

Appendix E: A Review of Governance and Strategic Leadership in the Adult and Community Learning Sector

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Working together in partnership



Contents

Part One: Commentary	3
The Definition of the Adult and Community Learning Sector	3
Introduction	4
Local Authorities: Structures and Governance	5
Delivery Models for Adult Learning	6
Governance Arrangements for Adult Learning	6
The Third Sector: Structures and Governance	8
The Findings of the Yarroll Study	11
Further Research	17
Part Two: Case Studies	17
Case Study 1: West Sussex County Council	17
Case Study 2: Kent County Council	19
Case Study 3: Derbyshire County Council	20
Case Study 4: Northampton County Council	22
References	25

At the time this overall review of governance in FE was commissioned (see main report), a substantial piece of LSIS funded research had just been completed by Ian Yarroll from Niace, entitled, 'Exploring the Leadership and Governance Implications of Self Regulation for Local Authority and Third Sector Providers of Adult Learning and Skills'¹. Whilst the debate concerning self-regulation is developing into a shared regulation model, that research still captures the governance issues concerned with regulation, and is relevant to the issues being addressed in this research.

Therefore much of this Appendix consists of extracts taken from Yarroll's research, enhanced by four case studies from local authorities. These show how governance and strategic leadership are being developed to ensure public involvement and accountability, particularly around the importance of transparency in the proper use of public funding, the machinery of government changes and the expectations of learners.

Part One: Commentary

The Definition of the Adult and Community Learning Sector

- 1 For the purposes of this research the adult and community learning sector relates mostly to local authorities and the third sector (previously known as the voluntary sector). It is part time, up to level two but often progression focused provision, some of it uncertificated, and much of it targeted at disadvantaged areas/clients. It is often delivered by part time staff, mainly short programmes that are needs driven by the local community. As discussed in Section 7 of the main report, the governance and accountability arrangements for local authority and third sector organisations are significantly different from those of the rest of the FE system.
- 2 There are some other types of ACL providers, specifically a group of what are known as 'former specialist designated institutions (SDI's) who for historical reasons were funded as further education colleges. This includes the WEA. Additionally there are a few former independent FE external institutions (FEIs) who are small independent providers, mainly charities, e.g. Open Door near Sheffield.
- 3 Local adult learning now comprises: 150 local authorities; approximately 35 voluntary sector former external institutions, four London-based 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 also belong to this sector, yet are currently regarded - and counted - as colleges². This definition excludes charitable companies that have LSC funding through Train to Gain/E2E/apprenticeships etc, who may also deliver contracts on behalf of local authorities. These providers have been covered in the Work Based Learning part of this review.

¹ Yarroll I, (2009), *Exploring the Leadership and Governance Implications of Self-Regulation for Local Authority and Third Sector Providers of Adult Learning and Skills*, LSIS, at www.lsis.org.uk/Publications.aspx

² Definition supplied by HOLEX

Introduction

- 4 The Yarroll research project investigated the implications for local authority and third sector providers of adult learning of the proposal for the further education sector to become self-regulating. Evidence was obtained from a literature review, interviews and focus groups with senior staff from nineteen local authority and third sector organisations. The research found that:
- The leadership, governance and accountability structures within local authority and third sector organisations are far more diverse and complex than within other parts of the FE sector.
 - Learning and skills is only one element of these organisations' mission and activity, and is often integrated into the delivery of other government agendas.
 - Levels of knowledge about self-regulation are low among leaders and those responsible for governance in these sub-sectors.
 - While there is considerable support for the concept of self-improvement, the appropriateness of models evident in discourses to date, and indeed the need for self-regulation at this time, are being questioned.
- 5 The report concluded that as plans for self-regulation develop, more account needs to be taken of the complexity of governance arrangements within local authorities and third sector organisations, and in particular the question of proportionality. Any support programme for leaders and managers in local authorities and the third sector, for the transition to self-regulation, needs to reflect both this complexity and specific requirements arising from changing policy. Furthermore, the project findings suggest that distinctions between the interrelated aspects of regulation and of self-improvement that lie within the concept of self-regulation (while particularly significant for local authorities because of their democratic accountability), should inform the further development of models of self-regulation for the sector as a whole. The project also identified other issues arising from the possible transition to self-regulation for those responsible for governance and leadership, and made recommendations as to what is needed to ensure a well-supported transition - some of these are repeated below.
- 6 Since the completion of the Yarroll research, the government has issued the White Paper 'The Learning Revolution'³. This makes specific reference to "fit for purpose accountability" (para 4.10), and the need for accountability arrangements for public funds used for informal adult learning provision to be both proportionate and aligned to wider policy outcomes. The White Paper signals changes in the role of local authorities in achieving these. In particular, there is reference to the wish of Government not "to create new bureaucracy or add to the burden of inspection and regulation".

³ Department for Innovation, Universities and Skills, (2009), *The Learning Revolution* The Stationery Office, Norwich at www.dius.gov.uk

Local Authorities: Structures and Governance

- 7 In parts of England (largely the 'shire' counties), responsibility for services is divided between district and county councils: referred to as 'two-tier authorities'. In all other parts of England and Wales, a single-tier, all purpose council is responsible for all local authority services and functions. These may be unitary councils, metropolitan district councils (in larger urban areas) or London boroughs. The City of London Corporation has its own individual status. In April 2009 nine new unitary authorities were established. These new authorities replace the existing two-tier county and city, borough and district councils with single tier authorities. The rationale for the creation of more unitary authorities is a reduction in bureaucracy and bringing management of services closer to communities.
- 8 Local authority governance structures were determined by the Local Government Act 2000, which contained provisions for new political management structures for local authorities in England and Wales. These provisions⁴ included the options of:
- A directly elected mayor, plus two or more councillors appointed by the leader of the council - a mayor and cabinet executive.
 - An executive leader elected by the full council, plus two or more councillors appointed by the leader of the council - a leader and cabinet executive.
 - A directly elected mayor, with an officer of the authority appointed by the council as a council manager - a mayor and council manager executive.
- 9 The 2000 Act required local authorities to establish overview and scrutiny committees which were charged with holding the executive and officers accountable. In addition, the Act gave power to overview and scrutinise committees to make reports and recommendations to the executive and council on policy development⁵. The 2006 Communities and Local Government White Paper⁶ revisited the models proposed in the 2000 Act and outlined proposals to legislate so that in future there will be three models of executive arrangements:
- A directly elected mayor with a four-year term.
 - A directly elected executive with a four-year term.
 - An indirectly elected leader with a four-year term.
- 10 Only 12 local authorities have introduced an elected mayor. Of the councils, 80 per cent have opted for the leader and cabinet model in which the executive consists of leader appointed by the council, with up to nine other members appointed by the council or by the leader. The remaining local authorities have a reformed committee system without any executive, i.e. a cabinet.

