

**FE Self-regulation  
Implementation Group**

**What are people saying?**

March 2007

# 1 Introduction

- 1.1 A number of events were held by the Self-regulation Implementation during March to seek stakeholder views on the overall direction of travel and the initial design of the proposition for self-regulation within the Further Education Sector.
- 1.2 Events were held in:
- Birmingham (13<sup>th</sup> March 2007);
  - London (14<sup>th</sup> March 2007);
  - Leeds (27<sup>th</sup> March 2007); and
  - Taunton (29<sup>th</sup> March 2007)
- 1.3 This document summaries the key points arising.

## 2 Overview

2.1 In summary there is support for the principle of self-regulation for the further education sector and a view that now is the right time to seize the opportunity. There were a number of additional and helpful issues raised that it was recognised would need to be addressed in due course.

2.2 In summary these included:

- That there is a need to put the learner/employer at the heart of the proposal and to demonstrate the tangible improvements that will result from self-regulation;
- That whilst there is support for the overall direction of travel, there is a need for more detail on the implications;
- That thought needs to be given to the implications for the Sector, other than the FE colleges, in particular for 6<sup>th</sup> Form Schools, Adult and Community Learning and private sector provision;
- That it needs to be guaranteed that the outcome from self-regulation will not merely result in additional activity, and cost, being transferred to the Sector without the resultant transfer of resources;
- That the far reaching model is an appropriate model to aim for, but that there is a need to be realistic in the timescale within which changes can be effected;
- That the phased approach is generally considered to be the right approach to adopt but that there is a need to be aware of the pros and cons of both phased and big-bang approaches; and
- That the proposals for the next Phase, whilst appropriate, are ambitious in timescale if the Sector is to be fully engaged and all of the issues fully explored. It will therefore require considerable work to deliver the changes.

## 3 Key Responses

3.1 This section summarises the responses to the questions set out in the Consultation Document. Wherever possible, comments have been allocated to the specific question to which they most appropriately refer. However, there are a number of generic points that did not relate to the specific questions in the Consultation Document.

### General

3.2 The following points reflect the comments made in general discussion on the proposition of self-regulation:

- There is a need to consider other regulatory regimes and best practice that is applied elsewhere;
- That the principle of self-regulation is not merely concerned with a minimum level of protection but is focused on putting the customer (the learner/employer) at the forefront of the changes;
- That irrespective of proposals to implement a system of self-regulation within the Sector there always be a need for external verification, validation and inspection;
- That there is a need to roll out standards across the Sector more widely;
- That the design of the self-regulatory regime should be driven by mechanisms that are considered to truly represent the Sector. This will require representative organisations to work together to develop a powerful regulatory body;
- There should be realism in relation to the proposal and in particular the power of the overall paymaster in relation to any system of self-regulation;
- Self-regulation enables preparation for the introduction of a system of 'demand led' provision;
- It was considered that there remains a lack of detail about the proposition;
- It is unclear where the voice of the employer and the learner is featured;
- It was noted that self-regulation needs to align with Framework for Excellence and other initiatives that are happening within the Sector;
- It was questioned whether there was political cross-party support for the implementation of a system of self-regulation within Further Education, and what would be the impact of changes in the political environment to the proposed direction of travel;

- It was questioned whether there was a need for self-regulation at all and what would be the benefits from implementing such a regime;
- It was noted that some constituencies wanted more regulation (for example, the learner and employer) rather than less. It was also considered that both the National Learners Panel and Institute of Directors wanted to see greater regulation within the Sector;
- It was suggested that the Sector is very complex;
- It was questioned whether 'demand planning' was truly possible;
- It was considered that a number of high performing colleges would want to continue with external regulation and inspection due to the benefits that this provided. There were a number of plaudits for OfSTED and it was highlighted that the OfSTED kite-mark was valuable for 16-19 year old provision. In this respect it was suggested that the value of external regulation should not be diminished;
- It was noted that local strategic partnerships are important;
- The peer review mechanism is key and the way forward;
- It was noted that Train to Gain implementation would have been different if undertaken by providers. It was suggested that this would have led to greater benefit for the learner if this had been undertaken more quickly;
- The voice of the whole sector needs to be heard in the design of a system of self-regulation. In particular there is a need to consider issues in relation to 6<sup>th</sup> Form Schools and the 14-19 agenda;
- It was questioned what was the appetite in DfES for self-regulation. In particular it should be recognised that there was a need for a leap of faith;
- It was suggested there was a need to define self-regulation, and articulate the boundaries that will apply (although this is covered in the fuller Consultation Document which will be made available on the web-site in due course). In particular it was suggested that the system should incorporate all sectors, consulting with others over time;
- There is a need to take all colleges with the proposition;
- It should be ensured that the power of incorporation is not lost in the design of the proposition. In particular there is a need to be clear on the prize to those that are incorporated;
- There is a need to be careful that large providers do not dominate the market;

