Exploring the Leadership and Governance Implications of Self-Regulation for Local Authority and Third Sector Providers of Adult Learning and Skills

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Research Publication Notices

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Contents

1. Executive Summary 01
2. Introduction 01
3. Research Framework 03
4. Research Methods 05
5. Research Findings 06
6. Analysis of Research Findings 12
7. Conclusions 14
8. Recommendations 16
Appendix 1: Desk research 18
Appendix 2: Single Voice for Self Regulation (for FE) 33
Appendix 3: Third Sector Organisations: Type, Legal Structure & Governance 34
Appendix 4: Interview Questions 35
Appendix 5: Organisations Participating in the Project 37
References 38
1. Executive Summary

This research project investigated the implications for local authority and Third Sector providers of adult learning skills of the proposal for the Further Education (FE) sector to become self-regulating. Evidence was sought 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 (SR) are low among leaders and those responsible for governance in these sub-sectors; and that 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 SR at this time are being questioned. The report concludes that as plans for SR 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 SR needs to reflect both this complexity and specific requirements arising from changing policy. Furthermore, the project findings suggest that distinctions between the inter-related aspects of regulation and of self-improvement that lie within the concept of SR, while particularly significant for local authorities because of their democratic accountability, should inform the further development of models of SR for the Sector as a whole.

2. Introduction

The aim of the research project was to scope and identify the implications of leadership and governance for local authorities and Third Sector providers of learning and skills in relation to the proposal that the Further Education (FE) sector become self-regulating. The project established current understandings of self-regulation (SR) and perceptions of the implications for governance and leadership of SR, and of how the changes to arrangements for performance management and accountability are likely to impact on these two groups of providers. Issues arising from the transition to SR for those responsible for governance and leadership were identified and recommendations made as to what is needed to ensure a well-supported transition.

A key component of the government’s aspiration to achieve world-class public services is the development of a ‘new professionalism’ where innovation consistency and continuous self-improvement are driven from within the public services themselves. It is within this context that proposals for SR within the FE sector have developed (Cabinet Office, 2008: 26).

The FE sector is broad and diverse, comprising FE colleges (incorporated bodies established under the Further and Higher Education Act of 1992), sixth form colleges, work-based learning providers, local authority and Third Sector providers of learning and skills.
The main groups of providers who have featured in the discourse on SR are FE colleges and WBL providers: taken together they are the major providers of publicly funded post-compulsory learning and skills programmes. However, local authority and Third Sector providers also make up 16% of the provision funded by the Learning and Skills Council (LSC), via both FE funding streams and under the Adult Safeguarded Learning funding arrangements.

The governance and accountability arrangements for local authority and Third Sector organisations are significantly different from those of FE colleges. In England, local government services are delivered through different types of council structures, reflecting the nature and demography of the area. These local government structures are county councils, operating with a second tier of local government through district councils; unitary councils; metropolitan district councils; London boroughs and the City of London Corporation. The Local Government Act 2000 provided councils with three options for political governance: the majority of councils have opted for the system of a council leader and cabinet executive, with a scrutiny committee structure that monitors and evaluates decisions. All local authority provision is statutorily regulated, with clear lines of public accountability and subject to external inspection as part of the Comprehensive Area Assessment (CAA).

Within local authorities there is no single common model of delivery or governance for adult learning services. Local authorities may deliver services directly or sub-contract all or part of their services. Many local authorities have a range of contracts funded by the LSC: these may include Adult Community Learning, Apprenticeships, Train to Gain and European Social Fund projects. In addition, local authorities may have Learndirect contracts and contracts with the Department for Work and Pensions for pre-employment programmes and deliver children’s workforce development programmes for their own Children and Young People’s Service. The responsibility of delivering this range of contracts may reside with the local authorities’ adult learning service or may be divided between different departments within the local authority. Local authority adult learning provision will have links into both broader council agendas and increasingly to local priorities expressed through Local Area Agreements (LAAs).

Governance models reflect both the political governance structures adopted by the local authority and the nature of the adult learning service itself. For example, some local authorities have adult learning centres with their own governance arrangements, whilst others have service-wide management committees. Furthermore many local authorities subcontract to FE colleges and/or Third Sector providers, but retain responsibility for leadership and quality improvement and remain accountable to the LSC for the quality of provision and delivering contracted outputs and outcomes.

Within the Third Sector there are a range of governance arrangements and delivery modes. The Third Sector’s organisational structures and legal status are diverse: governance arrangements are determined by these structures and legal status. In addition, some Third Sector organisations also will have sought charitable status. Thus structures determine their accountability and it is within this context that the Third Sector organisations deliver learning skills.
Since the completion of the research, the government has issued the White Paper *The Learning Revolution* (DIUS, 2009). This makes specific reference to “fit for purpose accountability” (para 4.10) and the need for accountability arrangements for public funds used for learning and skills provision to be both proportionate and aligned to wider policy outcomes. The White Paper signals changes to desired policy outcomes for particular aspects of learning and skills provision and a changing role for local authorities in relation to achieving these. As yet the details of how the new policy will operate have still to be developed but it is probable that they will in due course affect how SR is understood and may apply to local authorities, in particular, as there is reference to the wish of government not, “to create new bureaucracy or add to the burden of inspection and regulation”.

3. Research Framework

SR within the FE sector needs to be viewed within the wider context of public service reform and the developing concept of ‘new professionalism’, part of which encompasses SR. The Government’s reform agenda for public services over the last eight years has been characterised by a staged approach. The 2008 Cabinet Office policy document, Excellence and Fairness: Achieving World-class Public Services, is a continuation of this long-term agenda and sets the overall context for improvement of public services and encompasses SR:

“Better public services are at the core of the Government’s mission to deliver social justice and increase social mobility, as well as to enable the United Kingdom to compete effectively in a globalised economy.” (Cabinet Office, 2008: 7)

One aspect of public service reform outlined in the Cabinet Office policy document that is seen as being necessary to meet the world-class aspirations, is the development of what is described as ‘new professionalism’. This new professionalism proposes greater freedoms for high performing services and the professionals should define standards of excellence:

“Public service professionals are best placed to innovate a platform of consistent quality and create new services to meet new challenges as they develop.” (Cabinet Office, 2008: 24)