⁴ Local Government Act Part 2, (2000) http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000022_en_3#pt2-pb1-11g10 Accessed 28/11/08

⁵ Local Government Act Part 10, (2000)

⁶ Communities and Local Government Department, (2006) *Stronger and Prosperous Communities: the Local Government White Paper*. HMSO, Norwich. at www.communities.gov.uk

Delivery Models for Adult Learning

- 11 Adult learning services are diverse, both in the range of learning and skills programmes they deliver, and in the mechanisms they use for delivery. Many local authorities have a range of contracts funded by the LSC and these may include: adult community learning; Train to Gain; apprenticeships and other work-based training programmes; neighbourhood learning through the deprived communities fund; and European social fund projects. Furthermore, local authorities may have contracts with Learndirect and the Department for Work and Pensions for pre-employment programmes. Responsibility for delivering provision may reside with a local authority adult learning service or may be divided between different departments within the authority. For example, Train to Gain or Workstep programmes may be managed within economic development or human resources departments, whilst adult community learning programmes may be managed within the children and community services department.
- 12 Where adult learning services are delivered within one local authority directorate, usually one of the following models is used for service delivery:
- Direct delivery: all aspects of planning, delivery and quality assurance are managed by the local authority.
 - Subcontracted: planning and overall quality assurance are managed by the local authority but delivery of programmes is subcontracted to FE colleges, the voluntary community sector and other organisations.
 - A mixed model: planning and overall quality assurance are managed by the local authority with a combination of both direct delivery and subcontracted provision.
- 13 The majority of work-based learning and Train to Gain contracts are delivered directly by local authorities, rather than sub-contracted. The recent White Paper 'The Learning Revolution'⁷ signals a changing role for local authorities in relation to adult learning and may affect arrangements for securing and /or delivering provision.

Governance Arrangements for Adult Learning

- 14 There are a range of governance arrangements for adult learning that reflect both the nature of the local authorities' governance and that of the adult learning services. All models of governance seek to provide the functions of overseeing strategic direction of the service, monitoring the quality of provision and ensuring that efficient and effective use is made of resources. There are broadly five models of governance in adult learning services:

i) A Governing Body

- 15 A governing body exists with Instrument and Articles of Government, with delegated responsibilities and sub-committee structure. Typically sub-committees would include finance and resources, curriculum, quality and standards. Although largely a model adopted by adult education colleges, a number of other adult learning services have a governing body. Membership of the board of governors will include elected members,

⁷ Department for Innovation, Universities and Skills, (2009), *ibid*

often the cabinet member responsible for the portfolio including adult learning. Reports from the governing body will be submitted to a council's executive for scrutiny.

ii) A Management Group

- 16 An internal management group exists consisting of the head of adult learning services and senior management team, with sub-committees. The decision making process typically involves all significant policy changes and developments to be submitted for approval to the cabinet member with responsibility for adult learning and then, as appropriate, to a cabinet or full council. The development plans, self-assessment reports and Ofsted inspection reports will form the basis of performance monitoring by the cabinet member. In addition, a scrutiny function will be provided by a council's scrutiny overview committee comprised of elected members. Local authorities who deliver work-based training or Train to Gain may have a separate management structure, and a different cabinet member responsible for that provision.

iii) A Local Area Management Group

- 17 This is a variation on the second approach above, providing a management structure for specific geographical areas, either within a large county council, a city or metropolitan areas. Representation of these groups will reflect the area and usually include local elected members and learners as well as local authority staff. In two-tier authorities elected members from district as well as county councils may be represented on management groups. Varying degrees of autonomy and financial delegation will be given to these local groups, usually with a reporting mechanism to an overall service management group.

iv) An Adult Learning Sub-Committee

- 18 This model has largely been superseded by the other models of governance. However, the cabinet member responsible for adult learning may be supported by an advisory group of elected members and also there may be a structure of local area committees.

v) Social Enterprise

- 19 An emerging model of governance, as yet only developed by one local authority, is social enterprise. The governance options for a social enterprise are as a co-operative, charity or community enterprise.

vi) Commentary

- 20 As noted above, the majority of councils have a system of governance in which the executive consists of a leader elected by the council, with an executive of up to nine members appointed by the leader. Given the breadth of services delivered by councils, individual cabinet members will often hold a broad portfolio of service area responsibilities. For example, a cabinet member may have up to ten individual areas of responsibility within their portfolio. Ultimately responsibility for all provision lies with a council's cabinet.

- 21 A cabinet's responsibilities are much broader than those of an FE college's governing body and a significant difference between FE colleges and local authorities is that learning and skills provision is a small part of the overall services they provide. For local authorities, adult learning contracts may amount to less than 1 % of the overall budget. For this reason, the financial health performance indicator in the Framework for Excellence will not be used for local authority providers. This suggests that shared regulation may require a discrete accountable body for the governance of adult learning that fits within the overall regulatory and performance framework of the council. The introduction in 2007 by Ofsted of multi-remit inspections, where all LSC funded contracts (except Workstep) are inspected as a whole in a single inspection, has been a catalyst for change in some local authorities, with more unified and strategic leadership and management structures being created⁸.
- 22 A key aspect of all models of governance of adult learning services is the involvement of and scrutiny by elected members. This provides a degree of accountability, through the electoral process to local citizens, which distinguishes it from both the FE colleges and third sector governance models. It is not clear how this function of governance will be accommodated within a shared regulation approach. Adult learning services' priorities, aims and objectives link closely to those of their local authorities. Furthermore, some local authorities provide funding in addition to that allocated by the LSC. As such there are potential policy tensions between the priorities and targets of the skills funding agenda and those of a council. Local area agreements perhaps provide a mechanism for a more joined up approach, linking the various policy drivers to the needs of the local area. Logically, assessment of the effectiveness of these services would be provided through the Comprehensive Area Assessment, but it raises again the question of the relationship of shared regulation in the FE sector to a more area-based assessment.

