⁴ For example of a college that provides comprehensive information to prospective governors see www.westherts.ac.uk

- 73 Some of those colleges who - for whatever reason - have found it difficult to recruit new governors thought that there was merit in establishing a central mechanism for doing so along the lines of the NHS Public Appointments system. This has been discussed for some years (including by DIUS), but there is little evidence that it is required if colleges actively recruit. Moreover, the very factors listed above that encourage prospective governors to join corporations (most of them local), cannot easily be taken into account in operating a centralised scheme.

Retention and Succession Planning

- 74 Again, there is relatively little robust statistical data on the retention and succession planning of corporation members. Partly to address this, our survey of Landex sought information in this area, and even on the basis of this relatively small sample it is clear that the periods of office of governors vary considerably. Of the sample, eight have adopted fixed periods of four years (in one case preceded by an initial two-year appointment), mostly renewable for only one further period of four years unless in exceptional cases. Three colleges applied variable periods of office, and explicitly allowed renewal without limit, a practice defended by one college in that although "the board acknowledges that two terms of four years is the recommended maximum period it believes that it should have the right to appoint beyond that if the member concerned suits the criteria defined by the board". The survey asked colleges to identify the period of the current longest serving member, and the answers in order of length were: 30 years; 16; 15; 14; and 12. Discussion of this issue at some of the various consultative workshops suggested that such variations in practice are typical of the sector. These results need to be seen in the context of the instrument and articles of government which require lengths of appointment not exceeding four years, although appointment can be renewed.
- 75 This is a contentious area, and some governors, chairs and principals justified extended lengths of continuous service by reference to the special contribution of board members, the experience and expertise they bring, and their contribution 'institutional memory'. They may also feel that where such extended service causes difficulties these should be capable of being resolved by corporation search committees. On the other hand, such arrangements do not sit comfortably alongside recognised good practice elsewhere, and the advantages of a regular turnover of members are considerable. Moreover, the special contribution of a few independent governors can be rewarded in other ways (for example, in an ambassadorial role or as a 'patron') rather than in a continuing governing capacity. Although the FRC Combined Code³⁵ does not prohibit long-term continued non-executive board membership it frowns upon it, arguing that "any term beyond six years (ie two three-year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board" [paragraph A.7.1]. The Guide for Governance in Higher Education³⁶ goes further, specifically stating that: "continuous service beyond three terms of three years, or two terms of four years, is not desirable... After this point members should normally retire and be replaced by new members" [paragraph 2.53]. We agree, and propose that FE

³⁵ The Code can be found at www.frc.org.uk/documents/pdf/combinedcode.pdf

³⁶ CUC, (2009), *ibid*

colleges follow this practice. In accordance with our recommendations above, this is a matter best dealt with in the new code of governance, thus enabling corporations to be able to explain why they choose not to comply.

- 76 Because governors act in a voluntary capacity it is particularly important that colleges consider how their services can be used most effectively, and that motivation to engage actively in governance is high. Overall, few clerks report a high turnover of governors, and governor engagement with 'their' college is generally felt to be high and a major motivational factor for becoming a board member in the first place. The only study in this area was by Ockenden and Ellis Paine in 2006³⁷, which concluded that: good governor retention and limited turnover was evident; governing bodies generally appeared to appreciate the place of managed turnover within a healthy governing board; the quality and rigour of the recruitment process appeared to exert a significant effect on long-term retention of governors; and that both the ongoing support provided by the clerk and chair and the constructive use of their skills and experience were highly correlated with governor satisfaction.
- 77 An important issue related to succession planning is the arrangements in place for reviewing the performance of individual governors. This is an issue which is likely to grow in importance as corporations increasingly seek to monitor their own performance rather than just relying on LSC processes. Current arrangements vary, and there is no data on the number of colleges where such review is undertaken. Our impression is that it remains relatively rare, and where undertaken usually takes the form of an annual unstructured discussion between the chair and individual governors. Increasingly, other sectors are requiring annual reviews (particularly where board members are remunerated), and more colleges are likely to adopt such practices. This is an area where more information about the practice of corporations could be usefully collected and shared by clerks.

Staff and Student Governors

- 78 The involvement of students and - to a lesser extent - staff in governance continues to be controversial. The position of student governors is considered first. It was discussed in a consultation document produced by the government as part of an earlier review of the regulatory framework for colleges³⁸ which noted that "the FE White Paper committed to ensuring a higher level of learner involvement in decisions affecting their learning experience" and that as a result a governing body should have "at least two student governors". Conversely, the same report noted that "colleges fully endorse the need to increase the learner voice at corporation level and continue to examine different ways of doing this. They are not, however, convinced that a compulsory increase in the number of student governors is necessarily the best method of achieving this".
- 79 There are several issues here to consider. The *potential* benefits of student governors are widely but not completely recognised. They include: matters of principle (that in

³⁷ Ockenden N and Ellis Paine, (2006), *Retention and Succession Planning Within Further Education Governance, Institute for Volunteering Research* see www.ivr.org.uk/evidence-bank/evidence-pages/Retention+and+succession+planning+within+Further+Education+Governance.htm

³⁸ *Instruments and Articles of Government for Further Education Colleges: Report of the 2006 Consultation, Department for Education and Skills* at www.dius.gov.uk

learning communities the learner voice must not only be heard but must be part of the process which legitimises governance itself); matters of representation (that with corporation membership drawn from various sets of interest groups - including parents in sixth form colleges - not to have students represented would be an inexplicable omission); matters of information (the external members of the corporation often find it valuable to hear from student members at first hand); and matters of utility (that student governors have the potential to add value to corporation debates).

80 Many colleges make great efforts to try and ensure these potential benefits are turned into reality. For example, one college³⁹ has established a separate corporation student committee focusing on student centred items. In addition to two student governors it has six other members of the student council, eight other governors (including the corporation chair) plus the principal. Another has increased student union provision and is finding that this strengthens the way that student governors contribute at corporation meetings. Such activities are widespread.

81 Conversely many corporations report struggling in trying to achieve the potential benefits of student participation, and comment that the reality is often that student governors may be difficult to recruit, and participate little. Particular challenges relate to:

- The high proportion of part-time students in FE means that both recruiting and then maintaining the participation of student governors is difficult.
- The absence of well-developed student unions in many colleges means that an infrastructure to support cross-institutional student engagement often doesn't really exist.
- The very fact that student governors tend to serve one-year appointments and that most will have no experience of participating in board meetings, means that, in practice, their contribution tends to be extremely limited.

82 It follows, that if student participation is to help enhance governance - rather than just being a token presence - then substantial support has to be provided by colleges (usually through the clerk). Some do this, and are strongly committed to developing student participation. Other colleges query the benefit, and conclude that, however well intentioned, effective student participation as governors will continue to be the exception rather than the rule. This is for several reasons: the huge challenge for student members getting to grips with governance agendas with little or no experience in a very short space of time; the near impossibility of students participating actively in some of the key roles of a corporation (strategy development and holding the executive to constructively critical account, etc); and that the contributions that student governors can most usefully make are on those operational issues that boards should not be discussing anyway.

83 Some of the difficulties here stem from the different understandings about the primary purposes of governance discussed in Section 3 of the main report. These are not considered in detail here, but the arguments for direct student participation as governors stem from a belief that the primary driver of governance is representation and engagement (in its broadest sense), which leads to a broad range of board

³⁹ See www.havering-sfc.ac.uk

membership, with the support needs that is implied. Conversely, the driving rationale about increasing board effectiveness in all sectors has been ensuring institutional success in a competitive environment and maximising value for money and the return on assets. This inevitably drives boards to become smaller, more expert (and therefore more selective in the recruitment of members), with high expectations about the quality of the contributions and performance of individual governors. In such boards student participation can be perceived to be a distraction, with no amount of support overcoming the problem unless very exceptional students become governors.

84 However, the reality is that, whatever the tensions in current arrangements, student governors are likely to be here to stay at least for the foreseeable future, and colleges will need to do more to realise the potential advantages. There are at least four steps that could be taken:

- First, as in almost all aspects of college governance there is an absence of information about 'basic' good practice in how students are most effectively recruited and supported as governors. This information should be compiled (probably through clerks) and disseminated.
- Second, there should be more engagement with student bodies (particularly the National Union of Students) on how student governors can be more effectively supported. Currently, although discussions take place between the NUS and sector bodies it is difficult to see how they filter down to influence institutional practice.
- Third, the college sector needs to be more aware about other resources that exist, and good practice elsewhere. In particular, the Sparqs⁴⁰ initiative in Scotland appears to have had considerable success in enhancing student participation in the post-16 sector. The sector bodies should consider whether a similar initiative would be helpful in English FE.
- Fourth, colleges need to be more creative about developing other ways for the 'learner voice' to be heard, and interesting practice needs to be shared. Many of the potential benefits of student participation (particularly enhancing communication) are best achieved outside formal boardroom processes. For example, some colleges create forums for governors to meet students and so on.

85 Such activities have resource implications for colleges, and particularly for the time of the clerk. In Section 8 below, it is argued that this role is undervalued in some colleges, and where this is the case its importance will have to be recognised if appropriate support for student participation in governance is to be available.

86 Some - but not all - of the same issues apply to staff governors, who may constitute between one and three corporation members. Typically the effectiveness of staff participation depends on two key issues: first, the attitude of the corporation to staff membership, and second, the particular characteristics of the individual staff who become members. In practice, these two issues are often linked: where staff members have appropriate governance experience and are credible in the eyes of other board members, then their contributions are often valued, their insights provide an additional perspective of institutional life and its reality outside the boardroom, and potential conflicts of interest are minimised. However, the difficulties of staff members in playing a full role remain, for example, the difficulty they have of

⁴⁰ *Student Participation in Quality Scotland at www.sparqs.ac.uk*

challenging the executive who are their own employers. Conversely, where staff members do not have such experience or where they subjugate their primary corporate board loyalty to that of being a representative of staff, then difficulties may occur and in some cases staff participation may be thought to be a threat to effective governance. This situation may be exacerbated where staff representatives also occupy local trade union positions.

- 87 However, the future challenge for colleges is similar to that for student governors: how to provide the necessary support for staff governors to ensure effective participation and full understanding of their role. Some colleges could also do more to brief prospective staff governors about the requirements of the role, and to inform the voting constituency about the skills and experience that staff governors might ideally possess. Just as it is important that corporations find a way to listen more to the student voice, so it is that they listen more to the 'staff voice'. As a generalisation, the effectiveness of the recruitment and elective process for staff governors is often a barometer of the health of the overall staffing situation in a college: where a positive climate exists then few difficulties about staff governors may occur; but conversely a more difficult HR climate may result in those tensions manifesting themselves in the operation of staff membership.
- 88 A particular issue concerning staff membership raised by several respondents in the data collection for this review, was whether corporations should have freedom to appoint other members of the executive team to the board as full members. This would most obviously include the finance director, but perhaps other members of the SMT (or equivalent) as well. Any proposal to do this would be contentious. Those arguing for it see the benefits as being:
- It is normal practice in the private sector, for example in many of the providers of the work-based learning sector (see Appendix D).
 - It would provide more informed decision making and more meaningful engagement between external (non-executive) and executives.
 - Subject to there being frequent corporation meetings during the year, it would speed up formal decision making, by eliminating the need for repeated discussion of issues at SMT, corporation committees, and the full board itself.
- 89 However, critics would argue that:
- It blurs the distinction between governance and management, and weakens the accountability role of external non-executives. Those colleges that are implementing a Carver type model of governance might take this position particularly strongly.
 - In practice, it would be more difficult than is currently the case for non-executives to challenge an executive constructively, as the executive would be in a much stronger position than previously.
 - With board membership generally reducing in size, executive membership could only occur if membership was reduced elsewhere, most probably in relation to elected staff and student positions. The 'democratic deficit' that this would lead to would be difficult to defend within many colleges.
- 90 Nonetheless, if the instrument and articles were made more flexible, it is likely that some corporations might wish to move in this direction, and at least one university has

done so and more may follow. If corporations had the power to innovate in this way, it would be important that any such decision to strengthen executive membership was not made on the basis of the personal views of either the corporation chair or principal, but as part of a rigorous review of governing body effectiveness and with a thorough awareness of the resulting issues.

