

**FE SELF-REGULATION: Response to Self regulation Implementation Group
Consultation Document April 2007 by Plumpton College**

Q1. Are all the key objectives of self-regulation covered?

A1. No. It seems to us there are other important objectives:

- We believe that any regulatory framework needs to have a clear statutory basis, where the limit to the regulator's powers are defined in law and their exercise is open to challenge in the courts.
- The regulatory framework must also recognise that FE Colleges are public sector corporations, with responsibilities and rights enshrined in statute. This is quite different from the private sector nature of other sectors where self-regulation is applied, eg law, banking and finance. It should be an objective of self-regulation that any new FE self-regulating entity should be publicly accountable, and possibly a public sector body in its own right. Without this we question whether a self-regulating entity will command the necessary degree of public confidence.
- There must be no muddle or overlap in responsibility for overseeing the delivery of improved performance. As the papers recognise we are moving towards a demand-led system, where LSC will increasingly play a commissioning role, and employers and learners will pay directly for an increasing proportion of post-19 training. All these parties will specify the quality of performance they expect, and they hold the purse-strings which will allow them to move their business elsewhere if they do not get it. LSC will also remain the body responsible for capital grants to colleges, with continuing responsibility for ensuring colleges deliver projects and the output of those projects. We wonder whether in practice LSC will really be able to surrender real control over performance to a self-regulating entity, and fear that colleges will simply acquire a second regulatory apparatus.
- Any FE regulatory framework must recognise that many colleges are no longer simply FE institutions. Increasing numbers are taking on an HE role, which is subject to separate regulatory arrangements. Colleges are also increasingly working in partnership with schools (especially at the 14-16 level) and with employers, voluntary bodies, and private sector providers; and in many cases they are not the lead partner as regards delivery. FE-specific regulation is likely to lead to problems of demarcation with these wider roles, and raises questions about the reach the self-regulating entity has beyond FE colleges themselves.
- Colleges need a sustained period of structural stability in which to implement the wide-ranging changes announced by Government over the last two years and to deliver the looked-for improvement in performance. In many ways this is the most important objective of all, and it is difficult to see how it can be achieved with the radical shift in regulatory functions proposed, particularly one which involves a 4 or 5 year transition period.

Overall, we rather doubt that self-regulation can be put in place in a form which is consistent with these wider objectives. There seems to us in any event better and simpler ways of achieving the objectives set out in the consultation document which

do not suffer from the drawbacks set out above. Rather than self-regulation, we believe what is needed is LESS regulation and BETTER regulation from FEWER external regulators. The role of intra-sector bodies should be limited to spreading best practice, assisting Governing Bodies within each college to meet their responsibilities for overseeing improvements in performance, and identifying ways in which the current regulatory burden can be progressively lightened. We discuss this alternative approach more fully below.

Q2. Subject to validation, do you agree with this “direction of travel”?

A2 No.

We share the view that support for colleges’ efforts to improve the quality of their performance would be better located in one or more sector bodies than in the QIA and their contractors. We do not agree that this requires a single sector body responsible for promoting quality improvement.

Our experience is in fact quite the reverse:

- (a) As a land-based college, we have found that LANDEX has proved a much more focussed and effective forum than AoC for identifying, reaching consensus on, and then propagating the spread of best practice. No doubt this reflects the closer community of interest of LANDEX members.
- (b) There are now quite wide differences of interest (and to some extent performance and reputation) within the wider FE sector. Foster, for example, highlighted the different concerns of Sixth Form Colleges and General FE Colleges. And the emergence of the 157 Group as a lobbying forum separate from AOC risks accentuating the differences between larger and smaller colleges.
- (c) In our experience local and regional bodies such as FE Sussex and AoSEC have provided strong support to their member colleges, principally by facilitating networks of specialist managers through which best practice can be readily shared. We welcome this, and we are keen to see AoSEC develop this function further, eg by developing a training capability and by making more information available about good practice and innovation within individual colleges.

Still less do we agree with the concept of a single quality “authority” within the sector (para 1.6). There may be a role for certain aspects of support for colleges to be carried out at national level – perhaps at UK level rather than simply in England. These services might include research, for example, or toolkits for self-assessment by colleges, or the gathering and analysis of quality data for benchmarking purposes, but it must be up to individual colleges to decide whether or not to take advantage of them or to follow some other pathway which they feel is more appropriate to their particular circumstances. In other words the services offered are advisory. They carry no particular “authority”.