- It is considered that the Governance model within Further Education works well and adds value to the overall system that applies within further education. In particular there is a need to consider the implications for an institutions governance (or example how would an institutions governance operate within a framework in which self-regulation, and any governance requirements, was spelt out by the Sector;
- There is a need for trust otherwise there is a risk that the proposals will fail; and
- There is a need to cover the professionalism of staff in the plans proposed (standards, LLUK activity).

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

3.3 The following summaries the key points made in relation to the question of whether all of the key objectives of self-regulation have been covered;

- It was considered by many that all of the objectives were covered;
- There is a need to recognise that learners and employers are the driver. The learner needs to be at the heart of self-regulation and therefore higher up on the agenda. There should also be an analysis of proposals to understand the impact of the changes on the learner. The benefits to the learner were not yet clear although the outcome should be more funding finding its way to the learner;
- There is a need to consider the impact on employees within the Sector to understand how regulation impacts them now, and how it will affect them in future;
- Self-regulation should result in less regulation but with the same activities continuing to be undertaken. As a result the regulatory burden would become more in line with that in other sectors;
- It was suggested that self-regulation would be the best way to deal with failing provision and problems within the Sector;
- There are conflicts between the awarding bodies, learner, employer and stakeholder objectives that need to be taken into account;
- There is scope for diverting resources to the front line and this should feature in the objectives. The benefits that arise from moving to a system of self-regulation should be fed back into the Sector;
- There is a need to define the key performance indicators (KPIs) are for the Sector;
- There is a need to articulate the impact on equality and diversity of the proposal to move to a system of self-regulation;

- It was considered that the term self-regulation was a misnomer as there would still be a need for external regulation, although there would be a greater reliance placed on Sector (internal) regulation through Sector controls and assurance. It was suggested that the regime adopted might be analogous to the approach to regulation that applies within Local Government;
- The outcome would need to provide for greater representation of the Sector. There is a need to articulate how the Sector's voice is to be heard;
- There is a need to be clear on what success means. It was suggested that success would result in an improved performance focus;
- There is a need to be clear on whether self-regulation will give better quality. There was a certain level of cynicism that the outcome of self-regulation will be a transfer of costs into the Sector with savings retained by the Department;
- It was considered that the term self-regulation suggests a cosy relationship whereas in truth it rather placed reliance on internal procedures which wouldn't diminish the importance attached to the continuing need for external verification;
- It was that a key objective to ensure that any design did not stifle innovation and initiative;
- It was suggested that the order of priority of objectives need to be revised to give greater prominence to the accountability and reputation of the Sector;
- An objective should be to raise the reputation and understanding of the Sector;
- Whilst all of the objectives are covered there is a need for greater focus on reducing bureaucracy and avoiding overlap, with fewer players and better relationships;
- There was a need to recognise the mixed audience for proposals;
- There is a need to recognise that the regulatory model is different to others and is not focused on protecting monies but rather that government intervention is driven by the need to provide services; and
- The guiding principles of self-regulation should be to challenge and influence the work of the Sector.

## **Q2. Subject to validation, do you agree with this 'direction of travel'?**

- 3.4 The following summaries the key points made in relation to the question of whether, subject to validation, there was agreement to the 'direction of travel':

- Overall buy-into to the direction of travel. However it is unclear, under the combined accountabilities model, how organisations would come together (see also points in relation to question 6);
- It was considered to be the right direction of travel and one which was long overdue;
- Yes, it was agreed that the direction of travel is one to pursue;
- Some concerns were expressed over the practicality of proposals over the two years;
- There were some concerns expressed that there may be a undercurrent which is driven towards creating a Sector which is made up of larger, federated providers;
- It would be envisaged that there was the opportunity of 'quick wins' in the area of quality, for example through the bringing together of CEL, QIA and LLUK;
- It was questioned how enforcement would operate in smaller organisations;
- The key word associated with the development of a self-regulatory regime would be 'proportionate';
- Questions were raised over the peer referencing proposals, in particular in relation to who ensures that organisations are matched together;
- There is a need to recognise the diversity of the sector;
- There is a need to consider how the proposed 'direction of travel' fits with regulation in other areas, for example in relation to the Mixed Economy Group (MEG) providers; and
- It was suggested that there needs to be rationalisation from the current level of regulation that is applied to the Sector, and the bodies and activities that are undertaken to provide assurance, to a regime that this is more proportionate.