Framed within this broad public sector reform agenda, the DfES 2006 White Paper, “Further Education: Raising Skills, Improving Life Chances”, proposed a new relationship with colleges and providers, with an emphasis on reducing bureaucracy and a move towards SR:

“Our aim is a system where colleges and other providers are able to focus fully on their own improvement and on delivering ever more effectively to learners.” (DfES, 2006: 77)
It is within this context that in November 2006 the then Secretary of State at the Department for Education and Skills (DfES) challenged the FE sector to develop a proposition for SR. This work was initially taken forward by the SR Implementation Group (SRIG) and subsequently by Single Voice, a body which is owned and managed jointly by some of the main provider representative bodies. In December 2007 the Single Voice for SR (for FE), a company limited by guarantee, was established. The Consultation Prospectus for SR was published by Single Voice in November 2008 and outlined its proposals for SR in the FE sector. Single Voice regards itself as representing the sector in strategic dialogue with the government on regulatory matters and states that its purpose is:

“To promote, pursue, foster and support the work towards the establishment of itself as a single voice collating views of its members on regulatory matters.” (Single Voice, 2008: website)

The research for this report focused on the implications of the move to SR for local authorities and the Third Sector providers of learning and skills.

Both local authorities and Third Sector providers have a number of significant differences compared with other parts of the FE sector:

- Local authorities have statutory duties and discretionary powers and are democratically accountable for the services they deliver and learning and skills provision is a relatively small part of their overall provision;
- Third Sector organisations are diverse in their structures and governance and may have a broad remit and mission but learning and skills only may be part of their overall mission;
- The governance and accountability arrangements for both local authorities and Third Sector organisations that provide learning and skills provision are significantly different from that of FE colleges.

For these reasons the research focused on three key questions:

- What are the implications, for local authority and Third Sector providers of adult learning and skills provision, of current proposals for the FE sector to become self-regulating, in relation to responsibility and accountability?
- What particular challenges for leadership and governance are likely to arise from proposed changes in sector accountability arrangements during the transition and subsequently?
- How can the transition to SR for those in leadership and governance positions in local authority and Third Sector providers best be supported?

Appendix 1 (Desk Research) provides further detail on the policy context for SR.
4. Research Methods

The approach adopted was qualitative and combined desk research to review the available literature on SR and interviews and focus groups involving twenty local authorities and Third Sector organisations concerned with the delivery of learning and skills.

a) Desk Research

The desk research focused on:

- reviewing the policy context in relation to SR and self-improvement, particularly exploring SR within the context of wider public service reform;
- reviewing developments in SR and self-improvement within the learning and skills and FE sectors;
- identifying current governance, leadership and accountability arrangements that apply to and operate within local authorities and Third Sector providers of adult learning and skills, including those arising from receipt of public funding/subsidy, such as external inspection and the LSC’s performance management framework.

b) Research interviews

Interviews were conducted with national stakeholders to establish present understandings of the strategic and operational implications of the proposed move to SR for local authority and Third Sector providers, and to identify the issues likely to arise during the transition period and beyond. Semi-structured interviews were used: following initial telephone and e-mail correspondence outlining the purpose of the interviews, broad areas of questioning were sent to the respondents. Interviews were conducted in January and February 2009 (see appendix 5 for details). There were ten people interviewed in individual sessions and ten interviewed in focus groups.

Individual interviews were conducted with six local authorities and three Third Sector organisations. The organisations were chosen to provide a representative sample of types of organisations within the local authority and the Third Sector that reflected the diverse leadership and governance arrangements that is characteristic of these types of providers of learning and skills. For local authorities, this included urban and rural authorities, shire counties, unitary and metropolitan boroughs. For Third Sector organisations, these included the lead organisation for a consortium of Third Sector learning providers and voluntary and community organisations delivering learning and skills as part of a wider remit.

c) Focus Groups

An initial analysis of these interviews identified issues to explore with providers during two separate focus groups, one of eight local authorities and the second a group of three voluntary sector organisations. The focus groups were structured to provide a brief overview of SR and then using key questions framed around the three research questions to capture providers’ own perceptions of the implications of SR in relation to governance and leadership and likely challenges arising. The focus groups were held in March 2009.
**Interim Report**

An interim report was submitted in December 2008 and key findings were reported at the LSIS National Practitioner Leadership Research Conference on February 26th 2009.

**Final Report**

Outcomes of the desk research, stakeholder interviews and focus groups were analysed and summarised in the final report. The final report also includes commentary on the key issues emerging, draws conclusions and recommendations.

**5. Research Findings**

5.1. What are the implications, for local authority and Third Sector providers of Adult Learning and Skills provision, of current proposals for the FE sector to become self-regulating, in relation to responsibility and accountability?

5.1.1. Levels of knowledge of SR

There was a generally low level of knowledge of SR in respondents from both local authority adult learning representatives and Third Sector providers of learning and skills. About half of the respondents from both local authority and Third Sector organisations commented that part of their motivation for participating in the research project was to find out more about SR. These respondents were at middle or senior management level within their organisations. The majority of respondents felt their current level of knowledge reflected the priority of SR within the context of other more pressing agendas. A commonly expressed view was that when more concrete proposals for SR 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 SR was not currently high on councils’ or Third Sector organisations’ agendas.

5.1.2. A diverse, not homogeneous sector

All respondents questioned, in various ways, whether there is a homogenous “further education sector” with a shared history. 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. The Third Sector in particular felt that there was an unequal history in relation to capacity and investment across the FE sector. These disparities were further illustrated by the comparative lack of representation within Single Voice of local authorities and the absence of any Third Sector on the boards of Single Voice and the Learning and Skills Improvement Service (LSIS). By contrast there are currently three different bodies representing FE colleges – Association of Colleges, 157 Group and Mixed Economy Group.
There is no Third Sector representative body on LSIS’s council, possibly because there is currently no single body that can represent all Third Sector organisations delivering learning and skills. The newly launched Third Sector National Learning Alliance may in due course be able to undertake this role.

A view expressed a number of times by both local authority and Third Sector respondents was that the Single Voice proposals were being driven by FE colleges and did not sufficiently reflect the views or needs of local authorities or Third Sector providers:

“The mind set is that the sector is FE colleges: therefore colleges see it as their agenda and will drive it forward.” (Third Sector respondent)

It was from these perspectives that the proposals for SR in general, and by Single Voice in particular, 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.