The Third Sector: Structures and Governance

- 23 The Third Sector includes voluntary and community organisations, charities, social enterprises, co-operatives and mutual societies. Current government policy encourages the third sector to be involved in "transforming public services"⁹. Its organisational structure and legal status is diverse, ranging from small, legally unincorporated bodies such as community associations to larger, legally incorporated bodies formed as community interest companies. Governance arrangements vary and the range is shown in the table below.

⁸ *Watters, K. (2008). Leading Local Authorities, as Providers of Adult and Community Learning and Work-Based Learning Through Multi-remit Inspection. Centre for Excellence in Leadership. London*

⁹ *Cabinet Office, (2007), The Future Role of the Third Sector in Social and Economic Regeneration: Final Report. HMSO, Norwich at www.cabinetoffice.gov.uk*

Table 1: Third Sector Organisations - Type, Legal Structure and Governance

Type of organisation	Incorporated	Unincorporated	Eligible for charity status	Governance	Examples
Association		Yes	Yes	Governing body, often known as management committee. Two tier governance: governing body accountable to wider membership.	Community association
Trust		Yes	Yes	Trustees. Single tier of governance with no members other than trustees.	Grant awarding charitable trust
Company limited by guarantee	Yes		Yes	Board of directors. Two tier governance with directors accountable to members.	Many charities and very common for VCS and social enterprises.
Industrial and provident society	Yes		Yes	Management committee. Two tier governance, with management committee accountable to wider membership.	Housing associations; cooperatives (owned and controlled by members)
Community interest companies limited by guarantee	Yes		No		Social enterprises (usually owned by their members)

- 24 Companies limited by guarantee are the most common form of legal status for third sector organisations, and charitable status may be sought by organisations that fulfil the charitable purposes requirement of the 2006 Charities Act. The most usual structure is a board of directors or trustees who are accountable to the wider membership. A further distinctive feature of many third sector organisations is the accountability of the board of directors to the wider membership of the organisation from whom they may be elected.
- 25 A distinctive aspect of delivery of learning and skills by third sector organisations is that the majority have a wider remit and purpose than just the delivery of learning and skills, and their legal status and governance arrangements reflect this. Consequently their quality assurance, MIS and reporting arrangements also reflect this broader remit. For example, a single organisation may be receiving funding from the Department for Health, Department for Work and Pensions, and DEFRA, as well as LSC funding. Therefore the learning and skills provision sits within a complex remit. Programme delivery typically uses a number of approaches:
- Prime contractor and direct provider of learning and skills programmes.
 - Prime contractor and lead agency for a consortium of other voluntary community sector organisations delivering learning and skills programmes.
 - Sub-contractor of other learning and skills providers, such as FE colleges or local authorities delivering part of a learning and skills contract.
 - Sub-contractor as part of a voluntary community sector consortium delivering part of a learning and skills contract.

- 26 The development of capacity for governance and quality assurance within the sector has been the focus of the Third Sector Governance Hub established by the Home Office in 2005. One outcome of this was the introduction of a code of governance for the voluntary and community sector that sought to address and clarify the main principles of governance and accountability for boards of trustees of voluntary and community organisations¹⁰ (Governance Hub, 2005: 7).

However, the code is voluntary, and a survey in 2008 found that whilst it was welcomed by the sector and 42 per cent of organisations were using it, 21 per cent were not aware of it¹¹.

- 27 A variety of quality assurance frameworks are used within the voluntary and community sector. The Practical Quality Assurance System for Small Organisations (PQASSO) and the EFQM Excellence Model are the most common quality assurance systems adopted¹². Those organisations delivering learning and skills, either as prime contractors or sub-contractors, also operate quality assurance systems that meet the requirements of inspection and funding bodies.

Most of these quality assurance systems include governance as an element of the overall leadership and management. However, they may not specifically focus on performance management or governance, and may not have a self-assessment model, unlike those generally adopted in the learning and skills sector. Thus third sector organisations who deliver learning and skills may be operating different quality assurance systems for different aspects of their work.

- 28 Third sector organisations often are involved in the delivery of other public service contracts, as well as learning and skills, creating challenges for leadership and management. The different performance standards, quality assurance and contractual arrangements of different funding bodies together with a broad constituent membership, may cause tensions, with Parker¹³ noting: “The functions of governance, and more specifically of the board, are multiple, complex and often shared with paid staff and volunteers. Organisational effectiveness is equally contested for voluntary community organisations, as they have multiple stakeholders with differing perceptions of effective performance”.

- 29 A common governance issue across the third sector is attracting trustees with the appropriate skills and experience on to the boards of either social enterprises or voluntary and community organisations¹⁴. Shared regulation may add to the responsibilities of the directors or trustees, and require additional support and training.

¹⁰ Governance Hub, (2005). *Good Governance: Code for the Voluntary and Community Sector*, NCVO, London. www.ncvo-vol.org.uk/publications/publication.asp?id=3837

¹¹ Madden M, Saxton, J Vitali, C, (2008), *Review and Development of the Code of Good Governance*. NCVO, London. www.ncvo-vol.org.uk

¹² Parker M. (2006). *Measuring Governance Performance*. BASSAC, London. www.ncvo-vol.org.uk/uploadedFiles/NCVO/Publications/Publications_Catalogue/Trustee_and_Governance/Measuring_Governance_Performance.pdf

¹³ Parker M, *op cit*

¹⁴ Governance Hub, (2007). *For Love and Money: Governance and Social Enterprise*. NCVO, London. www.ncvo-vol.org.uk/publications/publication.asp?id=7986

The complexities of shared regulation may also add to the difficulty of attracting directors or trustees with the appropriate experience and willingness. Given the wider remit of many third sector organisations, the time and costs of implementing shared regulation may be disproportionately high in relation to the size of their contracts. These issues are discussed in more detail in Section 4 of the main report.

The Findings of the Yarroll Study

- 30 As noted above, this recent study for LSIS reviewed the challenges of self-regulation, and its main findings are summarised here. Although the rest of our report uses the idea of shared regulation, at the time of Yarroll's work the term 'self-regulation' was current, and has therefore been used in this section. The summary is presented in several sections: the regulatory context; the challenges for the sector; transition; and recommendations.

The Regulatory Context

- 31 Yarroll's research identified a number of important context factors in the local authority and third sector regulatory environment that will influence how self-regulation is perceived, and they are summarised below.