Training, Development and Support for Governors

- 91 There is agreement in the college sector that training, development and support for governors is crucial, but also that it is no substitute for appropriate recruitment in the first place. In other words, development has to support high quality governors, and not try to remedy the consequences of ineffective recruitment.
- 92 Almost all colleges appear to provide some form of development and support for their governors, not least because provision is reported to the LSC, and taken account of by Ofsted. By way of illustration we sought the position in Landex colleges as part of our survey of their governance, and all Landex corporations surveyed provided some form of training and development for their governors. Induction is common, with some colleges producing induction packs. A range of scheduled internal development events is reported, although frequency varies. Externally, the use of regional AoC events is generally welcomed, and the value of governors interacting with others from different institutions recognised. However, participation in national events is reported to be limited, primarily because of time, location, and cost. Some colleges note particular issues in getting independent governors to undertake external development activities. Such responses from Landex were typical of the comments obtained from other sources during the review.
- 93 Consideration of training, development and support needs to start with practice within individual colleges, and all corporations need to define what is required by their own governors. The starting point for this - as in existing 'good' practice - is for an ongoing needs analysis of governors, usually coordinated through the clerk. To meet such needs all corporations should have their own governor development plan, and a dedicated budget to implement it, and we propose that the new code should have such a provision. We were told by some respondents that funds do not exist in some colleges for governor development, or that principals were not prepared to support requests from governors to attend events. This is simply unsatisfactory, and resourcing governor support and development is a matter for the corporation and not a principal. Put simply, any corporation that is not capable of resourcing its own support and development needs is unlikely to be able to govern its institution effectively.
- 94 Participation by all governors in some development activities at least once a year should normally be an expectation, and there is a strong case for induction being compulsory. This conclusion is, of course, predicated on the basis that such activities are high quality and suitable for engaging governors at the levels required. Some respondents queried such a view, and wondered whether it was realistic to expect such participation from volunteers. However, the experience of those colleges where such expectations exist is that motivated governors will generally find time to participate in development activities that they perceive to be of value. We agree.

95 Nationally there is a substantial amount of governor training and development provider through organisations such as LSIS, AoC and private providers, some of which is offered regionally. Much of this is reported as being well regarded, however, a regular comment from respondents is that such activities are fragmented and could be coordinated more satisfactorily. Moreover, under current arrangements there may be duplication of content, and also there is no way of ensuring that the basic information and expectations about the approach to governance being delivered is consistent. There are also some important areas of activity where little provision is currently made, for example, forums which encourage joint working at senior levels between chairs and principals. In order to be credible such activities need to be led by providers with the highest credibility who have worked at the most senior CEO levels in organisations and have a deep understanding of governance. Similar needs for support and development exist for clerks, and therefore we make one joint recommendation.

In Section 8 we also consider the case for the substantial strengthening of briefing information available to governors and supplied through clerks.

Recommendation C3:

That as part of the preparation for shared regulation, the current arrangements for the development, training and support of college governors and clerks be reviewed, and more integrated arrangements introduced for delivery.

'Good' and Innovative Practice on Membership and Related Issues

96 The whole issue of increasing the effectiveness of corporation membership is one where there is a substantial opportunity for enhancing the quality of the overall governance of the sector by identifying and sharing both 'good' and innovative practice. The starting point should be collecting data on membership and other aspects of governance practice by an appropriate sector body for use by colleges. One aspect of such data should be on membership issues such as board size, the nature of membership, recruitment practices, periods of office, succession planning practices, and the other issues considered above. This is not intended as a bureaucratic exercise for use by a regulatory body, but rather as part of a self-help activity that clerks would complete because it was in their own interests to do so. Who should be responsible for collecting such data is a matter for discussion, but the AoC Clerks' Network should have a central role. This might be an annual report on governance in the sector, conducted by clerks and through clerks, although doing so biennially might reduce the modest administrative burden.

Recommendation C4:

That data on membership and other aspects of governance practice should be collected regularly by an appropriate sector body for use by colleges.

6 Governor Reward and Remuneration

- 97 Considering the case for the future remuneration of governors was an explicit part of the terms of reference for this review, and is a controversial issue in the sector. It has been discussed on several occasions previously, and this is likely to continue in the future. Accordingly the issue was considered in many of the data collection activities, including all of the consultative workshops, the Landex survey, and many stakeholder interviews. In addition, data from the previous consultative exercise undertaken by the Department of Education in 2006 was examined.
- 98 Currently colleges are not able to remunerate governors (although they can pay expenses), and this is prohibited in the instrument and articles of government. A similar position exists in schools, and has applied until very recently in higher education but is now changing (see below). In addition to opposition from the government⁴¹, the provisions of the Charity Commission have been barriers to considering payment. As colleges are charitable bodies they have to abide by charity law and the regulatory requirements of the Charity Commission. Charity law states that trustees cannot receive any benefit from their charity in return for any service they provide to it unless they have express legal authority to do so. This is based on the principle that trustees should not be subject to any conflict between their duties to their charity and their personal interests. Charity Commission guidance is set out in Note CC11 (June 2008)⁴². Nonetheless special cases can be made for remunerating individual trustees in exceptional circumstances, for example, where it is necessary to recruit a trustee with particular experience and it can be demonstrated that this has not been possible due to a lack of remuneration.
- 99 There are two separate issues here: first, the need for remuneration for all independent governors and how it might be introduced; and second, the need for remuneration of key office holders - most obviously the chair of the corporation. Each is considered in turn.
- 100 The case for some kind of remuneration for *all* independent governors is generally made for one or more of the following reasons:
- A number of other sectors now remunerate board members⁴³, and there is a concern in some colleges that it may be difficult to continue to recruit high quality governors unless FE remunerates as well. The converse position is that remuneration rates where offered are usually not large enough to change the motivation of prospective governors, and that payment is more an acknowledgement of contribution rather than a realistic reward for services.
 - That being an effective governor is now more challenging and time consuming than in the past, and requires a commitment that extends beyond what can be reasonably expected on a voluntary basis. For example, the move towards smaller boards where the corporation meets regularly - perhaps eight or more times a year

⁴¹ See *Department for Education and Skills, (2006) op cit*

⁴² Available at www.charity-commission.gov.uk

⁴³ For example, the NHS, prison service, the police, and some voluntary organisations all remunerate, however schools and charities do not. By way of illustration, non-executive members of NHS trusts are currently paid £6,096 annually with trusts chairs getting substantially more.

- may require 20 days or more of governors' time, equivalent to almost 10 % of a working year.

- Given an increasing and substantial workload, there is a real opportunity cost for some governors in becoming corporation members, and for members in full-time employment a potential loss of earnings. It is argued that in such circumstances there is little incentive (other than goodwill) for employers to release their senior staff to join boards.
- It may be difficult for some colleges fully to address the diversity agenda in governance unless remuneration is introduced, because otherwise becoming a governor may be beyond the economic capacity of a substantial part of the potential cohort.
- That remuneration will make it much easier to review the effectiveness of individual governor performance, and to terminate membership where contribution is not satisfactory. Currently, many corporation chairs find the idea of conducting annual reviews of volunteer governors problematic.
- Finally, and perhaps more contentiously, some argue that the quality of governance would be increased through remuneration by enabling career non-executives to join FE college boards.

101 The case against remuneration for *all* independent governors is generally made for one or more of the following reasons:

- In most cases there is no demonstrable need, current arrangements have worked satisfactorily in most cases, and the enhancements in governance reviewed in this report have all taken place in the context of volunteer membership.
- Volunteering is a widely recognised aspect of public duty (indeed one the government and FE sector is trying to encourage), and its associated values bring benefit to colleges. Moreover, when corporations need to take difficult decisions, a volunteer non-remunerated perspective enables boards to demonstrate that they have no financial interest in outcomes.
- There is a widespread feeling that remuneration would change the motivation of prospective governors for the worse, and that the strong personal interest in FE (and often 'their local college') that characterises much of current governor motivation might be lost.
- For many governors, motivation and satisfaction comes not from a desire for remuneration, but rather from undertaking their role effectively and the engagement with the college that this provides.
- As the population ages there is likely to be an increasing number of experienced potential governors available to colleges who do not require remuneration. Conversely, there is a clear danger of such recruitment limiting board diversity.
- More practically, introducing governor remuneration at a time when college budgets are likely to be under substantial pressure may be difficult to justify and may send out entirely the wrong messages in the light of the governance scandal in the banks.
- There is no robust value for money evidence that the quality of decision making in remunerated boards in other sectors is better than in some parts of FE. Indeed, in the consultative workshops some clerks and governors commented unfavourably on the quality of governance in the remunerated sectors in which they were personally involved.

- Finally, even if a strong case could be made it is difficult to see how remuneration could be introduced under the current requirements of the Charity Commission.

Those supporting remuneration in FE colleges are not surprised by such opposition, and generally do not expect those who become governors for voluntary reasons to support remuneration.

- 102 We know of no data to confirm or deny these contentions, and the position is likely to vary locally depending upon a number of factors. On balance, the opinion amongst the governor community in FE appears to be strongly against remuneration, and this is consistent with the conclusions of both the AoC and the Department of Education and Science when the last governance review was undertaken in 2006.
- 103 Some respondents argue that some of the drawbacks noted above could be addressed either by making payment only for *some* governors (which under suitable circumstances might comply with Charity Commission requirements), or might be made on the basis of loss of earnings, or where time spent might be paid to employers as an inducement for them releasing staff to act as governors. However, this would not work well for those in self-employment, and introducing differentiated processes which allowed some governors to benefit financially and others not would be highly contentious.
- 104 So far as the remuneration of *senior officers* - particularly the chair - of a corporation is concerned, similar issues apply. However, it is possible to make a stronger case based on the increased workload involved, and the greater responsibilities - and potential liabilities - carried by the post-holders. The moves to shared regulation and the greater duties generally falling on corporations and their senior officers may further strengthen the case. Some chairs - faced with ever increasing diary commitments - advocate this approach, but the majority appear not to support it. The notion of distinguishing between senior officers and other governors is, of course, itself contentious, and critics argue that such a decision might introduce unnecessary tension into board meetings.
- 105 Whatever the merits of the argument, it is likely that the pressure for remuneration will grow and it will remain a contentious issue. The main justification for payment must be to improve board performance and the quality of governance. It follows that corporations who wish to remunerate should be able to demonstrate that robust processes are in place to review the effectiveness of governance and the performance of both the board and individual members, including the chair (see Section 7). In such circumstances it may be difficult to justify remuneration in colleges that at a minimum do not receive favourable Ofsted ratings, but the internal judgement of board effectiveness might be expected to be more challenging than that.
- 106 Some colleges may look to the position in higher education, where a similar set of issues exists. In HE some statistical data is available on governing body attitudes to remuneration, and guidance by the Committee of University Chairs⁴⁴ notes that in 2007 26 % of university governing bodies had considered remuneration and all but one had rejected the idea. However, since then there has been movement. At least

⁴⁴ CUC, (2007), *Payment of Members of Governing Bodies*, at www.shef.ac.uk/cuc/publications

two universities have received Charity Commission approval for remunerating their chairs, and at least one university has recently introduced payment for all governors⁴⁵ after gaining Privy Council approval for amending its instrument and articles to approve this. Others are likely to follow, although probably not a majority.