5.1.3. Multiplicity of responsibilities

For local authorities three core issues were articulated by the majority of respondents:

- Local authorities differ from other parts of the FE sector in that local authorities 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;
- 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 the Executive;
- 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. Some adult learning services delivered a wide range of learning including adult community learning, Train to Gain, E2E and pre-employment contracts which connect to many aspects of the council’s work, as well as national policy agendas.

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 are 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. Organisations may hold contracts to deliver services across a number of different public service areas, such as health, justice or housing as well as learning and skills and therefore be subject to a range of inspection and regulatory regimes. 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.

### 5.1.4. Conflicting accountabilities

Unlike FE colleges, 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 CAA. 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.

Within the Third Sector, accountability lies with boards of directors or trustees. For some Third Sector organisations, 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.

### 5.1.5. Self-regulation and self-improvement.

Respondents from both local authorities and the Third Sector frequently questioned where the drive for SR was coming from and whether it was appropriate for the public sector. 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 of services. The degree and nature of internal and external regulation should be determined by the government or its commissioners of provision.
There was considerable support for external regulation. 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. There was recognition of the professional standards, training and independence of OFSTED inspectors and their role in the validation of internal quality standards and processes as well as grading provision. Some local authority respondents questioned how equivalent consistency of applied standards, and impartiality, could be achieved in SR arrangements and processes. This suggests that a training and support programme is likely to be needed to ensure consistency and quality assurance.

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.

5.2. What particular challenges for leadership and governance are likely to arise from proposed changes in sector accountability arrangements during the transition and subsequently?

5.2.1. Governance

The majority of local authority respondents believed that it would be very difficult for the cabinet/scrutiny committee system in operation in most local authorities to take on the additional accountable body role required for SR. The creation of a separate governing body or management committee, as already exists in some local authorities, may be required for the management of its adult learning services. However, it was generally felt that this would 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 Children’s Trusts are an example of a separate accountable body, Children’s Trusts are a statutory requirement and it was felt councils are unlikely to establish a similar body on a voluntary basis.

Given that adult learning services are not statutory services and only a small part of overall local authority provision, a common view was that councils were unlikely to see SR as a priority and would view it as an additional bureaucratic burden.

For Third Sector organisations with multiple remits, including learning and skills, the implications of SR 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 for 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 SR. 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. The key issue highlighted by a number of the respondents from these organisations was the burden that SR would impose given that learning and skills delivery only forms part of the organisation’s overall remit.
5.2.2. Legitimacy of regulatory bodies

The main concerns expressed by Third Sector respondents were that any system of SR the systems and responses required should be proportionate to the size and maturity of the organisation.

One key issue raised related to the nature of a self-regulating body "owned and managed by the sector". Firstly, all Third Sector respondents raised concern about the representation on Single Voice which does not reflect all parts of the sector to the same degree and has no Third Sector representation. The second concern expressed by one Third Sector respondent regarded the potential conflict of interest of a body, such as Single Voice, comprised members and representatives from the FE sector itself. The lack of independent members was seen as being 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 such as in the health service.

Other questions raised by some local authority respondents were whether the FE sector actually exists at present, and whether it could exist when the Machinery of Government changes come into operation in 2010. 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”. The corollary of this view is that as the FE sector will not exist, a self-regulatory framework for the FE Sector cannot exist.

“*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.*” (Local Authorities respondent)

5.2.3. Capacity

The lack of organisational capacity to deal with the additional demands that SR would bring was mentioned by all of the Third Sector respondents and by some of the local authority respondents. ‘Capacity’ in this context is defined as the structures, systems, people and skills within organisations.

Two Third Sector respondents spoke of consortia which had been established for the explicit purpose of delivering learning and skills. These organisations had boards of trustees that were the accountable body with responsibility for all elements of performance management. However, respondents from these organisations highlighted issues of capacity in terms of the size of the management team to deal with the processes of SR and the extra demands it would place upon a board of trustees. 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 respondent suggested that if SR was introduced then different skills of trustees would be required and a greater number of independent members with knowledge of key aspects of SR would be required. One response to this could be the establishment of more proactive and professional processes for recruitment of appropriately skilled and experienced trustees.
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 SR than did local authority and the Third Sector providers of learning and skills.

5.3 How can the transition to self-regulation for those in leadership and governance positions in local authority and Third Sector providers best be supported?

5.3.1. General awareness

All respondents felt that knowledge of SR was low amongst staff and even lower amongst those involved in positions of governance, such as elected members, trustees and boards of directors.

5.3.2. Support programmes for leadership teams

With regards to staff, the majority of local authority respondents and Third Sector learning consortia felt that staff were used to working in an environment of constant change. Therefore a shift to SR, 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 to SR therefore should build on current knowledge and experience of self-assessment and peer review.

5.3.3. Support for governance

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 SR, it was felt that there would be a broader development need to provide context for SR. This should include strategic development around the role of the organisation within the FE sector, an understanding of how the sector is regulated as well as the detail of the new regulatory regimes.

Notwithstanding the issues in relation to leadership and governance highlighted in section 5.1.3 above, 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 SR, its relationship to other regulatory processes within the Council as well as specific training in relation to the delivery of self the regulatory processes. It was emphasised that such a programme would need to be on-going as the nature of democratic government meant 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 SR 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.
5.3.4. Investment in capacity

Capacity, as defined in paragraph 5.2.3 above, within both local authorities and the Third Sector was often cited as a key issue in being able to respond to new demands. Within local authorities, the LLUK workforce reforms and the demands placed on leadership teams as well as tutors was given as an example of how the capacity of services can be stretched by new agendas.

Third Sector respondents felt that the lack of a level playing field in terms of funding, particularly for management and leadership infrastructure, had left them with less-developed management information and performance monitoring systems. These were felt to be central to the processes of SR and therefore, without further investment, Third Sector providers would be disadvantaged in the provision of key performance data. The majority of respondents from both local authorities and Third Sector felt that significant amounts of support would be required for those in positions of governance. In the Third Sector the capacity of both leadership teams and boards of trustees to deal with the processes of SR was seen as a key issue. A number of respondents felt that the process would increase bureaucracy as it is anticipated that a greater evidence base for SR would be required.

6. Analysis of Research Findings

This analysis identifies some of the emerging themes from the desk research, interviews and focus groups.