Levels of Knowledge of Self-Regulation

- 32 Yarroll found generally low level of knowledge about self-regulation from both local authority adult learning representatives and third sector providers of learning and skills, despite being at middle or senior management levels within their organisations. The majority of these respondents felt their current level of knowledge reflected the priority of self-regulation within the context of other more pressing agendas. A commonly expressed view was that when more concrete proposals for self-regulation were articulated then more time would be spent understanding and disseminating information within their organisations. As this was not yet the case, service managers were not yet raising awareness amongst senior officers, elected members or trustees. Consequently there was a general view that self-regulation was not currently high on councils' or third sector organisations' agendas.

A Diverse, not Homogeneous, Sector

- 33 All respondents questioned, in various ways, whether there is a homogeneous 'further education sector' with a shared history, and significant differences between FE colleges and local authority/third sector providers were cited to illustrate this view. These included disparities in funding methodologies, policy priorities and parameters, access to capital funding, investment in infrastructure such as management information systems, and quality assurance capacity. In particular, the third sector respondents felt that there was an unequal history in relation to capacity and investment across the FE sector.
- 34 These disparities were further illustrated by the comparative lack of representation within the Single Voice¹⁵ of local authorities and the absence of the third sector on the

¹⁵ For details of the Single Voice see www.feselfregulation.org.uk/infoabout_singlevoice.html

boards of Single Voice and LSIS. By contrast there are currently three different bodies representing FE colleges. As one respondent (cited by Yarroll) noted "The mind set is that the sector is FE colleges: therefore colleges see it as their agenda and will drive it forward." It was from such perspectives that the proposals for shared regulation were viewed. All respondents felt that the significant differences in responsibilities and accountability that exist between FE colleges, local authority providers and third sector providers of learning and skills had not yet fully been taken into account.

- 35 Some local authority respondents went further and questioned whether an FE 'sector' actually exists at present, and even if it did, whether it could continue to exist when the machinery of government changes come into operation in 2010. The argument being that after 2010, 14 to 19 provision will be commissioned by local authorities and adult learning provision commissioned by the Skills Funding Agency. Colleges, local authorities, work-based learning providers and the third sector will become solely providers of types of learning and not a discrete 'FE sector'. It follows - it is argued - that if the FE sector will not exist, then a self-regulatory framework for the FE Sector could not exist. As one respondent put it: "It is the wrong model, at the wrong time and not reflecting either the sector or operating within the wider context of the Machinery of Government reforms".

Multiplicity of Responsibilities

- 36 For local authorities three core issues were articulated by the majority of respondents to Yarroll. First, local authorities differ from other parts of the FE sector in that they have responsibilities for a wide range of statutory and other services; the provision of adult learning (which is not a statutory duty) accounts for only a small part of overall council provision. Second, accountability for the delivery of all services ultimately lies with democratically elected representatives. A system of scrutiny or policy overview committees provides challenge and scrutiny of decisions made by an executive. Third, adult learning priorities are likely to be integrated within wider council priorities. The most commonly cited examples were with children's services, particularly working with families, economic regeneration, health and libraries.
- 37 Third sector respondents stressed the diversity of their sector and the consequent range of governance models. They felt that their delivery of learning and skills was responding to the government's policy of encouraging the voluntary sector to engage with the hardest to reach: those that the public and private providers had been unable to engage. If this was the perceived remit of third sector organisations, then performance standards and regulatory frameworks should reflect this mission, not that of FE colleges. Some voluntary organisations had a broad remit, of which learning and skills were just one element, and some respondents highlighted the complexity of partnerships involved in integrated service delivery (for example housing, health and learning), which creates further complexity in governance arrangements.

Conflicting Accountabilities

- 38 Because of the diversity of service provision, local authorities are responsible for a wide range of statutory services and thus have multiple accountabilities. All the councils from which respondents were drawn have a cabinet structure, where a council leader

and the cabinet take responsibility for the delivery of services. Typically a cabinet member would have responsibility for adult learning as part of a portfolio of responsibilities. The democratic structure of accountability in local authorities includes internal scrutiny or policy review committees, external audit and inspection of all aspects of council performance, including leadership governance through the Comprehensive Performance Assessment (CPA) and the incoming arrangements for Comprehensive Area Assessment. A number of respondents reported that councils believed their governance and accountability procedures were already subject to inspection and validation through the CPA, complemented by external inspections of services by agencies such as Ofsted. This point was particularly strongly expressed by councils graded as high performing and receiving a four-star 'excellent' rating in CPA inspections.

- 39 Within the third sector, accountability lies with boards of directors or trustees. For some, learning and skills are only one of a number of responsibilities that are delivered by the organisation. One respondent indicated that voluntary organisations are accustomed to being accredited and inspected against external standards and quality assurance systems, for example, in relation to justice or health services, and therefore regulatory regimes per se were not problematic. The issue was the burden they impose relative to the size of the contracts being delivered. Some respondents delivered learning and skills through a consortium where the consortium was the single accountable body, with up to 20 individual organisations engaged in delivery. This was felt to be a clearer model, in terms of accountability.

Self-Regulation and Self-Improvement

- 40 A consistent theme emerging from both the local authority and third sector respondents to the Yarroll study was the need for a balance between external regulation and internal self-improvement. There was considerable support for self-improvement, and this was regarded as being separate from the regulatory processes which were felt to be both necessary and distinct from self-improvement. There are similarities between these views and some of the emerging propositions from the 2008-09 LSIS seminars on self-regulation. This distinction between the two elements is helpful as it clarifies the range of activity that is primarily external and accountability focused, and that which is self-motivated and focuses on improvement that could be sector led. It also ensures that self-improvement is not unnecessarily constrained by regulatory standards.
- 41 A view strongly articulated by some local authority respondents was that the regulation of any publicly funded bodies cannot be left to the sector receiving the funding, and therefore the regulatory framework needs to be determined by the government or its commissioners of services, not by the providers. All respondents believed that there was a role for an external body, such as Ofsted, to provide independent judgements on the standards and performance of publicly funded services.
- 42 Some local authority respondents questioned how equivalent consistency of applied standards, and impartiality, could be achieved in self-regulation arrangements and processes. However, peer review was regarded as an effective process for service

improvement, particularly through the sharing of good practice, validation of self-assessment and as a stimulus for further development. All of the local authority respondents indicated that peer review should be a part of the self-regulatory processes. None of the third sector respondents had been involved in peer review groups.

The Challenges for the Sector

43 Three particular challenges were identified in the Yarroll study: capability with existing governance processes; the legitimacy of the new regulatory bodies; and the capacity of providers to implement any new requirements. So far as the first of these is concerned, the majority of local authority respondents believed that it would be very difficult for cabinet/ scrutiny committees to take on the additional accountable body role required for self-regulation.