- 107 The issue, therefore, is whether the prohibition on remuneration should remain, or whether it should be permitted, if individual FE colleges wish to consider adopting it at some time in the future? Clearly, no action can be taken until the position is clarified concerning what body in the sector will act on behalf of the Charity Commission in regulating the exempt charitable nature of colleges. Once this has been determined a clear policy needs to be identified, the implementation of which is clear to colleges. If adopted, college instrument and articles would need to be amended in due course.
- 108 Subject to the approval of the various regulatory bodies, and that clear, robust and evidence-based cases for remuneration can be made, there seems no reason why corporations should be prohibited from having the powers to remunerate governors. Many - perhaps a large majority - will not wish to do so (and there should be no requirement), but where a good case can be made and a corporation can demonstrate value for money, there seem no good grounds for not giving colleges these powers. This view is consistent with the general tenor of this report, which argues that - subject to robust risk assessment and quality monitoring arrangements - under a shared regulation agenda colleges should be able to take the action that they can convincingly present as being in both their own best interests and those of the communities they serve. The Charity Commission guidelines - suitably implemented - provide such a test.

Recommendation C5:

That - subject to discussions between the Charity Commission and appropriate bodies in FE - corporations be given the power to introduce remuneration for independent members if they wish, although there should be no requirement to do so. Corporations wishing to do so should be able to demonstrate clear, robust and evidence-based cases for remuneration.

- 109 If the opportunity for governor remuneration were to be introduced, it would require robust procedures to be operated by remuneration committees (which are not currently required) which may need to co-opt independent members. This reinforces recommendation C3 above. A decision will also need to be made about whether remuneration levels should be decided nationally (as in the NHS) or locally. The spirit of shared regulation favours the latter approach, but the constraints of the regulatory environment probably mean that a relatively standard 'rate for the job' would emerge in any case.

⁴⁵ Leeds Metropolitan University has decided to remunerate its Chair to a maximum of £15000 pa, its Committee Chairs up to £7,500 pa, and all other independent members up to £3000 pa. For details see www.leedsmet.ac.uk/metoffice/gov/index.htm

Expenses

- 110 Although remuneration for governors is contentious the payment of expenses is not - or at least should not be. This is accepted as normal practice in almost all governance codes throughout the public and private sectors, and it is a matter of principle that no governor should be out of pocket for the service provided. Most colleges appear to pay expenses, but in the consultation we were told of some that do not. This is poor practice, and should not happen. However, action is in the hands of the governing body itself, and therefore no recommendation is necessary.

7 The Role of the Chair of the Corporation

- 111 Within the college sector there is an increasing recognition of the crucial role of the chair of the corporation in exercising effective board leadership. Indeed, during the consultation workshops some chairs went so far as to argue that there cannot be an effective governing body without an effective chair.
- 112 Most chairs and representatives from stakeholder groups appear to agree that the job of a chair is getting more demanding: an expanding workload (which may increase with moves towards shared regulation); a generally higher profile for governance; greater expectations on the corporation in relation to monitoring the quality of provision; and - in the perception of most chairs - the growth of the regulatory burden (particularly from the LSC) which adds to their workload without providing corresponding value.
- 113 As with other areas of governing body recruitment, there is no current data on the characteristics of corporation chairs. Informally, there is a general view in the sector that the experience and quality of chairs has improved substantially since incorporation. Many boards are now chaired by individuals with substantial experience in either or both of the private and public sectors, and numerous reports describe the beneficial influence of effective chairs on overall board performance⁴⁶. However, the variability of the performance of chairs is still perceived to be a problem by some in the sector, and this needs to be reduced if the funding and regulatory bodies are to have full confidence in overall governance within colleges. Where difficulties have occurred they are likely to have involved any of the following: a lack of time devoted to the task; a relationship with a principal that lacks sufficient independence; over-emphasis on the financial and resources aspects of governance at the expense of broader strategic issues and ensuring effective institutional performance; personality factors that meant effective board leadership could not be exercised; and an over-dominant chair.
- 114 There is also no published information on the length of service of chairs or their periods of office (although this is believed to be variable), and the 2008 instrument of government gives a corporation powers to determine for itself the period of office for both the chair and vice-chair. However, many colleges appear to have moved to a position where the chair serves a maximum of two four-year terms (in some cases only one), although some examples are reported where chairs have been in post for many

⁴⁶ See, for example, *Ofsted (2008), How Colleges Improve, op cit*

years, which is an unsatisfactory arrangement. Similarly no data is available on the extent to which the performance of the chair is reviewed and related to continuation in the role, and this is an area where greater transparency would be helpful.

- 115 From qualitative data collected during the consultation, it appears that corporations have in place formal processes for the appointment of a chair which vary in sophistication from an election amongst current members through to the use of search advisers to find 'the right person'. For such a crucial role, any institutional uncertainty in such a process is undesirable, and it is probably appropriate that the process is set out in a corporation standing order or similar instrument, which makes provision for nomination and voting arrangements and with a timescale for the process. Although a contested election of a chair may be rare, the process must fully accommodate that eventuality.
- 116 Three types of recruitment methods for chairs appear to be in use: election without search; election after internally managed search; and election after externally assisted search. So far as the first of these is concerned, it is reported that many corporations are content to elect as chair one of their members without search, who had previously been appointed under the usual mechanisms for the appointment of ordinary members. This process has the advantage of ensuring the appointment of a person who is familiar with the institution and who is a 'known quantity', but relies totally on there being a suitable individual in the current membership, able and willing to accept appointment as chair. The process might stimulate the production of a role description and person specification for the chair but does not require it, assumes that all boards have high-quality and chairworthy governors, and may not be responsive to issues of diversity. Accordingly, corporations need to be very confident about the ability of existing members before going down this route.
- 117 The second process in use is election after an internally managed search. This is perhaps the most commonly reported approach in the sector, and such searches appear to vary considerably in sophistication. Usually corporations rely on their existing search committee, and a distinguishing characteristic of this process is that the search relies on internal resources ie the knowledge and connections of existing corporation members and senior staff. This can work well, and it is characteristic of many independent corporation members that they are well connected and have strong networking skills. The process can - and has - produced good fields of strong potential chairs. The process may also stimulate the production of a role description and person specification. The process could involve the placement of a public advertisement but generally does not. A variant of this method reported in several colleges, is using a search approach to recruit a high calibre board member with the intention of making him or her chair in due course.
- 118 The third process is election after an externally assisted search, which is much rarer but is likely to develop as governance becomes more important. This involves the use of recruitment consultants ('head-hunters'), typically working to a corporation search committee which agrees a role description, person specification, the agreed parameters of the search (including public advertisement), and so on. The person identified through this process is then formally elected where necessary. It is clear that the appointment of recruitment consultants brings advantages. They can almost certainly carry out a wider search than a college could achieve, they can provide assistance in evaluating potential candidates, and they can offer high levels of confidentiality. The chief disadvantages would appear to be cost and (sometimes) difficulty in maintaining full control of the process.

- 119 Whatever system is used, effective succession planning for chairs is crucial, and best practice in the sector suggests that a corporation should consider well in advance what recruitment process it thinks appropriate (perhaps a minimum of 12 months before the retirement of the current chair) . In such circumstances it is important for the corporation as a whole to agree the approaches to be used, and the associated role specification (see below).
- 120 The role of the corporation chair can be difficult and challenging, and has moved a long way from the more procedural approaches of the past. It is now widely recognised that an effective relationship between chair and principal is crucial, as this sets the tone for the overall relationship between the board and other senior managers. Successful relationships usually centre on trust, openness, mutual respect and credibility, and the recognition that both parties have different and challenging roles to perform; governance is much more difficult without these. Such factors underpin not only the ability of a chair to provide 'constructive challenge', but also the willingness of a principal to receive it.
- 121 This relationship will vary depending on a number of factors - the personalities of those involved and the culture of the institution are particularly important. In addition, both parties need to observe the distinction between management and governance which may be difficult when discussing key issues. It is, however, important that the relationship is not too close, if a corporation is to have the right amount of independence. In particular, the chair has a key role in the system of checks on executive power, and should use judgement to intervene where necessary.
- 122 Although rarely discussed in public, one of the key factors determining an effective relationship between a chair (and board more generally) and an executive is simply the attitude of the key personalities involved. So far as the principal/CEO is concerned, does he or she really want an active and fully involved board, and so far as the chair and corporation are concerned do they really want to maximise board effectiveness and expend the effort required on what is - after all - a voluntary activity? A good practice study of governance in higher education⁴⁷ found very different attitudes to the active involvement of chairs and governing bodies, leading to four styles of relationship, the results of which also appear to apply to further education:

	The chair seeks actively to maximise the effectiveness of the corporation	The chair does not seek actively to maximise the effectiveness of the corporation
The principal/CEO seek actively to involve the corporation	<i>Partnership approach to governance</i>	<i>Under-developed approach to governance</i>
The principal/CEO do not seek actively to involve the corporation	<i>Conflict approach to governance</i>	<i>Managerial approach to governance</i>

⁴⁷ CHEMS Consulting, (2004), *Good Practice in Six Areas of the Governance of HEIs*, CUC, at www.shef.ac.uk/cuc/publications

- 123 In this diagram there are four possible outcomes to the different relationships between the corporation chair and the principal/executive:
- **A partnership approach** - where both the chair and the principal/CEO are jointly committed to ensuring an actively involved and effective board. The benefits are close collaborative working and governors having an active role. The main potential drawback is the danger of bridging the governance and management divide and drawing the corporation too closely into institutional affairs.
 - **A conflict approach** - where the principal/CEO seeks to deny the corporation the active involvement it seeks. This is potentially unstable with governance becoming a battle about who has the right to decide what.
 - **An under-developed approach** - where the principal/CEO seeks the active involvement of the corporation, whose chair is for some reason unable or unwilling to respond. This may leave the executive with a lack of support and constructive feedback, and an under-developed governance system. Changing the chair and other senior board members may be required to address this.
 - **A managerial approach** - where the principal/CEO is in an overly dominant position because of a lack of commitment by the chair, usually making the board a 'rubber stamp'. Some of the main problems of governance in FE in the past have occurred when this has happened, and in the long term this situation may need to be addressed by a change of senior board membership, or *in extremis* changes in the executive.
- 124 In addition, to the importance of the two way relationship between chair and principal, is the relationship of both parties with the clerk to the corporation. The most relevant work here, being that of Llewellyn⁴⁸ who undertook a study of the impact of 'triad', in higher education. However, his conclusions are likely to apply to colleges as well. His results are summarised in the next Section of this Appendix.
- 125 Within the board itself, perhaps the most crucial role of the chair is providing leadership to enable the corporation to feel confident about its ability to undertake its responsibilities effectively. Whilst recognised in the private sector literature on board effectiveness⁴⁹, this leadership role has generally been under-emphasised in education with more attention paid to the role of the chair in undertaking the processes of governance. However, in the consultative workshops there was an increasing recognition of the leadership role of chairs, and of the personal challenges this raises. This attention to corporation leadership is likely to grow in the next few years, with greater resource pressures on public expenditure, and colleges may have to take difficult and controversial decisions.
- 126 Until recently support for chairs was relatively limited, but this has been expanded by the development of the Governors Council, which has a valuable role to play in both briefing and supporting chairs, as well as helping them act as an effective lobby group. As for all governors, ongoing development for chairs is important, and all chairs should be expected to participate in an appropriate way. Although the majority of such

⁴⁸ Llewellyn D, (2009), *The Role and Influence of the Secretary in UK Higher Education Governing Bodies*, the Leadership Foundation, see www.lfhe.ac.uk/publications/research

⁴⁹ See for example Lorsch J W and Clark R C, (2008), *Leading From the Boardroom*, Harvard Business Review, April

development will probably be concerned with the provision of policy briefings, benchmarked data, and so on, it should not be assumed that chairs necessarily possess all the 'basic' skills and information they require, and their development needs should be addressed alongside those of other members. What is crucial is that any development activities provided are of the highest quality, that chairs have been influential in their design, and that those providing them are credible to the chairs.