### **Q3: Is the current landscape fairly described?**

3.5 The following summaries the key points made in relation to the question of whether the current landscape is fairly described:

- The description of the landscape is considered to be fair. The question is how fast the landscape moves;
- It is important that the current landscape is not just FE but also includes Learning and Skills Council, Jobcentre Plus and Department for Work and Pensions provision as well commercial provision and that the regulatory regime would apply in all cases. It was considered there was a need to be clear on whether proposals applied to just publicly funded or also included privately funded training;

- The definition of remit should be the learning and skills sector - including all aspects of LSC funded provision;
- The description of the landscape was good other than for community learning;
- Whilst brief the description of the current landscape was considered accurate;
- Conversely, it was considered that the landscape was not described fully. It was suggested the landscape also needed to cover the implications for Other Government Departments (OGDs), JobCentre Plus and also for non Government funded provision. There is also a need to consider how proposals fit with commercial and schools provision;
- It was questioned whether below the line, i.e. undertaken by the Sector, also meant both Government and privately funded provision;
- It was suggested that there was a lack of clarity over those functions that can be considered to be 'truly' regulatory and other functions that are currently undertaken;
- As well as debate on the functions above and below the line, there was also a need to consider implications at the boundaries e.g. Adult and Community Learning , age 14-19 and left/right dimensions (for example, the current and future role of the Sector Skills Councils);
- It was considered important to define the current landscape as the end position for a self-regulatory regime would be informed by the starting point;
- There is a need for the names of the organisations undertaking roles, and affected by proposals to move to a self-regulatory regime, to be shown;
- It was considered that there would be benefits for all providers to be associated with the quality mark of a self-regulatory regime; and
- It was noted that whilst there are parallels with the Higher Education sector there were more 'hangovers' within FE which add to complexity (for example, in respect of the treatment of 6<sup>th</sup> Form Schools, privately funded provision and charities).

#### **Q4: Which functions should be undertaken by the Sector?**

3.6 The following summaries the key points made in relation to the question of which functions should be undertaken by the Sector:

- It was recognised that OfSTED should still have the right to intervene. There would also still be a need for a financial audit to be undertaken;

- It was agreed with the identification of what is in the sector and what would be regulated;
- There were some issues over who takes responsibility for standards and funding. In particular in relation to who will allocate smaller chunks of funding to deal with specific problems (it was considered that this would still remain the role of Government);
- It was suggested that the proposals may create a need for a 'licence to practice';
- It was questioned where Sector Skills Council lie in relation to the Government/Sector dividing line. It was suggested there was a need to engage within the Sector below the line, in particular with the Sector Skills Councils;
- It was highlighted that the role of Governors could be enhanced in a self-regulatory environment;
- It was suggested that for policy and funding the names of the organisations should be shown on the boxes. It should also be made clear who would be responsible for attending a PAC hearing should this be necessary;
- There was a need for greater clarity on who is responsible for evicting a failing provider, in particular whether this would be the role of Government or the regulator;
- There was a need to take account of other initiatives underway within the Sector. In particular it was highlighted that the introduction of Quality Improvement Agency (QIA) peer refereeing would not replace OfSTED. There was also a need to recognise the implications of specialised diplomas;
- It was suggested that there was a need to be careful in relation to Learning and Skills Council funding and ensure that the combination of OfSTED and self-regulation and verification does not create further burdens;
- It was suggested that, rather than being grant-in-aid funded, QIA should in future sell to the market;
- It was suggested that not all functions would be able to be undertaken below the line by 2012. In particular it was suggested that having qualifications within the responsibility of the Sector may be a step too far;
- Conversely, it was suggested that the Sector should be able to validate its own qualifications and that this should cover all qualifications, not just adult vocational qualifications. Linked to this point it was suggested that there was a need to consider the interests of Awarding Bodies (which it was suggested are largely commercial) against those of the learner and employer;