44 In particular, the creation of separate governing bodies or management committees to oversee adult learning services, was felt to be contrary to the ethos of many local authorities who want to maintain a common system of governance and accountability across all council services. Although some separate arrangements currently exist (for example, children's trusts are examples of separate accountable bodies based on a statutory requirement), it was felt councils would be unlikely to establish similar bodies on a voluntary basis. Given that adult learning is not a statutory service, a common view was that councils were unlikely to see self-regulation as a priority and would view it as an additional bureaucratic burden.

45 For third sector organisations with multiple remits (including learning and skills), the implications of self-regulation were felt by respondents to be substantial. In respect of governance, the primary focus for boards of trustees was on the overall performance and financial viability of the whole organisation, not just on one element of the organisation's work.

Respondents questioned whether boards of trustees had either the capacity or the particular skills to take on the requirements of self-regulation, as the majority of trustees' skills related to the business requirements of the organisation's aims and objectives rather than fulfilling regulatory requirements on behalf of government.

46 Such views raised issues about the legitimacy of any new regulatory bodies, and the main concerns expressed by third sector respondents were that in any system of self-regulation the workload required should be proportionate to the size and maturity of the organisation. Greater ownership is perceived to be required across the whole FE sector for any changes in the regulatory system, with self-regulation being seen as a predominantly FE college agenda, driven by an institutional model that assumes a standard model for governance arrangements. Again the nature of the Single Voice was reported as a factor here, and although a body "owned and managed by the sector" may have attractions for colleges, some third sector respondents thought that the lack of independent members was a weakness, and contrary to the trend in other areas of the public sector where a high proportion of the members of regulatory bodies are independent of the sector they are regulating.

- 47 The final major challenge was a lack of organisational capacity to deal with the additional demands that self-regulation would bring, and this was mentioned by all third sector respondents and by some in local authorities. 'Capacity' in this context is defined as the structures, systems, people and skills within organisations. Some respondents from third sector organisations highlighted issues of capacity in terms of the extra demands it would place upon a board of trustees and the size of the management team (although not strictly a governance issue). Also the ability of individual trustees to deal with a self-regulatory process was questioned, given that they were appointed for a different purpose. One response to this could be the establishment of more proactive and professional processes for recruitment of appropriately skilled and experienced trustees.
- 48 The majority of respondents highlighted the disparities within the FE sector in relation to funding arrangements, access to capital funding, management information system infrastructure and quality assurance. It was felt that FE colleges in particular had benefited from many years of investment in these areas and therefore had a greater capacity to meet the requirements of self-regulation than did local authority and the third sector providers of learning and skills.

Transition Issues

- 49 Notwithstanding the above concerns about the concept of self-regulation, a number of specific transition issues were identified in the Yarroll study. The majority of respondents felt that their organisations were used to working in an environment of constant change and therefore a shift to self-regulation, although requiring the development of new approaches and responsibilities, would be seen as an extension of the work already undertaken in quality improvement, self-assessment and participation in peer review. The focus of a support programme to assist the transition should therefore build on current knowledge and experience of self-assessment and peer review.
- 50 Professional development for third sector trustees was identified as a key requirement. In addition to developing specific knowledge and skills in relation to the model of self-regulation, it was felt that there would be a broader development need to provide context for it. This should include strategic development around the role of the organisation within the FE sector, and an understanding of how the sector is regulated as well as the detail of the new regulatory regimes.
- 51 Local authority respondents felt that elected members, particularly cabinet members, would require a programme of support that enabled an understanding of the wider context for self-regulation, and its relationship to other regulatory processes within a council, as well as specific training in relation to the delivery of the self-regulatory processes. It was emphasised that such a programme would need to be on-going as the nature of democratic government means that elected members and the composition of cabinet and scrutiny committees is subject to change. This suggests that a support programme for elected members who would have responsibility for aspects of self-regulation should be linked into the induction arrangements for new elected members/cabinet members. As there may be changes in elected members' portfolio and oversight responsibilities, there may also be a need for training and

support for members who acquire a responsibility for publicly funded learning and skills provision, once in office.

- 52 Of course, some of these concerns might be addressed with the adoption of the idea shared regulation (as has been articulated since the Yarroll research). The notion of sharing clearly implies that the concerns of local authority and third sector providers need to be addressed. In particular, Yarroll noted that the idea of 'co-regulation' is a concept that provides a helpful approach to distinguishing between internal and external regulation, and suggests a joint and negotiated arrangement with responsibilities shared between the regulator and the regulated. The notion of co-regulation is implicit in the questioning made by many respondents of whether self-regulation is the right direction of travel, citing the need for independent external regulation to inspect and validate performance, and for standards also to remain in place.

Yarroll's Recommendations

- 53 Yarroll's study made a number of recommendations in the context of self-regulation, many of which are directly relevant to this review. They were:
- Representation from local authorities and the third sector organisations on the Single Voice and LSIS Council and Board should be strengthened.
 - The understanding of bodies involved in the development of self-regulation, concerning the diversity and complexity of leadership and governance arrangements within local authorities and third sector organisations, needs to be further developed.
 - A third sector body that can articulate the collective views of third sector learning and skills providers on self-regulation could make a valuable contribution to developments. The newly formed Third Sector National Learning Alliance may have the potential to be such a body.
 - Further development of models of self-regulation need to build on the distinction made between self-improvement and regulation. Self-improvement and development activity should continue to be sector-led.
 - Further exploration of the potential integration of CAA inspection and auditing processes, and Ofsted inspections of learning and skills provision, should be undertaken with a view to clarifying the role of such activities within an accurate and robust set of arrangements for self-regulation.
 - It will be important to ensure that changes to government departmental responsibilities arising from the implementation of machinery of government changes result in the development of coherent quality assurance and quality improvement processes within and across local authorities.
 - A comprehensive performance assessment framework that supports self-regulation should be developed that is appropriate for application across a diverse FE sector and is differentiated to reflect the varying missions and purposes of the wide range of provider organisations involved in governance and delivery. This will need to take account of forthcoming changes resulting in the transfer of responsibility for 16-18 provision from the LSC to local authorities.

- Account must be taken as planning for self-regulation moves forward of the recent White Paper 'The Learning Revolution'¹⁶, specifically paragraph 4.10 which relates to accountability for public funding.
- Further and wide consultation should be undertaken with local authorities and third sector organisations to inform the development of models of SR that properly reflect the diversity of the FE sector, and to identify the elements of a support programme for those in leadership and governance roles during the transition period as such models are implemented.
- In addition, we feel that further research is needed to look at the dynamics between governance of ACL providing institutions and strategic leadership of place and areas, particularly with regard to decision making and accountability frameworks.