- 127 Despite the general enhancement in the quality of governance noted above, in some of the consultative workshops and literature reviewed there remains concerns about whether the full role of chairs in both current and future circumstances is consistently well understood across the sector, and whether greater clarity is required. Accordingly, we have discussed with chairs at some of the consultative events whether an outline role description would be helpful for corporations in thinking about the responsibilities of chairs in relation to the future challenges that corporations will face. On balance, the idea was supported, providing adoption is voluntary, and accordingly a draft role description is attached as Appendix 1. (This is partly based on an earlier outline job description produced as part of the development of the www.ggpg.org.uk.) We recommend that this draft role description be widely discussed by chairs - and amended as necessary - before being formally issued. The Governors Council should be closely involved in such consultation.

Recommendation C6:

That a role description for the chair of a corporation be agreed, after wide discussion by chairs and other interested parties, and then be adopted by colleges on a voluntary basis.

8 The Role of the Clerk to the Corporation

- 128 The importance of the role of the clerk in effective governance in FE is generally well recognised within the college sector. Various attempts to support this role have been undertaken during the past few years, for example, the 'Clerks' Network' operated through the AoC⁵⁰, and the provision of various development activities including the ICSA certificate in FE run through LSIS⁵¹. Nonetheless a number of issues about clerks remain, and many were highlighted in the consultative workshops for clerks organised as part of this review.
- 129 Clerks play a number of roles, some of which are analogous to those of the company secretary in a private sector board. At a minimum, the role includes providing core administrative services to support the meetings of the corporation and advising on its legal requirements and statutory powers, but many clerks (encouraged by their corporations) do much more than this and provide a comprehensive service to support all aspects of the work of the corporation. This includes the provision of support, guidance, and information in a variety of forms, and maintaining sound communication and working relationships with the executive of the college. In a real sense the clerk should be the 'eyes and ears' of the corporation, ensuring that it has all the information it needs, whilst not - of course - straying into areas that are the responsibility of the college principal. The value of this proactive role is widely recognised, including in a number of Ofsted reports on colleges rated as 'outstanding' for governance, leadership and management.
- 130 The 2008 revision of the instrument and articles for colleges sought for the first time to define the role of the clerk, following observations in an earlier consultation exercise that the clerk was the only officer of the corporation whose responsibilities were not reflected in the articles, and that this might impact on the status of the role in some colleges. Accordingly, the articles now define the role of clerk as being responsible for advising the corporation with regard to: the operation of its powers; procedural matters; the conduct of its business; and matters of governance practice. The consultation document on the review of the articles makes it clear that the use of the word 'advice' was adopted because in some areas - but not all - the clerk was in no position to 'ensure' that a corporation acted on the information provided, although the consultation document also noted that the Department intended to "consult further with the sector on more appropriate drafting"⁵².
- 131 In FE the role of the clerk is undertaken in several ways: by full-time employees (who may combine the role with other compatible senior management responsibilities); by part-time employees; or by contracting the service out - in some cases to specialist providers of clerking services who may support more than one college. Although no accurate data exist, it appears that the last few years have seen substantial changes to the way that the clerk's role has been undertaken, with colleges generally moving away from full-time employees to contracted services. Within the clerking community the merits of these approaches continue to be debated, and some - not all - feel that the role has become devalued in some institutions due to contracting out. Those who

⁵⁰ See http://www.aoc.co.uk/en/college_governors/national_clerks_network.cfm

⁵¹ See www.centreforexcellence.org.uk/Default.aspx?Page=Programmes&id=234&status=Live

⁵² Department for Education and Skills, *Instrument and Articles of Government for Further Education Colleges: Report on the 2006 Consultation*, at www.dius.gov.uk

are full-time employees generally perceive themselves to be better based to provide a comprehensive service to board members, and some point to benefits of this approach in the university sector where almost all clerks are full time, and a recent survey by the Office of Public Management has noted that a strength of governance in that sector is the generally robust administrative arrangements in place to support governing bodies⁵³. Conversely, critics see a potential conflict of interest if clerks become too close to the management team. Those colleges who have adopted a part time or contracted out arrangement generally report favourable value for money, and confidence that the role is explicitly being undertaken in accordance with Nolan principles.

- 132 Of course, in practice no single approach is appropriate for all circumstances, and the consultative workshops raised a number of potential concerns:
- First, the variability with which the full proactive role of the clerk is recognised within colleges and corporations. In particular, where the role of the clerk has traditionally been seen as primarily procedural, the benefits of a more proactive interpretation may not be evident to some corporations, and may stay hidden until either a problem occurs or comparative information about the benefits of an alternative approach becomes available.
 - Second, the limited time for which some clerks are contracted, and the level of remuneration, causes concern in some cases. In the workshops examples were provided of clerks being contracted to provide 40 hours a month at relatively modest fees. It is difficult to see how anything but the most modest service could be provided at this level of input, and there must be an associated danger of corporation members being under-informed.
 - Third, clerks reported variations in how clerking services for corporation committees were provided, in some cases leading to a potential lack of coordination. One model is that the clerk is responsible for the secretarial and support services for all corporation committees, and where a large committee system exists this may be a considerable workload. Another model is that the clerk only has a role in the coordination of support, with secretarial services provided by others, an approach which may be cheaper but runs the risk of a lack of integration, particularly where no consistent 'house style' of document identification is used.
 - Fourth, although it is widely agreed that clerks have made an important contribution to enhancing the processes of governance in colleges, some workshop members felt that they needed to do more in encouraging innovations in governance, and in encouraging corporations to assess their effectiveness in terms of outcomes. Of course, to do this, clerks need to be well informed and have an active awareness of developments in governance in other sectors.
- 133 There has been no recent study in FE of how the way in which the role of the clerk is undertaken affects the performance of the corporation, and the most relevant work has been that of Llewellyn⁵⁴ in relation to the position of governing body clerks in higher education. However, his conclusions are likely to apply to colleges as well.

⁵³ Schofield A, (2009), *What is an Effective and High Performing Governing Body in Higher Education?*, p14, Leadership Foundation at www.lfhe.ac.uk/governance

⁵⁴ Llewellyn D, (2009), *The Role and Influence of the Secretary in UK Higher Education Governing Bodies*, the Leadership Foundation, see www.lfhe.ac.uk/publications/research

Llewellyn documents the important role played by clerks not only in providing direct services to a board, but crucially in terms of the role they play in the three-way interaction with chairs and heads of institution. Based on a sample of 110 UK universities, using a cluster analysis he identified three groups of institutions where the different nature of the interactions has varying implications for governance. In summary, these cluster groups were:

- Cluster 1 was dominated by ‘high input’ clerks and relatively ‘low input’ chairs and heads of institutions. Amongst other characteristics this cluster reported a higher result than the other groups on whether the development of governance was being driven by external accountability measures. These institutions tended to have a higher level of procedural advice-giving, and a lower level of provision of ethical advice than the other clusters. They also had a relatively high incidence of dealing with conflicts of interest in relation to governing body members and other institutional business.
- Cluster 2 contained those institutions where the input from all three individuals was relatively low, and was typified by a relatively low understanding of the clerk’s role by the head of institution. This group felt that their governing bodies needed more prompting by the clerk to deal with the development of governance practice, and felt most strongly (although only marginally above Cluster 1) that governance was more complex than ten years ago.
- Cluster 3 was characterised by high input from all three individuals, and reported higher ratings for the understanding of the clerk’s role than both other groups. A higher proportion of clerks declared their institutions to be proactive on governance issues and aware of the importance of good governance practice. They consistently reported higher scores for questions concerning the importance of the governing body to academic strategy, public perception about the institution, and the availability of sector governance guidance. They reported the lowest score for their assessment of the complexity of governance compared to ten years ago.

134 Similar research might be valuable in FE to assess the extent to which similar variations in the practice of governance are related to the way the role of the clerk is undertaken. Such a study would also be helpful in highlighting the important role of the clerk for those colleges where this has not yet been recognised. We recommend that such a study should be commissioned and involve the Clerks’ Network.

Recommendation C7:

That a study be commissioned on how the role of the clerk to corporations in colleges is undertaken, and that this should involve the Clerks’ Network.

135 In general, clerks at the consultation workshops expect their institutions to face substantial challenges in the years ahead, and believe that additional demands will be placed upon them and their corporations. In such circumstances, they expect to have to provide enhanced levels of service, with better levels of board briefing and support. Some are confident that this can be done, and that their college understands the importance of the clerk’s role. Others are much less confident, and report being

concerned that their institution may wish to continue to drive down the costs of governance to the detriment of an effective clerking role.

- 136 In such circumstances, the question has to be raised: is the full and proactive job of the clerk actually 'doable' on often very limited resources and in institutions that may not fully understand what is required? The answer from some of the workshops was yes - where a college understood the importance of the role, resourced it adequately, and expected high standards to support board effectiveness. However, it may not be 'doable' where these conditions do not apply, for example, where the role is undertaken on a limited contractual or part-time basis (unless the clerk employed has extensive senior experience), and where the contract was not resourced on a satisfactory basis. It follows, that in the worst case any attempt to drive down the costs of clerking below what is reasonable may threaten institutional governance, and would be a significant risk factor for a corporation to address.
- 137 For the majority of corporations where the role of the clerk is understood, a different question was identified at the workshops: what can reasonably be done in an efficient and non-bureaucratic way to enhance the performance of clerks?
- 138 First, we have discussed with clerks at some of the consultative events whether an outline role description would be helpful for corporations in thinking about the responsibilities in the light of the clarification in the 2008 articles. On balance, the idea was supported, providing adoption is voluntary, and accordingly a draft role description is attached as Appendix 2. (This is partly based on an earlier outline description produced as part of the development of the www.gpgg.org.uk.) We recommend that this draft role description be widely discussed by clerks, and amended as necessary, before being formally issued. The Clerks' Network should be closely involved in such consultation.

Recommendation C8:

That a role description for the clerk to the corporation be agreed, after wide discussion by clerks and other interested parties, and then be adopted by colleges on a voluntary basis.

- 139 Second, we recommend that an enhanced programme of training and development activities for clerks should be introduced, building on current practice. This should generally be devised by clerks for clerks, with delivery taking a variety of forms. Coordination should occur to avoid duplication (and any associated confusion) in provision, and there may be benefit in developing better links with similar activities in related sectors in order to make innovative practice more easily disseminated.
- 140 Third, the briefing role of clerks would be enhanced and simplified if regular briefings and updates on relevant information were made available to them. The Clerks Network already plays a valuable role for some clerks in sharing information, but more could be done. Currently, relevant information comes from a variety of sources (including the AoC), but much of it is not specifically addressed to clerks who may find themselves (especially when working on a contract basis) excluded from other networks. We propose that relevant stakeholder bodies consider how this might be done in relatively simple and non-resource intensive ways.

9 Key Activities: Strategy and Measuring Performance; Quality; Finance, Audit and Risk

141 In this Section we comment briefly on some of the key activities of corporations: developing and approving strategy and the associated issue of measuring institutional performance; quality; and finance, risk and audit. The intention is not to produce a comprehensive review of these issues (which would be impossible within the constraints of this study) but rather to identify a few key issues which have been identified in the data collection and which have a major influence on the way governance is undertaken in the college sector.

Strategy and Measuring Performance

142 The role of a board in developing and approving strategy and the associated task of measuring its achievement is a fundamental aspect of governance, emphasised in all sectors and it has become part of the mantra of effective governance.

143 As noted in Section 2, although the effectiveness with which the stewardship roles of corporations have been undertaken is generally felt to have improved, there has been more concern about their strategic roles. For example, in advising the Foster Review, Fresko and Rubenstein⁵⁵ noted that governing bodies vary considerably in terms of their capacity and capability to meet the "strategic leadership" requirements falling upon boards, and other sources have reached similar conclusions. Similarly, as noted in paragraph 15, one of the key findings of Ofsted⁵⁶ in their study of successful colleges is that governors in such institutions tend to play "a significant role in providing strategic direction and monitoring the academic and financial performance of the college".