6.1. The role of Local authorities and Third Sector organisations in the FE sector

Local authorities and Third Sector organisations are not ‘sub-sectors’ of the FE sector in the same way that FE colleges, sixth form colleges and work-based learning providers are. Local authorities’ primary purpose is to carry out statutory duties and exercise discretionary powers and they are regulated on that basis. Third Sector organisations exist primarily to fulfil their charitable mission and objectives: they may also deliver statutory services and contract local authorities and/or government departments. For both types of organisations, learning and skills provision may be a very small part of overall is a service delivery, as their primary purpose is not to be providers of publicly funded learning and skills.

These differences and their implications for a shift to greater self governance need to be taken into account if appropriate models of self governance are to be determined for local authority and Third Sector organisations delivering learning and skills.

6.2. The distinctions between self-regulation and self-improvement

A consistent theme emerging from both the local authority and Third Sector respondents 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 LSIS seminars on SR. The report of the recent seminars on SR outlines a number of emerging propositions. The first of these propositions stated:

“That the primary purposes of self-improvement and regulation are distinct and should not be confused. Regulation is essentially about protection of public interest, whereas improvement is essentially about pride and aspiration - distinguishing between them in our thinking liberates ambition.” (LSIS, 2009: 5)

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 activity focusing on improvement that could be sector led. It also ensures that self-improvement is not unnecessarily constrained by regulatory standards.

The concept of co-regulation featured in the discourse at LSIS seminars. Co-regulation is a system of regulation characterised by a joint and negotiated arrangement with responsibilities shared between the regulator and regulated. The notion of co-regulation was seen as attractive to the FE sector as it suggests that the standards and processes by which the sector is to be held to account should be negotiated jointly agreed between government, its regulatory agencies and the sector (LSIS, 2009: 6).

Although ‘co-regulation’ was not mentioned specifically by respondents, the principles of co-regulation were mentioned by respondents. As indicated in para 5.1.5 above, this was expressed as the need for SR to be balanced by external regulation and inspection, through bodies such as Ofsted.

6.3. Differentiation of regulatory processes

The recognition of the importance of different missions is a theme identified in the recent report of the LSIS SR seminars where it was suggested that one of the emerging propositions was:

“That regulation may need to be sensitive to different missions and purposes. The purposes of institutions in the sector differ - some see themselves as strategic partners with a strong community role, others have a narrower focus”. (LSIS, 2009: 9)

6.4. Self-regulation and Local Area Agreements

The original Single Voice proposition for SR focused on an institutional model which took little account of the emerging proposals for the strategic integration of public service delivery within a locality through LAAs and assessed by the CAA. The research findings, outlined in paragraph 5.1.3 above, highlight the integration of local authority adult learning into many aspects of local authorities’ priorities and that these already are embedded in LAAs.
This now is recognized within the development of self regulatory systems:

“We need to ensure that approaches to self regulation work within the context of the emerging local authority mechanisms and the role of FE providers and strategic partners in place shaping.” (LSIS, 2009: 12)

6.5. Further development of self-regulation

SR is a live and on-going area of development. During the period of research, from November 2008 to March 2009, there was considerable development, consultation and discourse on SR. The Learning and Skills Improvement Service series of invitation seminars on SR, held between November 2008 and February 2009 contributed to and shaped the development of propositions for SR. The report of the seminar series identified 10 emerging propositions and five areas for further work. Full details are given in Appendix 1, section 7.

These propositions and the additional areas identified for further work represent the basis on which further development of proposals for SR will be undertaken by LSIS. Although there has been some representation from local authorities and the Third Sector at the LSIS invitation seminars, it is arguable that there needs to be a strengthening of this representation to ensure that future developments reflect the need of the whole of the FE sector.

7. Conclusions

The following conclusions are drawn from the analysis of research interviews, focus groups and desk research and are presented in relation to the three research questions.

7.1. What are the implications for local authority and Third Sector organisations of current proposals for the FE sector to become self-regulating, in relation to responsibility and accountability?

7.1.1. Knowledge of SR amongst middle and senior managers in local authority and Third Sector organisations is generally low. There is a lack of clarity about what SR is and how it would impact upon local authorities and Third Sector organisations.

7.1.2. Local authorities and Third Sector organisations are complex and diverse in their structures, leadership and governance. They are not, per se, ‘ sub-sectors’ of the FE sector in the same way in which FE colleges, sixth form colleges and work-based learning providers can be identified as sub-sectors.

7.1.3. Current proposed models for SR are predicated on a model of governance derived from FE and would require the development of new governance structures, particularly in local authorities. These are likely to be seen as a duplication of current systems of governance and accountability and the cost of setting up such additional structures and mechanisms is likely to be disproportionate, and is at odds with assurances given in the recent White Paper The Learning Revolution (DIUS 2009).
7.1.4. For many Third Sector organisations, the imposition of SR would impose a considerable burden upon trustees and boards of directors for whom learning and skills may only be one of a number of responsibilities of their organisation.

7.1.5. Models of SR need to recognize that the primary focus of local authority and Third Sector organisations is not the delivery of learning and skills and to take greater account of their existing governance and accountability arrangements.

7.1.6. Planning for SR will need to take account of changing policy for adult education and accountability arrangements that are developed over the next three years as a result of the recent White Paper The Learning Revolution.

7.2. What particular challenges for leadership and governance are likely to rise from proposed changes sector accountability arrangements during the transition and subsequently?

7.2.1. Greater ownership is required across the whole FE sector of the evolving self-regulatory system. SR is currently seen as a predominantly FE college agenda, driven by an institutional model that assumes a standard model for governance arrangements. This may reflect the comparative lack of representation on Single Voice and LSIS’s board and council from local authorities and the Third Sector, as compared with FE colleges and workplace learning providers.

7.2.2. ‘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 SR is the right direction of travel, citing the need for independent external regulation to inspect and validate performance and standards also to remain in place.

7.2.3. Self-improvement through peer review, collaborative working and a process of continuous improvement should be a central feature of any self-regulatory system. There is substantial support for self-improvement through peer review processes and reflects the distinction made by many respondents between self-improvement and regulation. This also is an emerging theme from the LSIS seminars which draws out the distinctions between ‘regulation’ and ‘improvement’.

7.2.4. The varying mission and purposes of types of provider organisations need to be reflected in performance standards, with further differentiation within sub-sectors as required. Many local authority and Third Sector organisations are delivering not only the government’s priorities in learning and skills but also addressing other wider government agendas, particularly in relation to health, regeneration and social cohesion. These different missions and purposes need to be recognised within the regulatory systems and reflected in performance assessment frameworks, as these develop.