- There may be some boxes that straddle the above/below line e.g. accreditation. In particular there was broad agreement to the functions undertaken by the sector but recognition that ‘the devil would be in the detail’;
- It was suggested that there is a need for joined up thinking in the ‘qualifications’ landscape;
- There was a need to be clearer on what is meant by the accreditation box. It was suggested that this would seem to refer to OCR and Edexcel. However there was also a need to consider the implications for Sector Skills Councils;
- It was suggested that moving planning and funding below the line would be ambitious. In this light it was questioned what the term ‘demand planning’ mean would mean in practice;
- It was recognised that health and safety audits would continue, justifiably, above the line;
- It was suggested that policy advisory would be a key role which could be undertaken by the Sector. There would also need to be consistent interpretation of policy
- It was questioned whether ‘policy’ and ‘funding’ were sacred and whether they must continue to remain above the line. It was further suggested there was a need to split policy between high and low policy;
- It was questioned whether the role of Awarding Bodies should be moved below the line and into the Sector;
- There is a need to be clear that the result of self-regulation is not more regulation;
- To move to the model proposed there is a need for the Sector to demonstrate maturity, and a helpful and supportive attitude rather than seeking to condemn those that fail;
- There is a need to consider the Sector’s capacity to deliver (especially smaller providers) when developing proposals for the functions undertaken by the Sector;
- There is a need to strip out some of what is already there and reduce the functions undertaken rather than merely replace them within the Sector;
- There are issues of legitimacy of the Sector, in particular where there are politicians that are saying different things. In particular, it was questioned how the Sector would react when Government policy was considered to be wrong. It was highlighted that the Sector should respond and would need to ensure that it did not merely act as Governments “lackey”;

- One of the outcomes should be greater coherence of policy and influence. There would therefore be functions that straddling the above and below the line divide;
- There is a need for greater definition of the functions to be undertaken by the Sector;
- The consideration of the functions to be undertaken by the Sector needs to take into account the diversity of the Sector. In particular, self-regulation must meet the needs of the whole sector and at this stage it was not clear how this would be achieved;
- In defining the functions to be undertaken there was a need to consider how the cost of membership will impact on smaller providers. There was a need to avoid the big players dominating the market;
- It was suggested that there was a need for greater detail on the audit function. Specifically, the financial assurance box could be disaggregated to identify external audit separately so as to make it clear that this would not be undertaken within the Sector. It was recognised that there may be some audit and inspection above the line, but that this would be proportionate and much lighter touch;
- It was highlighted that a range of different quality measures exist across the Sector. It will be important that these are brought together, in particular in relation to the audit requirements
- There is a need to manage the system of self-regulation within the prescribed Learning and Skills Council (LSC) system and the needs of the local community more generally;
- It was questioned what role the Regulator would have in relation to competition and takeovers;
- There is a need to address aspects of who pays and who gets the money under a future landscape; and
- There was a need to set out the powers and remedies that would apply in a self-regulatory environment.

## **Q5. Is the far reaching model the right one to propose to the Secretary of State?**

3.7 The following summaries the key points made in relation to the question of whether the far reaching model is the right one to the propose to the Secretary of State:

- Yes the far reaching model is the right one to propose to the Secretary of State;

- It was suggested that one of the outcomes of the new model would be a slimmed down LSC, QIA and Centre for Excellence in Leadership. It was questioned what the role of the QIA and Learning and Skills Network was currently;
- It was considered that the far reaching proposal 'hits the right buttons';
- Whilst the timing will never be perfect it was considered that now was the time to move ahead with proposals for self-regulation;
- It was considered that there was a need to undertake further selling of the benefits of the far reaching model for learners and employers;
- Whilst supported there were some tensions that still needed to be worked out; and
- It was suggested that the far reaching proposition was the ultimate prize.

### **Q6: Is the combined accountabilities model the right one?**

3.8 The following summaries the key points made in relation to the question of whether the combined accountability model is the right one:

- It was suggested that accountability for the use of funds is key;
- It was questioned whether the representative bodies would be strong enough to undertake the role envisage. There was also a need to consider those representative bodies missing from those identified;
- Furthermore it was suggested that the combined accountabilities model could result in a self-selected group representing the Sector. At present it was not necessarily the right organisations that had been currently identified in work to date. Rather it was suggested that the Group proposed appeared to be an ad-hoc group of potential representative bodies;
- It was suggested that the single accountability model was the right one;
- It was envisaged that in the short term there would be merit in establishing a group to co-ordinate activity, but would not wish to create another body. However there was a need for greater clarity in how a combined accountabilities model might work;
- There was support for a model of collective accountability but that over time this should move towards a model of single accountability. However, it was suggested that the combined accountability model would lead to issues over whom would actually be held to account and by whom;