144 In another paper written for the Foster Review, Perry⁵⁷ sets out the strategic challenge for corporations in noting that "currently, many college mission statements promise to meet the educational and training needs of the community, to deliver excellence, or promote equal opportunity - too vague to be of use in deciding what the organisation does or, to get to the nub, what it stays away from. Without a tighter sense of 'this is what we do', colleges have sometimes chased income they see as necessary for survival and prosperity, even though organisations that simply aim for the latest funding stream - like firms whose whole *raison d'être* is to maximise shareholder value - will rarely do well".

145 As with other aspects of governance in the sector, the key issue appears to be one of variability in practice amongst corporations, and there are numerous examples of 'good' practice which enable a corporation to play a central role in strategic development. For example, in our survey of Landex colleges one corporation reported that it produced a detailed rolling seven- year strategic plan with associated performance indicators that were reviewed regularly⁵⁸.

⁵⁵ Fresko A and Rubenstein S, (2005), *op cit*

⁵⁶ Ofsted, (2004), *op cit*

⁵⁷ Perry A, (2005), *Mission, Purpose and Specialisation*, at www.dius.gov.uk

⁵⁸ See

www.plumpton.ac.uk/pages/viewpage.aspx?PageClass=Information&PageID=21&PageTitle=Corporate%20Information&DepartmentID=6

146 Why does such variation exist? There are a number of reasons:

- First (and this is an important contextual point) it needs to be stressed at the outset that considering and developing strategy can be difficult and challenging for many individual governors in all boards. Considering strategy involves balancing a large number of wide ranging factors, and may take some governors beyond their levels of experience. Lapsing into a discussion of operational issues at corporation meetings is a much more comfortable activity.
- Second, there is a widespread view that the emphasis of the regulatory bodies on compliance, the bureaucratic nature of the SARQ and now FMCE, and a funding methodology that emphasises short-term responsiveness rather than considered long-term development, have all tended to compound the difficulties faced by some corporations in taking a strategic approach. The fact that this hasn't happened in all colleges means that it is not inevitable, but it does probably mean that the senior members of a corporation have to demonstrate clear focus and leadership to avoid it being so.
- Third, effective strategy formulation requires robust and comprehensive information, and most corporations are naturally dependent on the principal/chief executive, clerk and other managers, who will have drafted the main college strategies. Where an effective working relationship exists such information can be made available in a transparent way, but where it does not then governors may find it difficult to be informed well enough to engage in the constructive debate and challenge about strategy that is required. This may be particularly the case where governors lack awareness of the local and regional factors that will shape a college's strategic engagement, and also where the clerk is only employed to deal with administrative issues which concern the board. An increased use is reported of approaches such as balanced scorecards to integrate reporting with strategic plans, but more needs to be done.
- Fourth, the reality is that the need for a strategic emphasis by corporations probably varies depending on their circumstances. Large and complex colleges with a range of programmes, different funding streams, and with a choice about future opportunities (each with different levels of risk) to pursue require a strategic approach to provide direction and help make informed choices. However, small colleges with stable student numbers operating in areas where there is very limited discretion may find the need for developing strategy much less pressing.
- Fifth, variation may occur for more mundane reasons: for example, that the organisation of corporation business emphasises the immediate and provides little opportunity for strategic and performance discussions. Many colleges now try to address this through annual awaydays, but the problem may be deeper than just agenda management. Indeed, one of the attractions of the 'Carver model' for those colleges adopting it, is the systemic way it tries to address strategic board responsibilities.

147 The contentious developments in the FE funding environment in the last year have not helped the case for colleges to adopt a considered strategic view of future developments. Although the dangers of engaging in short-term institutional growth without a corresponding strategy are generally recognised, the increasing short

termism of the LSC and government in relation to elements of funding has given rise to a debate about whether meaningful strategic development is possible by corporations. In several of the consultative workshops, different views were strongly heard: on the one hand it was argued that the ambiguity of the funding and political environment meant that any real evidence-based approach to long-term strategic development was simply unrealistic; whilst on the other hand it was argued that it was exactly in such an environment that robust strategy was required to try and guide colleges through turbulent waters. This issue is considered in more detail in Section 4 of the main report in relation to the proposed machinery of government changes.

Quality

- 148 Underpinning the overall institutional strategy, corporations need to develop a series of related strategies, most obviously in relation to learning and teaching, quality improvement, and the learner experience (the names vary). Because of the requirements of Ofsted these tend to be the best developed in well-governed colleges. However, we found two diverged views emerging from respondents on this issue.
- 149 First, many governors are confident that their corporation quality committees (most but not all colleges have them) are performing well, understand quality and educational issues and provide the constructive challenge required to drive up standards. The Ofsted reports cited above would tend to confirm this in some colleges. However, the alternative view was also regularly expressed: that it is in considering issues of quality and educational character that some corporations are most uncomfortable and that their quality committees (or similar) may not be wholly effective. Section 4 of the main report considers the future implications of this for the adoption of Framework for Excellence.
- 150 A number of respondents to this review (principals, clerks, and governors alike) also raised another issue, relevant to the discussion in Section 3 about the need for a shared understanding of what is meant by governance. This is the variation shown by Ofsted inspectors in their understanding and interpretation of governance, and its relationship to management. There are genuine issues here (and hence our recommendation for greater clarity), but it is not the role of governors to get involved in the detail of the management of quality. However, this can be a fine line to tread, and also one that is interpreted in different ways in different sectors, so - for example - school governing bodies are encouraged to have a more direct involvement in the management of quality than would usually be considered ideal. This almost inevitably leads to possible inconsistency of practice, and may further confuse some corporation members about their role, in what is already a difficult area for them.

Finance, Risk and Audit

- 151 The abolition of the LSC means that it is unnecessary to comment on the governance aspects of the current funding environment. Rather, it may be helpful to identify some specific issues about current practice that corporations would like to see addressed in a future funding approach to aid effective governance.

- 152 The main criticisms from the general perspective of colleges are well known and do not need detailed comment. Ignoring the total volume of funding (itself a subject of criticism), overall, the funding methodology has been perceived as: too short term; too initiative based; too restrictive (for example in that virement across funding streams has not been possible); ignores the realities of institutional development in the pursuit of central policy; and is too bureaucratic in relation to financial reporting. There are different views about such claims which are well known within FE.
- 153 The general issue (considered in more detail in Section 4 of the main report), is that in new funding arrangements from April 2010, funding mechanisms need to be introduced which are compatible with any reasonable notion of shared regulation, and which have the broad confidence of college corporations. Failure to do so may present a substantial risk to effective governance in the sector, and may lead to many governors not wishing to continue in their role. It is partly for this reason that it is important to develop a new code of FE governance subscribed to by all stakeholder bodies (see recommendation C1).
- 154 Whilst the overall responsibilities of corporations in the area of finance are reported to be generally well recognised, two specific aspects emerged in the consultation process and require further comment: the role of the corporation in relation to both risk and effective internal audit. So far as risk is concerned, there appears to be some tension between the reporting requirements of the LSC and the extent to which the concept of risk is embedded in the practice of some colleges. Current LSC guidance requires compliance with the FRC Combined Code, and it was proactive in 2004 in giving advice to colleges about introducing risk management and ensuring that governance statements were compliant with Turnbull Guidance. LSC reporting requirements include not just financial risks, but reputational and other kinds.
- 155 However, although risk reporting is provided to the LSC, some governors (entirely those with a private sector background) observed to us that although corporations recognised financial risk, other kinds of risk (including reputational and strategic risk) were - in practice - not so well understood and featured less in corporation meetings, and also that the quality of college risk management was variable. Some of these governors also observed that risk processes in their own corporations were too mechanistic, too dependent on the maintenance of a risk register as an end in itself (when it is really only a tool for assessing risk), and that responsibility for reporting risk to the corporation was sometimes provided by the finance director rather than - as is generally desirable - by the clerk. Of course, FE is not alone in experiencing tensions between practice and regulation in this area, but it is important that an understanding of risk governance goes beyond the clerk, finance director and chair.
- 156 So far as audit is concerned, it must be conducted in accordance with the financial memorandum with the LSC and its Audit Code of Practice (ACOP)⁵⁹. Although we have not looked at the operation of internal audit in any detail, discussions with a number of respondents have suggested that it is only partly effective in some corporations. The need for effective internal audit in relation to financial control is well recognised, however, the more generic role of internal audit to guide institutional development may be less understood, despite it being included in ACOP guidance,

⁵⁹ www.lsc.gov.uk/Search.htm?Term=audit+code+of+conduct&Search=1

encouraged by the LSC and on LSIS governor training programmes. Accordingly, an important issue is to clarify the generic role of internal audit in relation to both colleges and LSC (or other funding body) expectations.

- 157 A crucial question for corporations is therefore whether a college takes internal audit seriously, and key questions include: is internal audit asked to review challenging and potentially difficult issues, and if not why not? are internal audit recommendations implemented, and does anyone check and report back to the audit committee or the board? does management make promises which are later ignored? has internal audit uncovered anything serious recently, and has it challenged management decisions? and is internal audit linked to a wider systematic process of institutional and departmental evaluation? These are much broader questions than finance control issues (although that is not to devalue the importance of the latter).
- 158 There are three main options available for the provision of internal audit services, and the merits of each vary: appointing a professional audit firm; employing internal audit staff; and joining a consortium. The key to effective oversight of internal audit, and the effective operation of the audit itself, lies in the preparation and use of an audit plan which is based on the assessment of risk and assurance needs. Specifying this work plan and looking at the results, should be a matter for the whole board and not just the audit committee. One of the key issues for corporations (and not just the audit committee) is: how much resource should be devoted to internal audit? This is not a simple answer, and it is obviously related to the extent of assurance that the corporation requires.
- 159 The issue here is whether the internal auditors have been getting 'under the skin' of the institution. A good audit service will show effective leadership and management at the partner or manager level, and experience in FE matters. They will be sufficiently engaged in the institution itself to have insight beneath the surface. Their value to the institution will be enhanced if they are talking and thinking the language of strategy, management quality and performance, as well as risk management and control. Conversely, an indication of poor audit is when their recommendations are rejected justifiably by management. It would be an unusual institution which contained little that a good auditor could not criticise or improve.
- 160 In this context, Appendix C highlights two specific issues in this area which need more attention. First, although rigorous internal audit is a key governance tool, there is an issue about how much information should be shared with the regulator in the form of the LSC. Clearly substantial audit information on finance, risk and data management needs to be reported in the usual way, however, there may be aspects of internal audit that should remain a confidential corporation matter as part of their standard quality management processes. It also appears that this latter purpose of internal audit may not be well understood, and that some corporations are reluctant to spend more on the developmental aspects of audit. The prescription by the LSC that a minimum number of internal audit days need to be undertaken is one way of addressing this dilemma, but may do little to create the institutional capacity to use the audit process effectively.

- 161 Second, there is a specific point about the relationship of internal audit to the Framework for Excellence methodology that causes concern. One aspect of the financial control element in the methodology proposes that the rating of colleges be partly determined by the number of problems identified in internal audit reports. Whilst it is wholly proper that a regulatory body receives assurance that proper internal audit processes are in place, it is wholly inconsistent for corporations to be penalised for pursuing what would generally be regarded as good practice within the audit community. That is, the more demanding and critical a corporation is of its own practice (as determined by internal audit) the more it appears to run the risk of incurring penalties from the regulator.
- 162 Finally, and separate from the above, we heard many adverse comments about the way that the LSC requires internal audit to review governance within colleges. A requirement of three days is stipulated, which some colleges find excessive for the work involved. Others complain that the compliance requirements of the LSC means that value for money of this activity is poor, it is difficult to use this time effectively, and that the focus is too much on narrow process aspects of governance at the expense of the broader - and more creative - picture.
- 163 Although these examples are of relatively modest issues, they provide an illustration of the potential confusion about what constitutes effective governance in the sector, and it is in the interests of all parties that such issues be resolved in the post-April 2010 arrangements.