7.3. How can the transition to SR for those in leadership and government positions in local authority and Third Sector providers best be supported?
7.3.1. Not enough is yet known about the detail of how SR for local authority and Third Sector organisations would operate in practice. This makes it difficult to be able to identify the type and nature of support required.

7.3.2. There is a need for a comprehensive information and support programme for leadership and governance teams in both local authorities and Third Sector organisations. Levels of knowledge of SR are limited amongst service managers and low amongst those in positions of governance, such as elected members and trustees.

7.3.3. Support programmes need to recognise the limited amount of time elected members and trustees may be able to devote to be trained in relation to SR, given the small proportion of the organisation’s activity the LSC funded-provision might represent.

7.3.4. Organisational capacity, in terms of systems, staff and skills, to cope with the expected demands of SR was a particular concern expressed by Third Sector organisations. Few respondents, either from the local authority or Third Sector organisations, felt that SR would reduce bureaucracy.

8. Recommendations

8.1. Representation from local authorities and the Third Sector organisations on Single Voice and LSIS Council and Board should be strengthened.

8.2. The understanding of bodies involved the development of SR concerning the diversity and complexity of leadership and governance arrangements within local authorities and Third Sector organisations needs to be further developed.

8.3. A Third Sector body that can articulate the collective views of Third Sector learning and skills providers on SR could make a valuable contribution to developments. The newly formed Third Sector National Learning Alliance may have the potential to be such a body.

8.4. Further develop models of SR need to build on the distinction made between self-improvement and regulation. Self-improvement and development activity should continue to be sector-led.

8.5. 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 SR.

8.6. 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.
8.6. A comprehensive performance assessment framework that supports SR 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.

8.7. Account must be taken as planning for SR moves forward of the recent White Paper *The Learning Revolution* (DIUS 2009) specifically paragraph 4.10 which relates to accountability for public funding.

8.8 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.
Appendix 1

Desk research

1. Introduction.

There is little published research on SR within the learning and skills sector. However, SR is an emerging theme within the public sector. The desk research explored SR within the context of public service reform and this section outlines the development of SR within the learning and skills sector.

SR is closely related to governance: current governance models in both local authorities and the Third Sector are outlined and the differences between these and other parts of the FE sector are explored.

A commentary on each of the sections draws out the key issues and possible areas for further investigation through or during the research interviews and focus groups.

The FE Sector has been defined by the SR Implementation Group as:

“All publicly funded post-16 learning provision in England, including all institutions covered by the 1992 Further and Higher Education Act, including all FE colleges, Sixth Form Colleges, Work-Based Learning and Personal and Community Development Learning. It excludes school sixth forms, higher education, Trusts and Academies.” (Self Regulation Implementation Group, 2007: 26)

However, it should be noted that this definition excludes important elements of Adult Safeguarded Learning: Family Learning and Neighbourhood Learning in Deprived Communities. These two funding streams sit alongside Personal and Community Development Learning and together they comprise Adult Safeguarded Learning.

All references in this report to the “FE sector” will use the above definition, as amended to include all Adult Safeguarded Learning.

2. Self-regulation: the wider context

2.1. SR and public services.

The 2008 Cabinet Office policy document, ’Excellence and Fairness: Achieving World-class Public Services’, outlines current strategy for the improvement of public services and encompasses SR.

The Government’s reform agenda for public services has been characterised by a staged approach. The first stage introduced national standards and targets to improve performance across all areas of Government funded public services. When the Government perceived an improvement in standards, from around 2001, the second stage of reform was introduced which encouraged public services themselves to develop more flexible and innovative approaches to service improvement, rather than have standards imposed from central government (Cabinet Office, 2008:7).
The latest stage of public service reform, seen as being necessary to meet the world-class aspirations, is the development of what is described as ‘new professionalism’. This new professionalism recognises that:

“Public service professionals are best placed to innovate a platform of consistent quality and create new services to meet new challenges as they develop.” (Cabinet Office, 2008: 24)

With this new professionalism there is an expectation of increased accountability by the public services to their service users. It is envisaged that this strengthened accountability will be achieved through citizen empowerment, transparency of performance information and professional groups setting their own challenging performance goals. Central government retains a role in setting direction, maintaining national minimum standards and ensuring that underperformance is dealt with (Cabinet Office, 2008: 24).

The new professionalism outlined in the Cabinet Office paper has five strands:

- raising skills and increasing consistency in the quality of practice across public services;
- greater freedoms for high performers, both for excellent organisations and front-line staff;
- rewarding success;
- excellent leadership and management;
- professionals defining standards of excellence.
(Cabinet Office, 2008: 25)

The delivery of this ambitious agenda outlined in the Cabinet Office paper will be achieved by local and national leadership operating in tandem to deliver high level public services. Local leadership and accountability are viewed as becoming more important as there is a shift in emphasis to increasing responsiveness to users of services (Cabinet Office, 2008: 34).

The increased flexibilities and accountability given to local government through the new LAAs and the new performance management regime delivered through the CAA are evidence of the Government’s changing policy to public services.

These recent proposals to change public service delivery build on the Cabinet Office model of a self-improving system. A number of the elements of this model have already been implemented. These include performance assessment, with regular inspection; workforce development, with a particular emphasis on the development of leadership and management programmes; qualifications developed through the work of agencies such as the Centre for Excellence in Leadership and the lifelong learning sector skills Council, LLUK.

2.1.1. Local authorities: Comprehensive Area Assessments

The 2006 Local Government White Paper, ‘Strong and Prosperous Communities’, announced a new performance framework for local services. The new performance framework encompasses LAAs and the CAA, and will:
• strengthen accountability to citizens and communities;
• give greater responsibilities to local authorities and their partners for securing improvements in service;
• provide a better balance between national and local priorities with a drastic reduction in the number of national performance indicators and a revised LAA;
• improve the arrangements external assessment and inspection.  
(CLG, 2006: 116)

A key aspect of the new performance framework is devolution of responsibility and accountability for service delivery to local authorities. A revised LAA process will result in a reduction of the National Performance Indicators from 1200 indicators to 200 indicators. The LAA is conceived as an instrument through which central government, local authorities and their partners agree and limited the number of improvement targets for each area (CLG, 2006: 126).