- There was a need to consider the role of representative bodies (both in relation to policy and representation more generally and in relation to regulation and representation where it was considered there may be conflict);
- It was suggested that Option 3 (a combined accountability model) was ‘the only one in town’;
- There was a need to understand how the combined accountability model might work in a demand led environment;
- Concerns were expressed over the possibility for larger player bias in a combined accountability model;
- Some concerns were expressed over whether a super quango (as it was considered might be envisaged under Option 2) would be better able to deal with the Sector;
- Internal communications are considered to be key to the success of the combined accountabilities model;
- The combined accountability model was considered to fit with the overall direction of travel proposed;
- There was a need for further articulation of the reasons for option 3;
- It was suggested that if a body was imposed by the Government on the Sector then this would be unwelcome;
- It was suggested that there was first a need to firstly ‘sort out’ the Association of Colleges (AOC) governance arrangements before moving to a combined accountability model.

## **Q7 Is the phased approach to implementation right?**

3.9 The following summaries the key points made in relation to the question of whether the phased approach to implementation is right:

- It was suggested that some providers should be allowed to move more quickly than to self-regulation than others;
- It was considered that the phased approach to implementation was the right one but that the timescale might be ambitious. In particular it was considered that a ‘big bang’ implementation would not work;
- It was highlighted that there were advantages and disadvantages with phased v big bang;

- It was highlighted that there was scope for some quick wins and that the implications for Awarding Bodies and Sector Skills Councils/Partnerships should be considered further;
- It was suggested that there should be less regulation as the Sector demonstrates improvement over time;
- It was considered that the phased approach has a disadvantage in that it will result in two systems initially operating for a period of time. As a result it will not therefore initially yield the full benefits;
- The phased approach is considered to be ambitious. It was considered to be unclear how it could be achieved within the timescale proposed and gain the full engagement of the Sector;
- There was a need to factor in the legislative implications associated with the timing of changes. In particular there is therefore a need to consider how each of the legislative frameworks affects the bodies that are implicated;
- It was suggested that the phased approach was the right approach but that this could be derailed by changes within the Sector;
- It was noted that Option 2 (single accountability) allows the possibility of a big-bang more than option 3 (combined accountability);
- It was noted that there will be challenges in Phase 2, in particular with regard to the use of resources and the timing of proposals. In particular questions were raised over the capacity of providers to deliver in a self regulatory regime and the recognition that they would need support;
- It was suggested that there were lessons to be learned from the fire services where there were issues over ownership;
- The evolutionary approach was preferred to one that was 'big-bang' in nature;
- Issues associated with the process of change are considered to be key. There was a need to get the timing of issues right;
- It was suggested that above the line also needed to evolve as proposals for self-regulation evolved;
- It was considered that five years to implement the changes looked to be optimistic;
- It was suggested that there was a need to create incentives to move away from a centralised approach. There was a need for collaboration and leadership if the agenda is to be fulfilled and currently it was not clear how this would be achieved in an environment which is competitive;

- It was requested that greater details be provided on what piloting would mean, for example how this would work for peer referencing and accreditation;
- There was a need for greater articulation of the benefits of the phased approach;
- Some concerns were expressed over approach proposed to phasing activity. There is a good deal of other activity that is underway and self-regulation should not be considered in isolation; and
- There was a need to recognise the need for a transition phase with external assurance continuing to be carried out OfSTED.

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

3.10 The following summaries the key points made in relation to the question of whether the content for Phase 2 was right:

- It was considered that the analysis of the current 'galaxy' is crucial to ensure that proposal can be implemented;
- There was a need to consider who is being persuaded. It was considered that it is necessary to persuade both the sector and 'ourselves';
- It was suggested that a number of areas are complex to understand - in particular in relation to planning where there was a need for clarity in relation to the roles of the LSC, Regional Development Agency's (RDAs) and SSCs;
- The timescale for Phase 2 was considered to be very challenging, and indeed maybe even be impossible. There was a need for Phase 2 to ensure that the colleges were on-side and in this respect June to August may not be an appropriate period for consultation as sector is 'out';
- There was a need to take account of the AOC's timetable; and
- There is a need to take account of risk in the proposal as well as the priorities and early wins.