10 Public Benefit and Public Understanding of FE Governance

- 164 The terms of reference for this review asked for observations on how the public benefit and understanding of FE governance could be enhanced. This stems from at least three specific issues: first, the machinery of government changes which will increase the formal responsibilities of local authorities in relation to FE colleges; second, the requirements of the Charity Commission for charities (whether exempt or not) to demonstrate public benefit; and third, the recent intensified focus of FE on the importance of so-called 'place shaping' as a contribution to local engagement and development.
- 165 We obtained information on this topic in two main ways: through discussion at the consultative workshops and in the survey of Landex members (see Appendix F). So far as the latter is concerned, there was also a difference of view about whether this was solely a management task, and if not then what the role of the corporation might be. Others saw a significant role for the board, including: encouraging communication strategies with local communities; reporting widely on relevant activities (both in an annual report and elsewhere); and undertaking an analysis of the economic impact of their college on the local community.
- 166 These views were confirmed by discussion in the consultative workshops, which noted the substantial existing contribution of almost all colleges to local communities. For example, research by Chapman and Carter⁶⁰ cites examples of corporations being highly strategic in areas such as restating their social mission, encouraging employability, and becoming proactive partners in economic and social renewal. Indeed, almost every FE college will have a myriad of local partnerships and relationships of different kinds with different user groups. The issue is not whether colleges should do more (which will depend on what is done now), but whether they need to inform local communities more effectively about what is being done.
- 167 In parallel with such existing concerns is the increasing focus on the need for a 'joined-up' approach by local bodies (including colleges) to enhance local economic and social development. The potential role of colleges in the 'place-shaping' agenda is documented in two recent LSIS publications⁶¹, which note numerous existing examples of interesting practice. Such forms of college engagement, may require innovations in governance, for example concerning the roles of colleges in local partnerships. Such issues are considered in more detail in Section 7 of the main report.
- 168 Notwithstanding future developments, several areas were identified in the consultation where corporations could make current public benefit more explicit, and at the same time increase public understanding. As stated elsewhere in this Appendix, the first step that colleges could take would be to review and share their own practice in relation to public benefit and show how it can be demonstrated. One aspect of this is likely to be the adoption of public benefit strategies which set out specific objectives

⁶⁰ Chapman R and Carter N, (2008), *op cit*

⁶¹ LSIS, (2009), *Identifying the Contribution of FE providers to Local Priorities, Partners and Places*, LSIS, and Gibney J et al, (2009), *The 'New' Place-shaping: the Implications for Leaders in the Further Education Sector*, LSIS at www.lsis.org.uk

and indicators of performance that enable corporations to monitor achievement. Strongly related to this is the need for corporations to clarify their strategic approaches for ensuring corporate social responsibility. Indeed the two could be part of the same document. It is unknown how many colleges have such policies (a search of a small number of sample college websites revealed none), but they are becoming increasingly common in other parts of the public and private sectors.

Recommendation C9:

Where they do not already exist, corporations should consider adopting public benefit and corporate social responsibility strategies to guide their engagement with the public and local interest groups.

- 169 Some colleges have already identified some aspects of public benefit through commissioning their own local or regional economic impact studies. Although primarily undertaken for their own strategic planning benefits, such studies can provide valuable information on local impact, although social impact may be more difficult to measure than economic.
- 170 Although many colleges communicate widely within their local communities some do not. For example, references are frequently made about the need to enhance links with local employers.. Although doing this is a management task, corporations need to be assured that appropriate arrangements are in place. After incorporation many colleges held public meetings and some produced annual reports, although many have now ceased this practice often because of disappointing attendance. Where this approach doesn't work it needs to be replaced by some form of appropriate reporting which engages local communities, and the existence of a college website is not enough.
- 171 Although it has gone out of fashion there remains much value in corporations producing an annual report in a form suitable for the core readership it chooses to define. Although at worst such documents can be little more than unconvincing public relations, at best they provide a genuine account of institutional activities. Some colleges still produce such annual reports and find them of value, and others should consider the benefits. The form of production and distribution of such annual reports will depend upon local circumstances, but the aim should be to reach key user groups and communities, and to provide an honest and reliable account of activity avoiding an over-congratulatory tone.
- 172 Governors - particularly senior external members - can also play a valuable ambassadorial role for colleges, perhaps easier for those who have substantial personal networks within local communities. Although this potentially risks confusing their governance role with aspects of management, it is usually possible to ensure that appropriate boundaries are drawn round the two activities, although the guidance of the clerk may be required.
- 173 Finally, although undertaking much of the above is a management task, a corporation can lead not only by developing a public benefit and associated communication strategy, but also by ensuring full information on its own activities. The main route is

likely to be the website, and, in practice, the information about governance on college sites varies widely from the fairly comprehensive to none. During the consultation, governors generally appeared to accept the idea that all corporations should ensure as broad a dissemination of corporation activities as possible, not just to meet the requirements of Freedom of Information legislation, but - more positively - because effective governance needs to be underpinned by as much transparency as possible.

11 The Governance of HE in FE

- 174 An increasing amount of HE is now being provided in FE, and (subject to government funding policies in the next few years) this may increase. Funding for HE in England comes from the Higher Education Funding Council for England (HEFCE), and quality assurance is undertaken by the Quality Assurance Agency (QAA). Corporations contract with HEFCE for HE student numbers, and are therefore accountable to it for the delivery of provision.
- 175 Expanding HE provision is attractive to many FE colleges. It is an additional - and welcome - revenue stream, it diversifies funding, is less short term than many LSC initiatives, it supports local partnerships which may lead to other benefits, and is generally perceived to be 'high status' provision which is good for institutional reputation. However, there are challenges to governors and corporations, and during the consultation for this review several were acknowledged by respondents:
- Both HEFCE and the QAA operate substantially different regulatory approaches from those of the LSC and Ofsted, and governors therefore need to be confident that they understand their responsibilities in contracting for students.
 - Offering HE provision should be seen as a major long-term strategic decision to be considered carefully by corporations, and not a short-term income generating management decision. It follows that corporations need to have comprehensive information available in order to provide adequate scrutiny of management proposals. Several governor respondents observed that such information was not made available, and they knew little on which to base such strategic decisions.
 - In particular, franchising and other forms of partnerships raised numerous financial and contractual issues, which governors need to be aware of before approving them. Some respondents felt they could be better informed, and - for example - did not know of easily available good practice information available on the HEFCE website.
 - It is important that corporations can demonstrate good financial and risk management procedures in relation to HE in FE, and again we found some governors who were unaware of relevant financial details. There are also substantial reputational risks if problems occur that corporations need to address from the outset.
- 176 Partly as a response to such issues, HEFCE is currently funding several projects from its Leadership, Governance and Management Fund⁶² on HE in FE collaboration, of which two have particular relevance to governance:

⁶² See www.hefce.ac.uk/lgm/build/lgmfund/projects/showcats.asp?cat=4

- The first is 'Leadership, Management and Strategy for Higher Education in Further Education Colleges' being run by the University of Sheffield. Amongst other things this project will produce resources for governors and managers in FE colleges on collaborative partnerships, some being made available through LSIS.
- The second is entitled 'The Ability to Deliver' - A Case Study on Models of Governance in existing and proposed University Centres' being run by the Association of Collaborative Provision⁶³ and the University of Staffordshire. This is identifying, developing and disseminating emerging good practice in the governance of new university centres, and mapping it against the Good Governance Standard for Public Services. It will provide case studies for further developments in this area.

177 The projects will disseminate their findings in 2010, and relevant FE sector bodies should ensure that colleges are informed. Because of this emerging work, we make no further comments on the governance of HE in FE.

12 Governance in Sixth Form Colleges

178 There are currently 93 sixth form colleges⁶⁴ and most of the discussion in the rest of this Appendix applies to them as much as general FE colleges. However, there are some areas where different issues apply, and these are briefly summarised here. The implications for sixth form colleges of the changes in the machinery of government are considered in Section 7 of the main report, and this will see sixth form colleges being designated as a separate category of college, funded, regulated and performance managed by their home local authority.

179 In some ways the governance of sixth form colleges currently operates half-way between that of larger general FE colleges and schools. Their instrument and articles vary slightly to provide a requirement for parent governors (as in the rest of the school sector), and particular arrangements apply to a small number of voluntary faith-based sixth colleges. By the standards of most general FE colleges, sixth form colleges are relatively small with a mean size of 1500 students and a range between 500 and 3000. This means that some fall into the category of small colleges noted in paragraphs 25-28.

180 Standards of provision in sixth form colleges are generally high, and the Ofsted 2008 inspection ratings for leadership and management are also higher than other parts of the sector (see paragraph 17), although any causal link to governance is unclear. Various respondents in the sector to this review have observed that the nature and focus of sixth form colleges tends to make governance slightly more straightforward than in some other parts of the sector, and colleges tend not to have complications such as multiple missions, alternative funding streams, multi-site operations, and so on. Strong local parental support for sixth form colleges may also be of assistance, as in the schools sector.

⁶³ See www.acp.ac.uk/a/StartPage.aspx#

⁶⁴ Source: www.sfcf.org.uk

- 181 There is a substantial literature on school governance, which may be relevant to any detailed comparative review of the effectiveness of sixth form governance, but this is not considered in any detail here. However, in summary perhaps the most interesting recent study of school governance was by the University of Bath in 2008⁶⁵. Balarin et al identify general satisfaction with school governance, which amongst other things is characterised by a high level of support for the principal being offered by governing bodies, and where the role of parent governors is generally regarded as valuable. Nonetheless the policy conclusions of Balarin and colleagues are similar to this review, in that they conclude amongst other things that governing bodies are overloaded (the separation between management and governance is much less clear in the school setting), and as a result governing bodies often: find it difficult to address strategic issues; that the importance of school governance does not have a high enough profile; and that confusion about school governing body roles and responsibilities exist, echoing our own discussion and recommendations in Section 3. Some of the respondents to our study from the sixth form college sector described similar issues facing their own boards.
- 182 In general, most sixth form college respondents to our study appear not to place so much emphasis as those from FE colleges on making the kinds of changes to governance suggested in this report, and - despite frustrations concerning funding in the past year - feel broadly content with current arrangements. Indeed the main fears (see Section 7 of the main report) are that machinery of government changes may threaten the current stability of governance. That is not to say that some difficulties were not reported, for example, getting effective student engagement is cited as being particularly difficult in some sixth form colleges, but in general there appears to be less pressure on governing bodies to enhance both their own performance and that of their institution, than in some other parts of the sector.

13 Governance in Independent Specialist Colleges

- 183 The specialist college sector provides further education for learners with complex or severe learning difficulties and/or disabilities whose learning and support needs cannot be met in their local college. Approximately 3,600 learners are funded⁶⁶, in part at least by the LSC, and colleges without LSC contracts are funded either by LEAs or social services. Most colleges (70) are members of the Association of National Specialist Colleges (Natspec), and in terms of learner numbers colleges are small (in some cases with fewer than 20 learners). However, because of the characteristics of learners, costs are very high and LSC funding is provided on the basis of individual learner assessments. The nature of the colleges means that in addition to the oversight of educational provision, governing bodies often have specific responsibilities for residential care, medical therapies and for ensuring a safe environment.