By limiting the number of targets in each LAA to 35 out of the 200 national indicators, there is scope for the indicators chosen to reflect local priorities and standards. From April 2009, the CPA for local authorities will be replaced by a CAA. The CAA will provide a joint assessment of public services within an area. Seven inspectorates will work together to deliver joint judgements on public services within a local area. These are:

• Audit Commission;
• Commission for Social Care Inspection;
• Healthcare Commission;
• HM Inspectorate of Constabulary;
• HM Inspectorate of Prisons;
• HM Inspectorate of Probation;
• OFSTED.

“For the first time, local public services will be held collectively to account for their impact on better outcomes. This means that CAA will look across councils, health bodies, police forces, fire and rescue services and others responsible for local public services, which are increasingly expected to work in partnership to tackle the challenges facing their communities.” (Audit Commission, 2008 website)

Following the White Paper, a consultation on a general principles and approaches to CAA was undertaken and the results published in May 2008. In light of the initial consultation, a simplified approach with two rather than four elements was proposed in the second consultation:

• an area assessment;
• organisational assessments of the council’s and fire and rescue services.  
(Audit Commission 2008a: 10)
A second consultation on the detailed proposals for the framework for CAA was undertaken between July and October 2008. The final framework for CAA will be published early in 2009, with its introduction starting in April 2009.

The inspection regime for learning and skills provision also is reflecting the move towards SR. Ofsted is currently consulting on proposed changes to inspection for the FE sector which reflect the changing policy context for public service delivery. These proposals include:

- the rollout of the Framework Excellence and the need to use it intelligently for inspections;
- the rising importance of locality leadership for many providers in the learning and skills sector, where they are key players in the delivery of local priorities expressed in LAAs;
- the shift towards SR will require more assurance from inspection the providers have the capacity to self-improvement and self-regulate.

The new proposals include determining the frequency of inspection on the outcomes of annual risk assessments. For high performing providers a six year cycle of inspection is envisaged, with a four-year cycle for providers deemed to be satisfactory through the risk assessment process (Ofsted, 2008: 6).

### 2.2.1. The Learning Revolution (DIUS 2009)

On 23rd March 2009 the government published ‘The Learning Revolution’. This sets out a vision for adult education for the future, which is likely to result in significant structural changes in relation to local authorities, and to provide further opportunities for Third Sector Organisations to become involved in delivery and to access new funding, at least in the short term. Paragraph 4.10 of the White Paper makes specific reference to accountability, national performance measurement for local authorities, new inspection arrangements and funding guidance. Specific assurances are made that government expects accountability arrangements to be proportionate and aligned to changing policy objectives; and that there is no intention to create new bureaucracy or add to the burden of regulation. New arrangements are to be developed over the next three years.

### 2.2. Commentary

SR within the FE system cannot be viewed in isolation from the wider reforms of public service and the concept of ‘new professionalism’, part of which encompasses SR. The performance management systems developed for SR need to take account of the evolving approaches to public service delivery which increasingly requires collaborative action by public services to address local priorities.

The introduction of the CAA, with its emphasis on assessment of the standard of public services within the local area, suggests the need for a much closer alignment of the SR process for FE sector with that of the CAA in order to achieve an integrated assessment of performance in a locality. The commencement of the CAA in April 2009 precedes any introduction of SR within the FE sector and should enable self-regulatory processes to be aligned with the CAA.
The proposed changes to the Ofsted inspection process reflect the shift from self-assessment and peer review to SR, with the emphasis of inspection focusing on providers’ capacity to self-improve and self-regulate.

Further changes will take place in respect of inspection arrangements for adult education as a result of the publication of the White Paper, ‘The Learning Revolution’ (March 2009).

3. Self-regulation in the FE system


The background to the formation of the Single Voice for FE is described in the ‘Research Framework’ section of the main report.

The Consultation Prospectus for SR was published in November 2008 and outlined Single Voice’s proposals for SR in the FE sector. Single Voice regards itself as representing the sector in strategic dialogue with the government on regulatory matters. Single Voice believes it will be the vehicle for transforming FE into a more self-regulating sector and will be responsible for developing, implementing and maintaining the framework for SR. The key elements of Single Voice’s Prospectus for SR and details of membership are summarised in Appendix 2 below.

Single Voice’s work needs to be seen in the context of the transition from self-assessment to SR. For example, the Support for Excellence programme, funded by the Quality Improvement Agency, has been implemented to help providers work collaboratively to improve their self-assessment and develop the capacity to self-improve. The programme will do this primarily through the use of peer review and development activity focusing on the whole organisation development. There is an emphasis on ensuring the robustness of self-assessment processes and judgements and encouraging collective action to address improvement needs. This programme is seen as supporting providers in their move towards becoming self-regulating. (Support for Excellence, 2008: website).

Also the formation of the Learning and Skills Improvement Service (LSIS) in 2008 is seen by government as creating a fresh approach to performance improvement in the learning and skills sector. LSIS will be owned, directed and governed by FE colleges and providers. LSIS is “dedicated to supporting excellence, leadership development and SR in the FE sector”. (LSIS, 2008). The board of 14 members has one local authority representative and no representative from the Third Sector.

LSIS will use the LSC’s newly introduced Framework for Excellence data to underpin the development and targeting of its programmes and services:

- LSIS will provide support for colleges or providers that require it to improve their performance on the basis of Framework ratings;
- LSIS will use the Framework to consider both the conditions under which Learning and Skills Beacon status is awarded and those under which it may be withdrawn (LSC, 2008).
4.2. Commentary

Although all of the Single Voice documents use definitions of the FE sector that encompass local authorities, the voluntary and community sector and work-based learning, there is a sense that the proposals are largely developed from an FE college perspective. The Foreword of the Single Voice Phase 2 Proposition makes reference to the community colleges in America and Canada and technical colleges in Australia, France and Germany as models for autonomous SR. (Single Voice, 2007: 2).