Further Research

- 54 Overall, the complexity of provision in the adult and community learning sector is such that further research may be needed to look at the practical implications of shared governance and strategic leadership in ACL providers, particularly when set in the context of developing interest on localism, local partnerships and 'place-shaping'. The starting point for considering such possible research might be dissemination events on this study held for ACL providers.

Recommendation:

Further research may be needed to look at the practical implications of shared governance and strategic leadership in ACL providers, particular when set in the context of developing interest in localism, local partnerships and 'place-shaping'. The starting point for considering such possible research might be dissemination events on this study held for ACL providers.

Part Two: Case Studies¹⁷

- 55 The following four case studies showcase how different authorities are addressing the issues of public accountability. These come from a strategic leadership perspective and address some of the Government's implementation of the machinery of Government changes.

Case Study 1: West Sussex County Council

- 56 West Sussex County Council is in the process of externalising its maintained county-wide Adult and Community Learning Service and establishing a social enterprise to safeguard adult learning at a time of increasing uncertainty about public funding. The new enterprise is being set up as a company limited by guarantee, with charitable status. Incorporation of Adult Learning – West Sussex is currently taking place; a submission will be made to the Charities Commission shortly, with the expectation

¹⁶ DIUS, (2009) *ibid*

¹⁷ Case study acknowledgements: Bob Powell, Lesley Harry, Allan Chesney and Ian Forward for supplying the case studies.

that full transfer will take place from April 2010, to coincide with the national machinery of government changes for the FE sector. Preparatory work, including piloting in two areas of the county, has taken place over the past 18 months.

- 57 The rationale for change is, in the words of the current Head of Service, "future-proofing" to enable the service to work in flexible and innovative ways in a context where there are no medium-term guarantees about public funding support. The aim is to generate new and different forms of income. Greater partnership working (with further and higher education organisations, with business and with the voluntary sector, including other social enterprises) will maximise the use of available resources. West Sussex ACL Service current annual income is of the order of £5m, primarily from the LSC. A revised service infrastructure will consolidate administrative and back-room services currently secured via the County Council and provide a basis for supporting activity in partner organisations. It is envisaged that decision making will be streamlined, resulting in greater and speedier service responsiveness and flexibility. Operational controls will be internalised, and no longer subject to County Council corporate processes. Trading surpluses can, under the new model, be retained within the service for further investment. New arrangements will also remove questions and arguments about service direction from the political arena.
- 58 As a company with charitable status, the regulatory frameworks of Companies House and the Charity Commission will apply. The liability of members will be limited (under the memorandum of association of the company) to £1. Under company law the directors of the company will also benefit from limited liability, provided that they do not act negligently or fraudulently, do not permit the company to continue trading when it is insolvent or do not otherwise breach a statutory obligation imposed on directors. To begin with, the sole member of the company will be West Sussex County Council. The directors of the company will be free to manage the business as they see fit: they will play a key role in shaping the overall future direction of the company and will appoint and provide challenge to senior staff. Directors will represent key communities of interest around adult learning in the county and will also be trustees of the charity.
- 59 As a charitable body, the organisation will embody a strong commitment to the involvement of service users in all aspects of decision-making. This will build on the current service's existing practices for consultation and feedback from learners. Adult Learning West Sussex will develop a range of tools to ensure that people using services can be involved in planning and decision making, including participation at Board level. The new service will be expected to sustain and, where feasible, enhance existing links with users and non-users, and continue to take a proactive position on external communications. Recent formal public consultation on the proposed changes have raised the service profile and its contact base; traditional meetings have been augmented by roadshows, an e-panel, radio interviews, wide press coverage and the establishment of community and student champions to ensure the service receive clear messages on its future direction.
- 60 Though not technically needing to report to this wide, public constituency other than through compliance with charity law, leaders of the new enterprise will de facto seek to respond in ways, which meet expressed views and patterns of demand. The new

arrangements are being designed in full mindfulness of the Charity Commission's advice and rulings on the need to demonstrate public benefit in a proactive manner. Social enterprises also have to pass legal tests as to how they bring public benefit. Although this organisation is not itself being established as a community interest company (the increasingly common legal form for new social enterprises), the regulation of CICs provides a further concrete framework for how public benefit and hence wider public accountability are measured in this context.

- 61 The timetable for future development of the new arrangements is:
- West Sussex County Council will take a formal decision about the next phase of transfer in September 2009;
 - The Company Board will hold its inaugural meeting in September/October, when it will consider an outline business plan; and
 - A final decision about full externalisation will be taken in March 2010.

Case Study 2: Kent County Council

- 62 The Head of Adult Learning, and his Director, report regularly to the portfolio holder for communities who is a cabinet member. Throughout his five year term of office the cabinet member has developed a well informed understanding of adult learning and the Kent service. His understanding makes a significant difference to the support given to the officers and in the decisions made. There is also scrutiny through the Policy Overview Committee, which has a broader representation of the wider community (and performs a similar role to the previous Scrutiny Panel). This committee meeting is also on KENTTV and has a challenging role for the officers. They will ask questions such as 'Why can the public only learn Chinese in Gravesend?'
- 63 Kent does not have a separate governing body for its adult education. It does have several KCC buildings that are exclusively for adult education at present, which previously had housed committees that had oversight of the centres, mostly focussing on the building and internal operations, but over time, with their limited decision making powers, they have been dissolved. The Adult Education Service has an interactive website, with all the information about the provision available, including work based learning, lifelong learning and services available for the not for profit sector. There is a direct email link to the Head of the Service. He receives about 25 contacts per month directly from the public, ranging from issues about accommodation, suggestions for new courses and more strategic questions about the range of courses on offer in a particular location.
- 64 Their system of governance/strategic leadership has developed to include the broadcasting of live committee and cabinet meetings on line to the public, who can watch them real time or later through a link via the Kent website (<http://www.kenttv.com/>) or Kent TV.

Before the Internet service was launched, a publicity campaign informed the public of its purpose and how they could use it to interact with the decisions made by the council. Tax payers' money was used to set up and maintain Kent TV - which is

operated by an independent media company. Editorial control resides with Ten Alps. The demonstration of public benefit and engagement is critical to justify this expense. The authority has commissioned the service for a further year, following very positive feedback and evaluation of value to the democratic process.