⁶⁵ Balarin M, Brammer S, James C and McCormack M, (2008), *Governing Our Schools*, University of Bath at www.bitc.org.uk

⁶⁶ Source Natspec see www.natspec.org.uk

- 184 As their name implies, these colleges are independent, and their ownership and governance arrangements are a microcosm of the diversity found in the overall further education system. There are no statutory instrument and articles of governance as there are for FE colleges, and specialist colleges are either charities, part of large healthcare groups, or privately owned. A typology of governance arrangements is set out below.
- 185 The only comparative data on the quality of governance is that produced by Ofsted as part of their overall inspection arrangements for education provision, although not for residential care. Ofsted data for 2008 records 13 full inspections of specialist colleges, with six achieving a score of two (good) for leadership, management and governance, five scoring three (satisfactory), and three scoring four (inadequate). However, the same caveats made in Section 2 about using Ofsted data as a basis for judgements about effective governance apply. There may be particular challenges for specialist colleges (especially very small ones) in meeting Ofsted criteria, and the administrative requirements involved. Overall, a review of inspection outcomes by Ofsted for Natspec⁶⁷ concluded that nearly half had increased their overall effectiveness grade from their previous inspection, and of the 15 % of colleges initially deemed inadequate nearly all are now either satisfactory or have had their LSC contract terminated.
- 186 The same study identified significant good practice in aspects of governance, although the cited examples tended to illustrate rather narrow compliance or process issues rather than the achievement of broader institutional performance (for example, the regular review by governors of staff vetting records; effective monitoring of health and safety; and governors being clear about their duties and responsibilities). All are a useful precondition for effectiveness but scarcely a dimension of effectiveness itself.
- 187 Governance arrangements in specialist colleges obviously reflect ownership patterns and associated organisational structures, and the following types of governance are evident:
- Colleges which are one part of a large national charity - for example, the RNIB College at Loughborough. In general, governance arrangements (and particularly compliance with charity status and the requirements of the Charity Commission) might be expected to be well understood in such institutions, and the powers of the college trustees in relation to the overall charity clearly set out. The size of large national charities and their administrative infrastructure also provides the opportunity for them to be familiar with the detailed requirements of the FE regulatory bodies.
 - Colleges which are part of a large private healthcare group, and which have entered the FE market as a logical extension of their existing business - sometimes based around selling residential services, for example, elderly care homes. Colleges of this kind might typically operate under a private board structure, with the powers of a college board varying in relation to the overall company board. Corporate governance requirements are likely to be well understood and based on

⁶⁷ See Preece S, (2009), *Inspection Outcomes From 2005-09 and the New Cycle -Examples of Good Practice*, Ofsted at www.natspec.org.uk

the FRC Combined Code, but - at least initially - requirements for developing educational as well as residential provision may be more of a challenge.

- Colleges which are based on small - often local - charities, and where the trustees are likely to have a close and personal involvement. Typically this is likely to provide a high level of governing body or board engagement, and a high level of trustee motivation. However, it risks trustees getting involved in operational issues (about which they may have strong views), and potentially may confuse governance with management unless clear arrangements are in place.
- Colleges which are small privately owned businesses whose governance arrangements may be typical of those for SMEs. The implications of this for effective governance are considered in the part of this report on work-based learning, but - at the least - getting to grips with the regulatory requirements for educational provision is likely to be challenging for these providers.

188 Although a governing body in the sense that it is understood in the FE college sector may exist in some specialist institutions, it is not inevitable, and colleges which are part of a larger organisation might be governed by a central board structure for all subsidiaries, or only have their own advisory committee. Moreover, the trustees of some colleges may view their governance arrangements as more closely related to the voluntary sector than FE, the former having its own code of governance and associated good practice guidance.

189 It follows that cross-sector observations about governance within specialist colleges are difficult to make, without particular reference to the circumstances of individual providers. Perhaps the two issues they are most likely to have in common are the high level of commitment of governors to their particular learner group, and of their relatively small size. The former tends to mean that difficulty in recruiting board members is rarely an issue, but on the other hand ensuring turnover of membership may be. With regard to the latter, small institutional size tends to create specific demands on governance, typically involving some or all of the following: colleges finding it difficult to provide the specialist information and support required by governors; the greater likelihood of governors getting more involved in operational issues where board members may have particular skills (eg finance and estates) because of a less developed administrative infrastructure; possible lack of expertise in FE processes and requirements (as opposed to considerable expertise in the specific area of the charity or business concerned); and a lack of access to good practice information outside the specialist college sector but nonetheless relevant to its governance. Such issues, of course, exist in addition to the generic ones concerning governance addressed elsewhere in this report.

190 Natspec have recognised these issues and the need for high quality governance, and in 2009 ran seminars which were a first attempt to identify some common roles and responsibilities for governance in specialist colleges, in order to contribute to assuring quality and encouraging continuing improvement across the sector.

191 National changes to the machinery of government, and amendments to the inspection methodology of Ofsted, raise a number of issues for the specialist college

sector, but again the implications are likely to vary depending upon the governance model in operation. First, a number of specialist colleges play national or regional roles, and some have concerns that a move towards local commissioning will cause potential funding and governance problems. This is not just an issue of how local authority commissioning relates to a specialist organisation, but is also set in the context where individual local authorities take different views about the value of specialist provision as opposed to mainstreaming it where possible.

- 192 Moreover, although local post-16 partnerships are being encouraged as part of the machinery of government changes, as small independent providers (whether charities or private) specialist colleges may find it difficult to participate in potentially multiple partnerships. Although such problems may be partially mitigated through a regional approach to funding, the Department for Children, Schools and Families has itself recognised the issue and notes that "there may be a case for some providers [to learners with learning difficulties] to have arrangements with the YPLA"⁶⁸. Nonetheless until a satisfactory new system is in operation, trustees and directors are bound to view these new arrangements as a substantial risk factor which they are responsible for addressing.
- 193 Some colleges have schools attached to them, typically with separate governing bodies but with a shared chief executive. Where this exists new Ofsted arrangements are being put in place to align more closely college and school inspection arrangements. Residential provision is already subject to inspection by the Quality Care Commission. Boards or governing bodies will need to take account of these changes, and whilst potentially welcomed by many providers, this risks a substantial inspection load, particularly when falling on generally small providers.
- 194 Finally, trustees and boards have a clear responsibility for ensuring the financial sustainability of their college, and have concerns that the two above factors - when coupled with the likely financial consequences of a severe reduction in public expenditure (irrespective of current political commitments being made) - will inevitably result in cost implications for specialist colleges, with administrative costs increasing whilst income is squeezed. Of course, whether this occurs is a matter of speculation, but it is a realistic risk factor for directors and trustees, particularly when ambiguity about future contracting arrangements exists. It follows that any additional costs of governance need to be seen in the context of adding recognisable value for the community of learners served.
- 195 So far as the recommendations of the Report are concerned, it is difficult to generalise about their importance for the specialist college sector, because of the diversity noted above. Accordingly, it is suggested that governors, directors and trustees look beyond the colleges section of the report and consider the broader set of proposals made in relevant parts of the analysis of both private providers and those delivering adult and community learning.

⁶⁸ DSCF, (2009) *Raising Expectations: Enabling the System to Deliver - Update and Next Steps*, para 3.11 at www.dscf.gov.uk

14 Conclusions

- 196 The diversity of the college sector makes general conclusions difficult, most particularly in the independent specialist colleges sector. Rather, all that can really be identified are a set of general observations, against which the circumstances of individual colleges can be addressed. This clearly makes future policy formation concerning governance difficult, and the issue is considered in Section 4 of the main report.
- 197 Overall, as noted in Sections 1 and 2 above, the quality of college governance as a whole is generally considered to have improved substantially since incorporation, and continues to do so. Subject to a relatively small number of colleges perceived to be at risk, there is general confidence about colleges meeting the regulatory requirements as set out in their financial memorandum and associated documents.
- 198 At its best, college governance is reported to be effective and robust, and to add value to colleges, and the important role of corporations in assisting institutional change has been highlighted, most notably by Ofsted. Within colleges with effective governance, there is no single approach to governance, and whilst some are decreasing board size and reducing the number of committees (sometimes using a model such as 'Carver') others continue with established committee-based approaches. What is demonstrably important is commitment to effective governance from all those involved, most notably the corporation chair and principal/chief executive.
- 199 However, as noted in Section 2, numerous challenges to further enhancing governance exist in many colleges: some external - most notably the demotivating constraints of a regulatory culture which causes continual frustrations for many corporations; and some internal - of which the resources devoted to governance (including the time available to the clerk and the seniority of the post) are amongst the most important. Some have suggested⁶⁹ that in the face of such challenges college governance tends to lack a strategic focus and creativity, and whilst this may be true in some cases the generalisation may be dangerous, and many governors who responded to this study would claim that this is not the case in relation to their own board. However, it is clear that if action were taken to address the issues raised in the Appendix, then some of the existing barriers to more consistently effective governance across the college sector would be removed.
- 200 Two important questions follow. Firstly, in a large college sector is the job of governor actually 'doable' as currently conceived in the colleges sector? That is, are there enough skilled, experienced and highly motivated volunteers available to become governors and able to give the time, commitment, and rigour necessary in what will be difficult and challenging times in the next few years? The effectiveness of governance in some colleges clearly indicates that the task is 'doable' under appropriate circumstances, and given the implementation of the recommendations proposed above and the adoption of a much more collaborative regulatory climate, the task may also be 'doable' across the sector as a whole. However, if action is not taken to address the challenges identified above, it is unlikely that consistently effective sector-wide college governance will be demonstrated in any real strategic sense.

⁶⁹ For example, Gleeson et al, (2009), *op cit*

- 201 The second question concerns how to accommodate innovations in governance in those colleges where confidence exists in current practice, whilst at the same time providing effective controls on those colleges where governance is inadequate. In other words, does the regulation of governance in the sector have to proceed at the pace of the slowest college, and if not what action might be taken? There is some support amongst corporations in the sector for a more risk-based approach to be introduced, that would provide increased freedom of action for those corporations that could demonstrate effective governance. This approach would be generally consistent with both the idea of shared regulation, and also the thrust of the new Ofsted methodology, and we think has a good deal to commend it. It is also consistent with some of the recommendations made in this report about the adoption of more flexible instrument and articles of government for those colleges who can demonstrate the maturity to use them effectively. How such risk might be assessed is considered in the main report.
- 202 Finally, in addition to the formal recommendations of this Appendix (listed below) there is a danger that the many points of detail considered in the text will be overlooked by colleges. Accordingly, we recommend that clerks review the full content of this Appendix and produce a proposed action list of issues relevant to their own corporation. Where necessary, some on going discussion of the issues arising might be taken forward by the Clerks' Network.

Recommendation C10:

Clerks in all FE colleges should review this Appendix in detail, and produce a suggested action list of issues relevant to their own corporation.

15 List of Recommendations

The Appendix makes the following recommendations. When considering the actions that might be taken in implementing them, reference should be made to the relevant sections of the text, where various conditions may be identified about the applicability of aspects of the recommendations to various parts of the FE system. In particular, sixth form colleges and independent specialist colleges will need to consider the appropriateness for them of recommendations concerning general FE colleges:

Recommendation C1: That a code of governance for FE colleges be drawn up by a working group consisting of all relevant key stakeholders, and that once agreed it should be the basis for consistent regulation by all key groups in the sector. *Page 15*

Recommendation C2: That the model instrument and articles of governance be made shorter and enabling, and only seek to define and regulate essential core elements, with much of the current content of the instrument becoming guidance. *Page 18*

Recommendation C3: That as part of the preparation for shared regulation, the current arrangements for the development, training and support of college governors and clerks be reviewed, and more integrated arrangements introduced for delivery. *Page 28*

Recommendation C4: That data on membership and other aspects of governance practice should be collected regularly by an appropriate sector body for use by colleges. *Page 29*

Recommendation C5: That - subject to discussions between the Charity Commission and appropriate bodies in FE - corporations be given the power to introduce remuneration for independent members if they wish, although there should be no requirement to do so. Corporations wishing to do so should be able to demonstrate clear, robust and evidence-based cases for remuneration. *Page 33*

Recommendation C6: That a role description for the chair of a corporation be agreed, after wide discussion by chairs and other interested parties, and then be adopted by colleges on a voluntary basis. *Page 38*

Recommendation C7: That a study be commissioned on how the role of the clerk to corporations in colleges is undertaken and how this relates to the performance of corporations, and that this should involve the Clerks' Network. *Page 41*

Recommendation C8: That a role description for the clerk to the corporation be agreed, after wide discussion by clerks and other interested parties, and then be adopted by colleges on a voluntary basis. *Page 42*

Recommendation C9: Where they do not already exist, corporations should consider adopting public benefit and corporate social responsibility strategies to guide their engagement with the public and local interest groups. *Page 50*

Recommendation C10: Clerks in all FE colleges should review Appendix C in detail, and produce a suggested action list of issues relevant to their own corporation. *Page 59*

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Appendix 1: Draft Role Description for the Chair of Corporation Governing Bodies: for Discussion and Consultation⁷⁰

This draft role description for corporation chairs has been assembled from existing sources⁷¹. Before adoption it needs to be subject to extensive consultation - particularly by chairs. It is not intended to be prescriptive, but it aims to incorporate current understanding within the FE colleges sector of best practice. The document is best approached as a checklist of points which a college may wish to consider in developing a role description for the chair of its corporation. All the points it contains should be reviewed and if necessary amended, with appropriate new material added in accordance with local usage before a role description is finalised and issued.