This may suggest that the models driving the SR proposals are largely predicated on a single model of governance: that of autonomous FE colleges. The Phase 2 Proposition states that:

“The Instrument and Articles of Government will continue to form the basis of the legal entity of colleges. Current governance arrangements for other providers, including private and voluntary sector agencies and those within the public sector (where additional regulatory frameworks simultaneously apply), will continue to apply.” (Single Voice, 2007: 13)

It is not clear if this statement suggests that SR will initially apply only to FE colleges, or whether a different model of SR is required to take account of the ‘additional regulatory frameworks’ referred to above. If it is the latter, further development of models of SR that are relevant to local authorities and Third Sector organisations will be required. The Consultation Prospectus for SR, (2008) does not clarify the issues and responsibilities of governance in relation to local authority or Third Sector providers of learning and skills. There is passing reference to “other governance codes”, without further expansion as to what is meant by this (Single Voice, 2008: 30).

There is a recognition that governing bodies, and their instrument and articles of government, will need to be reviewed and supported in a transition to SR. Again, a single model of governance (i.e. that of FE colleges) is assumed and no reference is made to the implications for governance in other parts of the FE sector and how they will need to be addressed.

There is a lack of recognition that within the local authority and voluntary community sector, both the overall organisational governance models, and the specific governance models for adult learning, are far more complex and diverse than within FE colleges. If a single model of SR for the FE sector is to be achieved, the implications of the Single Voice proposals for SR for local authorities and the Third Sector need be understood and incorporated into the proposals.

To date the stakeholder consultation that has been conducted, mainly through the four stakeholder events held in March 2007, had little representation from the local authority or voluntary community sectors, yet these sectors are significant providers of adult learning.

The recent formation of LSIS, with its own role in relation to SR raises the question of where the delineation of responsibility for SR will lie in practice between Single Voice and LSIS. Single Voice’s Consultation Prospectus for SR states that:
“Further work is being undertaken to establish a joint protocol that will ensure a clear alignment between the regulatory function of the Single Voice and the development functions of LSIS, on these and related matters.” (Single Voice, 2008:16)

5. Local authorities: structures and governance.

To provide the context for SR for local authority providers of learning and skills, a brief description and analysis of local authorities and their governance models is required.

In parts of England, largely what are referred to as 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 will be 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.

5.1. Local authority governance structures.

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 provisions 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.

(Local Government Act Part 2, 2000: 7)

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 also gave power to overview and scrutiny committee to make reports and recommendations to the executive and council on policy development (Local Government Act, Part 2 2000: 10).
The 2006 CLG White Paper re-visited 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.

(CLG, 2006: 58)

Only 12 local authorities have introduced an elected mayor. Of the councils, 80% 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 (CLG, 2006: 57).

5.2. Delivery models for adult learning

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: these may include Adult Community Learning, Train to Gain, Apprenticeships and other work-based training programmes, Neighbourhood Learning in Deprived Communities fund and European Social Fund projects. Furthermore, local authorities may have Learndirect contracts and contracts with Department for Work and Pensions for pre-employment programmes.

The responsibility for delivering this range of contracts may reside with the local authorities’ adult learning service or may be divided between different departments within the local authority. For example, Train to Gain or Workstep programmes may be managed within Economic Development or Human Resources departments whilst the adult community learning programmes may be managed within the children and community services department.

Where adult learning services are delivered within one local authority directorate, usually one of 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;
- mixed model: planning and overall quality assurance are managed by the local authority with a combination of both direct delivery and subcontracted provision.

The majority of work-based learning and Train to Gain contracts are delivered directly by local authorities, rather than sub-contracted. As indicated above, these programmes may either be managed separately from other adult learning provision or as part of an integrated adult learning and skills service.

The recent White Paper The Learning Revolution (2009) signals a changing role for local authorities in relation to adult learning and may affect arrangements for securing and/or delivering provision.
5.3. Governance arrangements for adult learning

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 the efficient and effective use is made of resources.

There are broadly four models of governance in adult learning services:

i) Governing body

A governing body 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, often the Cabinet member responsible for the portfolio including adult learning. Reports from the governing body will be submitted to the Council’s executive for scrutiny.

ii) Management group

An internal management group consisting of the head of adult learning service 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 the 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 one of the Council’s scrutiny will overview committees comprised of elected members.

Local authorities who deliver work-based training/Train to Gain may have a separate management structure and have a different cabinet member responsible for that provision.

iii) Local area management group

A variation on the service management group 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, 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) Adult Learning Sub-committee

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

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

5.4. Commentary

As noted in Para 4.1 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 10 individual areas of responsibility within their portfolio. Ultimately responsibility for all provision lies with a council’s cabinet. Thus the cabinet’s responsibilities are broader than those of a FE college’s governing body. This suggests that SR 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 created (Watters 2008:15).

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. Similarly, for some national work-based learning providers, such as supermarkets with apprenticeship schemes, training provides a small part of their overall provision. 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.

A key aspect of all models of governance of adult learning services is the involvement 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 SR model.

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. There are potential policy tensions between the priorities and targets of the LSC and those of the council. LAAs perhaps provide a mechanism for a more joined up approach. Logically, assessment of the effectiveness of these services would be provided through the CAA, raising again the question of the relationship of SR in the FE sector to area-based assessment.
6. The Third Sector: structures and governance

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” (Cabinet Office, 2007:13).

The Third Sector’s 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. Companies limited by guarantee are the most common form of legal status for Third Sector organisations. Furthermore, charitable status is an additional legal status that may be sought by organisations that fulfil the charitable purposes requirement of the 2006 Charities Act. Governance arrangements for the Third Sector organisations are determined by the legal status and type of organisation. The most common governance structure is a board of directors or trustees who are accountable to the wider membership. For those organisations with charitable status, further duties are determined by the 2006 Charities Act. A further distinction of Third Sector organisations is the accountability of the board of directors to the wider membership of the organisation whom they may be elected. Appendix 3 summarises the main types of Third Sector organisations, their legal structure and governance.

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 broader role. Consequently their quality assurance, MIS and reporting arrangements also reflect this broad 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.

Third Sector organisations which deliver learning and skills programmes do so using a variety of delivery models. These include:

- 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.

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 work was the introduction of a code of governance for the voluntary and community sector in 2005 that sought to address and clarify the main principles of governance and accountability for boards of trustees of voluntary and community organisations (Governance Hub, 2006: 7).
However, the code is voluntary and a survey in 2008 found that whilst the code was welcomed by the sector and 42% of organisations were using it, 21% were not aware of the code (Madden, 2008: 4).

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 adopted within the sector (Parker, 2006: 31). Those organisation delivering learning and skills, either as prime contractors or sub-contractors, also will operate quality assurance systems that meet the requirements of inspection and funding bodies.