Para 1.7 suggests that a reduction in LSC oversight would be conditional upon self-regulation. We disagree. The Government’s own Better Regulation policy makes it clear that the intensity of regulatory oversight should be risk-based. Ofsted has already adapted its arrangements to make the frequency of its full inspections dependent on the quality of college performance and self-assessment found on its short Annual Assessment Visits. We should be pressing LSC to go down this same

route of less and better-focussed regulation. In our view better self-assessment by colleges, validated by the current external regulators, is the key to achieving this, not self-regulation by the sector. And the primary responsibility for ensuring improvements in self-assessment should continue to lie firmly with individual Governing Boards

We therefore fundamentally disagree with the direction of travel suggested here.

Q3. Is the current landscape described fairly?

A3. The picture painted in this section is generally valid (if a little over-coloured), but it is incomplete in one or two important respects, and we draw rather different conclusions as to the appropriate remedy.

It is incomplete, because it fails to recognise that the problem is not simply the multiplicity of agencies, but also the highly prescriptive and inflexible statutory framework under which colleges operate; this represents a large bureaucratic burden and needs addressing as part of the regulatory landscape. And secondly because the FE sector can no longer be viewed in isolation from the wider schools and HE sectors. We need to press Government for a more joined-up approach not only in their policy-making, but also in the regulatory arrangements across all these areas.

As regards the remedy, we would like to see a continuing rationalisation and merger of public sector agencies with responsibilities for the FE sector, real progress in harmonising data requirements and data collection between agencies (the FE sector bodies have an important role to play in identifying opportunities here), and greater coordination in their interfaces with individual colleges. Overlaps in their functions need to be highlighted and resolved. Processes which have become redundant as a result of subsequent changes of Government policy should be weeded out. There should be a wider use of sunset provisions in new regulations.

Rolling back bureaucracy will involve hard and sustained graft on the part of colleges and the bodies that represent them, at a time when college management teams need to focus their full attention on delivering the Government's challenging agenda. Plumpton's Governing Body believes that Governors, and particularly Chairs, will accordingly need to throw their weight behind identifying and raising with regulators at senior level particular instances of undue bureaucracy. This view is supported by Chairs of other Sussex colleges and by the Board of AoSEC.

We do not see self-regulation as part of this agenda. We are concerned that continuing to push for it will simply distract attention from the increasingly urgent task of reducing the overall regulatory burden and constraints.

Q4 Which functions should be undertaken by the sector?

Q5 Is the far-reaching model the right one to propose to the SoS?

A4 For the reasons set out above we believe that no regulatory functions requiring enforcement should be transferred to an FE sector body. It is possible that some ancillary activities could be hived off from external regulators and handled by, say, AoC: for example data gathering, where it could be shown that this would lead to efficiencies in collection and/or improvement in the quality of the data. But AoC would be acting as an agent for the external regulator in these cases, and not under its own powers.

We would agree that the accountability of individual colleges, and specifically the accountability of their Governing Boards, could usefully be strengthened. In particular we would support steps to increase the transparency to stakeholders of the Governing Board's strategic plans for the college, perhaps through fuller statements in the Corporation's Annual Report. The LSC's Casterbridge model for the Annual Report now lags well behind best practice disclosure in the private sector. Improvements here however do not depend upon a change in the regulatory framework.

Q6. Is the combined accountabilities model the right one?

A6 Given our fundamental difficulties with self-regulation, none of the three models set out at para 1.17 would be acceptable to us. We would therefore want to explore other possibilities, including the possibility of opting out of self-regulation and continuing to be regulated by an external regulator.

If self-regulation were to be imposed on us by statute we would prefer Option 2, on the basis that the new body ought to be set up on a statutory basis. We suspect that a hybrid model along the lines of Option 3 is the least transparent form of arrangement, and could therefore face the greatest difficulty in establishing credibility; moreover, there could well be concerns on the part of small colleges in being regulated by any grouping dominated by large colleges.

Q7. Is this phased approach to implementation right?

A7 The proposal is for the removal of statutory functions from LSC and other statutory bodies. Surely this would involve legislative change? In which case it would in practice be difficult for Ministers not to set out to Parliament their planned timetable for the transfer of regulatory powers and the extent of the transfer they had in mind.

The open-ended timetable recommended at para 1.22 would prolong the period of uncertainty and instability that Colleges face. As we have already said at A1, we believe it is now most important to put in place a settled regulatory framework.

Q8. Is the content of the proposed Phase 2 right?

A8 We believe that the proposals are seriously flawed, and important considerations have been overlooked. The time allowed for consultation is wholly inadequate. We are accordingly unable to endorse the proposals. We would be happy to discuss the ideas more fully with the Implementation Group, but I have to say that on the basis of what we have seen so far we do not believe that "self-regulation" would be in the best interests of Plumpton College, and we would like to pursue other more straightforward ways of reducing bureaucracy.