1 Appointment

- a) The Chair to the corporation should be elected by the full membership of the corporation, in accordance with any provisions of the institution's legal instruments of governance. The Chair should be responsible solely to the corporation.

2 Leadership

- a) The Chair is responsible for the leadership of the corporation. As the chair of its meetings, she/he is responsible for ensuring that the necessary business is carried on efficiently, effectively, and in a manner appropriate for the proper conduct of public business.
- b) The Chair should ensure that the corporation acts in accordance with the instrument and articles of governance, other external regulatory requirements, and with the institution's own internal rules and regulations, and should seek advice from the clerk in any case of uncertainty.
- c) The Chair should ensure that the corporation exercises collective responsibility, that is to say, that decisions are taken corporately by all members acting as a body. The Chair should encourage all members to work together effectively, contributing their skills and expertise as appropriate, and should seek to build consensus among them.
- d) The Chair is responsible for ensuring that the corporation conducts itself in accordance with accepted standards of behaviour in public life, embracing selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- e) The Chair shall ensure that the clerk maintains an up-to-date register of the Interests of members of the corporation, and shall make a full and timely personal disclosure. The chair shall ensure that any conflict of interest is identified, exposed, and managed appropriately, in order that the integrity of corporation business shall be - and shall be seen to be - maintained.

⁷⁰ The rationale for producing a job description for the role of the corporation chair is addressed in Section 7 of Appendix C of the report.

⁷¹ (a) The FE Governance website at http://www.ggpg.org.uk/roles/role-profiles-and-responsibilities/governing-board/chair_and_vice_chair.html

(b) a draft job description for the parallel role of chairs in universities at www.shef.ac.uk/cuc/publications

3 The Business of the Corporation

- a) The Chair is responsible for ensuring that the corporation exercises control over the strategic direction of the institution, and that the performance of the institution is adequately assessed against the objectives and indicators which the corporation has approved.
- b) The Chair should ensure through liaison with the clerk that all relevant information (including regular and satisfactory management and committee reports) are presented to the corporation.
- c) The Chair should, at all times, act in accordance with established protocols for the use of delegated authority or Chair's action (ensuring that such protocols are drawn up if none exist). All instances of the use of delegated authority or Chair's action should be reported to the next meeting of the corporation.
- d) The Chair should endeavour to establish a constructive and supportive but challenging working relationship with the principal or chief executive, recognising the proper separation between governance and executive management, and avoiding involvement in the day-to-day executive management of the institution.
- e) The Chair should develop effective working relationships with the clerk to the corporation, and work closely with him/her in the operation of corporation business.
- f) Any arrangement for the Chair to act as formal signatory on behalf of the institution e.g. in connection with the use of the seal or the approval of the financial statements should be stipulated.
- g) In relation to new senior post-holder appointments (including the principal), the Chair shall assist in compiling job descriptions and person specifications, and will supervise the selection and appointments process.
- h) The Chair will be responsible for instigating any disciplinary action against the holders of posts designated as senior posts.
- i) In chairing meetings of the corporation the Chair shall ensure that all bye-laws and committee procedures are complied with, and will liaise as required with chairs of corporation committees to ensure reasonable consistency of practice in corporation business.

4 The Performance of the Corporation

- a) The Chair should ensure that the corporation attempts to maximise its effectiveness through critical self-assessment of its own performance and processes, and through ensuring that appropriate performance review processes exist and are acted upon throughout the institution.
- b) The Chair should ensure that the corporation approves and operates a procedure for the regular appraisal/review of the performance of its individual members and should participate as appraiser/reviewer in that process. The Chair should encourage members to participate in appropriate training and developments as appropriate.

- c) The Chair will be responsible for the appraisal/review of the performance of the principal or chief executive, and will make recommendations to the remuneration committee or corporation accordingly.
- d) The Chair will be responsible for the appraisal/review of the performance of the clerk to the corporation, taking care to ensure that any other duties the clerk may perform for the institution are excluded from consideration, and will make recommendations accordingly.
- e) The Chair should encourage and participate in a process to review his/her own performance as Chair via the appraisal/ review procedure for ordinary members of the Governing Body.
- f) The Chair should lead the process for the recruitment of new members of the corporation, and should ensure that satisfactory succession plans exist for new recruiting members which take full account of the need to ensure a diverse membership with the necessary skills and expertise.

5 The External Role

- a) The Chair will represent the corporation and the college at external meetings, presentations and conferences. *(Local additional clause: list any other committees or bodies which the Chair may be asked to be a member of or attend in his/her external role.)*
- b) The Chair may be asked to play an agreed ambassadorial role on behalf of the institution.
- c) The Chair will be asked to play a major role in liaising between key stakeholders and the institution, or in fund-raising. This role in particular should be exercised in a carefully co-ordinated fashion with other senior officers and staff of the institution.
- d) The Chair will be expected to participate in the activities of the AoC Governors Council as appropriate.

6 Personal

- a) The Chair will have a strong personal commitment to further education and the values, aims and objectives of the institution.
- b) The Chair will at all times act fairly and impartially in the interests of the corporation and institution as a whole, using independent judgement and maintaining confidentiality as appropriate.
- c) The Chair is expected to attend all meetings of which he/she is Chair or a member, or give timely apologies if absence is unavoidable.
- d) The Chair will make him/herself available to attend induction/training events organised by the institution and other appropriate bodies.

- e) The likely overall time commitment required of the Chair for the effective conduct of the duties of the post is **XXX** (*for local determination, and may be expressed as days per week or month rather than an absolute total. Comment on the distribution of the commitment through the year may be helpful.*)

- f) The office of Chair is not remunerated, but the Chair is encouraged to reclaim all travel and similar expenses incurred in the course of institutional business, via the clerk. Directors' liability insurance is in place. (*Local additional clause: stipulate any other support for the Chair which the institution offers e.g. use of an office, clerical support, etc.*)

Appendix 2: Draft Job Description for Clerks to Corporation Governing Bodies: for Discussion and Consultation⁷²

This draft job description for clerks has been assembled from existing sources⁷³. Before adoption it needs to be subject to extensive consultation - particularly by clerks. It is not intended to be prescriptive, but it aims to incorporate current understanding within the FE colleges sector of best practice. The document is best approached as a checklist of points which a college may wish to consider in developing a role description for the clerk of its corporation. All the points it contains should be reviewed and if necessary amended, with appropriate new material added in accordance with local usage before a role description is finalised and issued.

1 Appointment and Reporting

- a) The clerk to the corporation should be appointed by the corporation, and in accordance with any provisions of the institution's legal instruments of governance. The clerk should be responsible solely to the corporation and should report directly to its Chair.
- b) When the performance of the clerk is reviewed this should be undertaken by the Chair of the corporation, if necessary in consultation with appropriate others.

2 The Business of the Governing Body

- a) The clerk should ensure the effective operation of all processes and procedures associated with the business and meetings of the corporation and its committees, including acting as a correspondent for the corporation (eg by replying to invitations, questions and requests for information).
- b) The clerk should ensure that effective administrative support is provided for all members of the corporation as reasonably required, including, but not limited to, the reimbursement of expenses incurred in undertaking corporation business.
- c) The clerk should advise the corporation of all matters concerning the recruitment and appointment of new members, and should be responsible for ensuring the provision of appropriate support, briefing and induction for them.
- d) The clerk should ensure the provision of suitable and timely advice to the corporation and its committees on all matters relevant to their responsibilities. Wherever possible, the clerk should ensure that associated documentation and information is provided in a concise and understandable form.
- e) The clerk should advise the corporation on all matters related to the assessment and enhancement of its own performance, and should be responsible for coordinating the identification of governors' development needs, arranging governor training, and coordinating the involvement of the corporation in relation to any externally required assessment processes of governance.

⁷² The rationale for producing a job description for the role of clerk is addressed in Section 8 of Appendix C of the report.

⁷³ (a) The FE Governance website at www.ggpg.org.uk/roles/role-profiles-and-responsibilities/governing-board/the_clerk.html

(b) a draft job description for the parallel role of clerks in universities at www.shef.ac.uk/cuc/publications

- f) The clerk should advise the corporation on the possible application of good or innovative practice in the way it undertakes its responsibilities.
- g) Under direction from the corporation, the clerk should establish and monitor a proper scheme of delegation to committees, managers, or others.
- h) The clerk should ensure the custody of the college seal and the safekeeping of all relevant records of corporation business.
- i) The clerk should act as administrative support for the appointment, suspension or dismissal of senior post-holders, and establishment of a selection panel or special committee as appropriate.

3 Legal Requirements and Statutory Powers

- a) The clerk should provide the corporation with authoritative guidance about its legal, statutory and public responsibilities as set down in the instrument and articles of government, the financial memorandum and regulations of funding bodies, and other general law.
- b) The clerk should ensure that new or revised responsibilities for the corporation (eg arising from new legislation) are drawn to its attention.
- c) The clerk should take appropriate action if and when the corporation, its chair or a committee is at risk of acting outside its powers or proposing unlawful actions.
- d) The clerk should monitor public interest disclosure procedures, suggesting amendments and, where required by the corporation, acting as lead assessor.
- e) The clerk should have sole responsibility for obtaining legal advice for the corporation and should be provided with a budget for that purpose.

4 Working Relationships and Conflict of Interest

- a) Where the functions of the clerk are combined with those of a senior administrative or management role in the college, the clerk must exercise care in separating these two functions, and any other role must not conflict with the primary responsibility of the clerk to the corporation.
- b) If the clerk perceives any conflict of interest between his or her separate functions, it should be reported immediately to the chair of corporation. If a conflict of interest is confirmed, the clerk should be offered an opportunity to respond to any questions raised. The clerk should make a full and timely disclosure of his or her personal interests in the register of interests.
- c) The clerk will be required to form effective working relationships with the chair of the corporation, the principal/chief executive of the college, and other relevant senior managers. The clerk should consult the principal/chief executive and keep him or her fully informed on any matter relating to corporation business (other than in relation to the remuneration committee's consideration of the principal's/chief executive's emoluments).
- d) The clerk should advise the chair in respect of any matters where conflict (potential or real) may occur between the corporation and the principal/chief executive or other senior managers. In doing so, the corporation will safeguard the clerk's ability to carry out his or her duties.
- e) *Local additional clause: state the clerk's relationship to the college senior management team or equivalent body (e.g. a member, an observer, not a member, etc) - amend as required in the case of each college.*

5 Personal

- a) The clerk should have a strong personal commitment to further education and the values, aims and objectives of the college.
- b) The clerk should at all times regulate his or her personal conduct in relation to the corporation and the college in accordance with accepted standards of behaviour in public life, embracing selflessness, integrity, objectivity, accountability, openness, honesty and leadership, and maintain confidentiality as appropriate.
- c) The clerk should participate in procedures established by the corporation for the regular appraisal or review of his or her performance. These procedures should be separate from procedures for the appraisal or review of any other responsibilities the clerk may hold.
- d) The clerk should be required to maintain a high standard of personal and professional self-development, and should be encouraged to participate in appropriate professional development activities.
- e) The clerk will be expected to participate in the activities of the AoC Clerks' Network as appropriate.