- 65 For those citizens who don't have access to the internet at home, access is prompted through the public libraries. Of the 100 libraries, 68 have public access computers and support to use them provided by volunteer Webwizards. During live broadcasts, or after the meetings, the public are able to make comments and ask questions. These are actioned by the appropriate elected member as soon as possible after the meeting. The Leader of KCC regularly posts a blog on issues of the day to encourage feedback and dialogue with the public.
- 66 The authority is in the process of reviewing its delivery of education services to adults. It currently believes that the delivery through the authority is popular and publicly accountable. Kent was in the first tranche of local authorities to welcome and support the 'learning revolution' concept and is keen to establish the joining up of policy and funding for learning and skills in the region. The Head of Adult Learning and Communities Directors are currently preparing an options paper for the cabinet. There is the potential to make radical changes in the way the service is delivered, incorporating Libraries as access points for information, advice and enrolment. The authority is exploring changes carefully to ensure that public interest is paramount and public funding is utilised to maximum advantage.

Case Study 3: Derbyshire County Council

- 67 The Derbyshire Adult Community Education Service (DACES) is located in the Directorate of Children and Younger Adults (CAYA), and the Head of Service (HoS) reports to the Deputy Director of CAYA. HoS also has direct access to the relevant cabinet member and provides policy briefings and annual reports on service performance.
- 68 Across the Council there is a robust and accountable process for strategic decision making which is open to public scrutiny. For DACES, major decisions like the annual budget, Service priorities, establishment, structure and conditions of service require cabinet approval. This level of internal scrutiny of strategic decisions can speed up decision making. In October 2008 the HOS anticipated that the deepening recession would have a negative impact upon Spring enrolments. Cabinet approval was secured by November, through the normal committee paper process, to cut the Spring fees by 50 per cent. Cabinet approval was prompt because of the robustness of the background work undertaken before proposals were presented to cabinet and due to the local knowledge elected members had of the impact of the recession upon their local constituents.
- 69 Decisions made by the cabinet are subject to scrutiny by the four improvement and scrutiny panels made up of non-executive members of the Council, appointed on a proportional basis to reflect the political balance of the Council at the time. Their role is to hold the cabinet to account, influence the development of new policy, conduct

improvement and scrutiny reviews of Council services, make recommendations for service improvement and monitor the performance of the Council.

- 70 Meetings are open to the public to listen to the debate and discussion and they can suggest topics of inquiry and can contribute to reviews if they have knowledge to share. Panel outcomes are available to the public and Council employees. Chief Officers attend, and past panels have received reports on DACES relating to outcomes of inspection, annual performance, and the best value review of basic skills.
- 71 Officers and elected members make a clear distinction between operational and strategic decisions, and once policy is set the Head of Service is trusted to implement it. This trust exists because cabinet members are confident that officers are keeping them informed of major changes in funding, inspection, industrial relations, and the law, and highlighting the associated risks and opportunities. In return elected members provide a valuable insight into the likely public response to policy proposals and have proved to be a strong advocate for the value of adult learning at both local and national levels. This is because public feedback through the household survey, ward surgeries, and learner evaluations tell them that the direct delivery of adult learning is popular, publicly accountable and perceived to provide value for money.
- 72 Learners have a voice through local elected members. The local MP used the House of Commons Education Select Committee in 2006 to ask the LSC to justify cuts to the Derbyshire Adult Education Service budget as a result of public pressure from Derbyshire learners, the 14 Older Peoples Forums and local elected members. This led to the LSC being held to account to justify their decision to reduce the service budget by 16 per cent.
- 73 The Council is both a provider and a securer of adult education and training and needs to be transparent about ensuring value for money. DACES has had to secure 'contracts' in competition with other providers and demonstrate capacity to deliver both efficiency savings, as well as high quality, before being given preferred provider status. When a conflict of interest arises, such as when the Service took over running the Early Years and Training Team which administers the government funding for the private and voluntary childcare workforce, it was decided to set up an advisory group external to the Service to oversee contracting decisions. Similar principles will apply to the contracting of Entry to Employment from April 2010.
- 74 The Council and DACES are proactive in taking a place shaping role and work hard to nurture and develop formal and informal partnerships at all levels in line with the aspirations outlined in the Local Area Agreement. An example is the lead that DACES has played in securing funding for the development of an eco centre which will help the Council and local low carbon communities respond to climate change. Public consultation opportunities led to improvements to the original plans and the partnership with local employers and the National Stone Centre helped secure external funding and donations in kind.

Case Study 4: Northampton County Council

75 Northamptonshire Adult Learning service has articulated a distinct role for adult learning in the county that sits alongside and is separate from the government's drive for skills. It sits within a vision for well being and social community development, which may lead to skills and an increase in economic activity, but is not the intended purpose for delivering adult learning. The authority see it more as a part of the community development, social networking, health and well being of their citizens. The Head of the Service describes it as having a role in 'replacing the extended family in a community', as families increasingly live apart and people become isolated from family support.

76 This reflects the three core purposes of the Council: to help people help themselves; to be a safety net for the vulnerable; and to be a trusted advocate. In the case of adult learning these core purposes are encapsulated in the Service's mission: "Through learning to empower people in Northamptonshire to live more independent lives as active citizens helping to deliver safer communities and promoting a dynamic and prosperous economy".

77 The Service believes that:

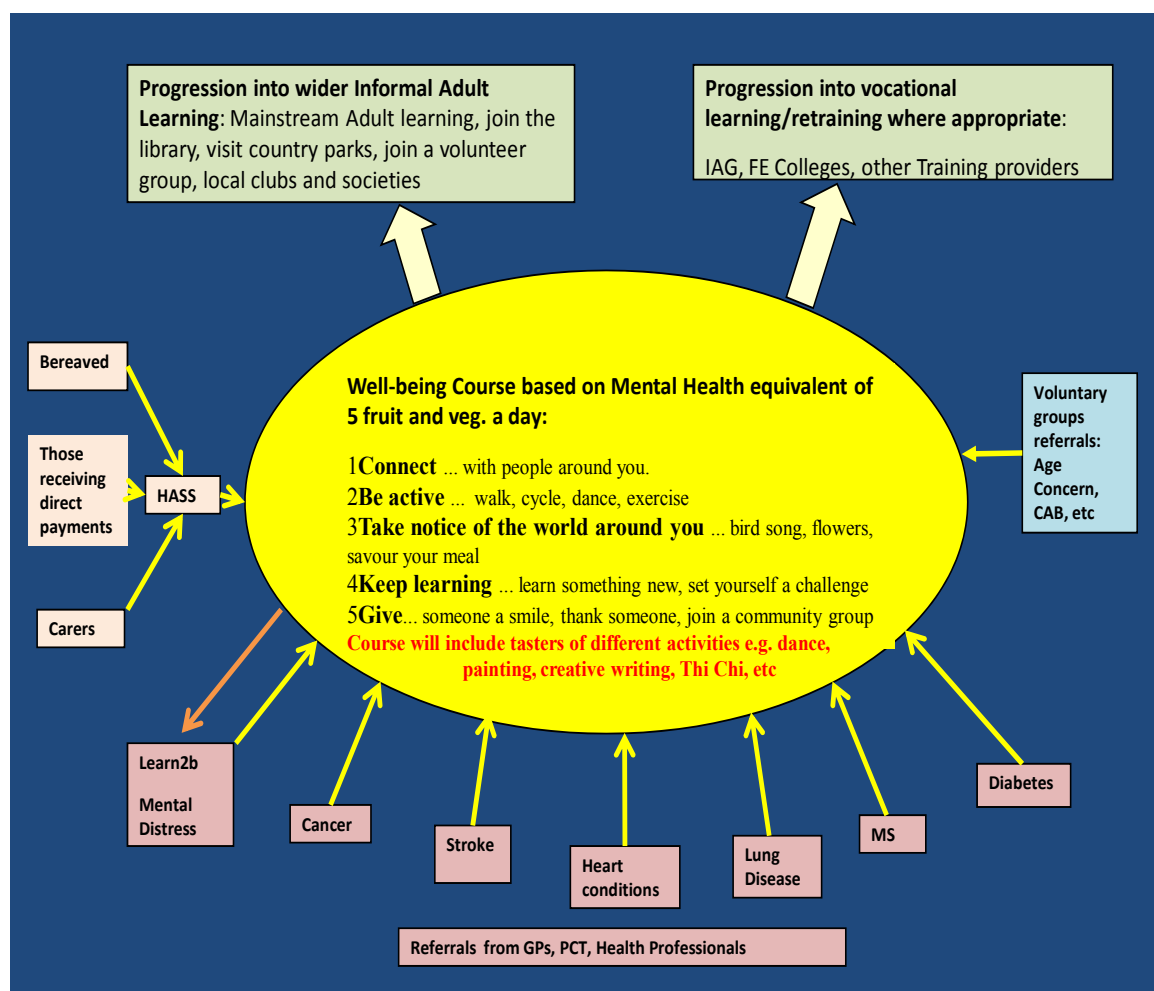
- The role of subsidised informal adult learning is to encourage people to take up new interests and to empower them with the skills required to pursue these interests on their own or through clubs or societies. It is not the role of the Adult Learning Service to provide classes (clubs) through which individuals pursue their interests for years.
- The role of the Adult Learning Service is not to compete with private provision, but to complement it.
- People engage in adult learning either because they have a history of doing so, or they try it at a change point in their life – for example, their children have left home, they have retired, been bereaved, made redundant or their health has changed. It is the Service's role to reach out to individuals at such change points, then to provide them with the skills and confidence in their chosen subject to the point that they can go on learning or refining their skills by progressing into clubs or through self study. In this way the Service works in partnership with clubs and community groups and helps sustain a wider informal adult learning offer within the county.

78 In fulfilling its mission the Service has two goals:

- To enrich people's lives – through learning to seek to broaden learners' outlook on life be that by helping them understand and appreciate others, develop new interests, understand themselves or to connect with others.
- To empower people – through learning to seek to give learners the confidence and ability to: engage with others and to be included within society, be that in the neighbourhood that they live, a community of interest or with those of other communities; have an active voice and participate within their local area or interest group and the wider community; and to have the ability to choose how, where and when to engage with others and their interests.

- 79 The Service Head is also committed to maximising the positive impact adult learning has on the communities by delivering learning locally in community settings, using community facilities. It is all part of the community development agenda, working in partnership with community groups to complement their own activities, for example:
- Working with local clubs and societies to progress learners on to being active members of the group, helping sustain local groups.
 - Working with groups seeking to support individuals suffering from long term conditions to enhance their quality of life.
 - Working with community groups seeking to raise the confidence and opportunities for a community.
- 80 As such their aim is:
- To improve cohesion, tolerance and understanding within and between communities.
 - Establish or make known access routes for individuals within communities.
 - Create a community consciousness within individuals and between communities.
 - Help sustain community resources.
 - Encourage active participation and support within communities.
- 81 The Head of Service feels there is an urgent need to develop a performance measuring system that will capture the full impacts of informal adult learning. The current Ofsted criteria do not match the aspiration and intentions of this focus on adult learning. Such a system must address national concerns about value for money, whilst allowing local flexibility to focus delivery towards supporting LAAs.
- 82 An example demonstrates this policy in action. The Adult Learning Service has developed a partnership with the Northamptonshire Teaching Primary Care Trust (NTPCT) to deliver a number of activities, including: specialist non-medical interventions for specific illnesses, such as Learn2b provision for mental distress (this provides a broad range of adult learning classes to give beginners and intermediate level learners the skills and confidence to be able to pursue their interest on their own or through clubs and groups); and also to develop a wellbeing course, whose objectives are: to inform people of the importance of informal learning and associated activities to their mental and general well-being; and to inform people of the informal learning opportunities available to them and to let them try some activities to see which suit their lifestyle and interests. The model is shown in diagrammatic form below:

Diagram 1: Northamptonshire’s Well-Being Model for Adult Learning



83 Learners are referred to the course via statutory and voluntary organisations that interact with the public at key life changing events. For example, referral may be via their health professional as part of their recovery plan from a serious illness or via a voluntary agency through which they have sought support such as Citizen’s Advice or Age Concern. Progression from the well-being course on to mainstream adult learning classes or direct into clubs and groups will be encouraged as part of the course. For some individuals the life change they are going through may lead to a career change, thus for some progression may be through Information Advice and Guidance (IAG) counselling into vocational training.

84 If Northampton's wellbeing model for adult learning is work effectively, it requires a high level relationship between the council and statutory, private, voluntary and community groups, further education colleges and clubs to establish a coherent complementary offer for the public. Developing links with IAG providers is essential to enable learners engaged through the well-being course to progress to vocational learning where appropriate.

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