**6.1. Commentary**

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:

> “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.” (Parker, 2006: 4)

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 organisations (Governance Hub, 2007: 8). The complexities of SR may add to the difficulty of attracting directors or trustees with the appropriate experience and willingness to take on the responsibilities arising from SR.

The commonly adopted quality assurance systems in the Third Sector include governance as an element of the overall leadership and management. However, they may not specifically focus on performance management or governance and do not have a self-assessment model of quality assurance embedded into their delivery, unlike those quality assurance models generally adopted in the learning and skills sector. Thus Third Sector organisations who do deliver learning and skills may therefore be operating different quality assurance systems for different aspects of their work. SR is likely to add to the responsibilities of the board of directors/trustees of Third Sector organisation and require significant support and training. New requirements, such as SR, also will add to staff responsibilities as they seek to integrate these changes into the overall leadership and management of the organisation and to support and advise trustees in this work. Given the wider remit of many Third Sector organisations the time and costs of implementing new requirements such as SR may be disproportionately high in relation to the size of their contracts.
7. Self-regulation LSIS seminars

SR – shifting the paradigm LSIS 2009

Since the commencement of this project a report based on a series of seminars convened by LSIS on the subject of SR has been made available. These were invitation seminars with 30 to 40 people from organisations and representative bodies attending the seminars. A small number of local authority and Third Sector providers of learning and skills were represented at the seminars. The title of the series of four seminars was “The emerging consensus” and the report discusses:

- the rationale and narrative for SR;
- the nature of regulation in the public sector;
- the emerging propositions for regulation of ‘FE’;
- areas for further exploration.

The rationale and narrative for SR is located in the context of the wider national public sector reform agenda; the policies of the Department for Innovation, Universities and Skills (DIUS) in particular; the current economic crisis; and the ambitions of the FE Sector to become self regulating.

In respect of the nature of regulation in the public sector it was noted that the public interest must be protected where public funding was being dispensed, so that as a bare minimum regulation in the public sector must:

- safeguard and account for public money;
- secure quality and value for public money;
- achieve public policy priorities’ and;
- ensure that behaviour meets accepted standards of public services.

A series of propositions was developed which captured areas of consensus arising from the first four seminars. These will be further addressed in later seminars in the series. They are significant in the context of this research project.

**Proposition 1:** The primary purposes of self-improvement and of regulation are distinct and should not be confused.

Regulation is essentially about the protection of public interest, whereas improvement is essentially about pride and aspiration. Different types of activities are required in relation to each of these purposes. Improvement is largely sector-led and motivated, whereas ‘protection’ of the public interest necessarily requires external accountability. Any regulatory system aims to ensure that minimum standards are met; enforcement instruments are deployed to ensure that this is the case. Improvement usually means striving to do more than meet minimum standards and cannot be ‘enforced’ in the same way.
Proposition 2: Regulation can be carried out through approaches on a spectrum from external regulation through co-regulation, to SR.

The concept of ‘co-regulation’ is attractive as it promises a joint and negotiated arrangement with the responsibilities shared between the regulator and the regulated. However the term co-regulation implies a degree of joint administration of the regulatory mechanisms which may not be an option. The immediate ambitions of the Sector may be achievable via co-design and co-ownership of the regulatory system as a whole, and increasing elements of SR within the regulatory system. Government or regulators would typically have legal backstop powers to secure planned objectives.

Proposition 3: The Sector should co-design the standards and mechanisms for regulation.

The greater the co-ownership of the regulatory framework (as distinct from the extent of consultation), the greater the understanding of the framework will be, and therefore the stronger the commitment by all parties to comply with the framework and to secure high standards.

Proposition 4: Regulatory mechanisms should be as efficient and stream-lined as possible.

Proposition 5: Regulatory mechanisms should support self-improvement as far as is possible without compromising their regulatory function.

Proposition 6: While regulatory standards should be common across the Sector, the mechanisms and the degree of regulation, co-regulation or external regulation will vary depending on the capacity and performance of different providers.

Regulation needs to be ‘differential’ – that is, to be implemented in different ways for different providers. Whatever the mechanisms to be used, they are likely to need tailoring to adapt to the different types of providers within the wider Sector and thus to avoid either imposing unduly heavy burdens on some providers and/or giving disproportionate attention to high performing providers when it is those that are performing less well that require more attention.

Proposition 7: The performance management system should be capable of recognising the different missions and ambitions within the Sector.

Regulation may need to be sensitive to different missions and purposes. One model that might offer a way forward is that for LAAs whereby there is a core of indicators that are mandatory and a proscribed number of additional indicators are chosen from an approved list, to reflect local priorities. The LAA arrangements enable public service bodies to work together on a shared and agreed local agenda while ensuring that statutory duties are met.

Proposition 8: Professional bodies can promote good practice across the spectrum of quality and accountability frameworks – self-improvement, SR, co-regulation and external regulation.
A range of professional bodies underpin the activities of providers. For example a new professional body the Institute for Learning has been established for FE teachers, trainers and assessors. It will be important to ensure that the spectrum of activities associated with regulation and self-improvement does not duplicate the roles and responsibilities of relevant professional bodies.

**Proposition 9:** *The FE sector needs to consider how to manage accountability to its local community and locality alongside the national regulatory requirements.*

There is a need to take account of the increasing localism in public policy and the evolving approaches to public service delivery in localities (for example LAAs, Multiple Area Agreements or MLAs). A SR system that focused on the learning and skills sector in isolation would not accommodate the reality of collaborative working for composite outcomes at the local level.

The new CAA framework and approach to area-based inspection already points towards integrated assessment of performance in a locality. This raises the question as to whether a common framework could and should be developed that facilitates collaborative delivery at a local level. The future is local.

**Proposition 10:** *Regulation should not be relied upon to achieve key priorities for the Sector.*

A danger of focusing too closely on regulation is to believe that it deals with that which is most important. In the case of equality and diversity in the Sector workforce in relation to the demographic profile of learners, for example, this is unlikely to be the case. The Sector should take the initiative and assert that regulation alone will not necessarily address all important issues.

In addition to the ten propositions, five ‘areas for further work’ are identified at the end of the report:

- Streamlining existing arrangements for regulation.
- Increasing set the ownership of the standards and mechanisms.
- Exploring the potential role of professional bodies.
- SR and locality.
- Addressing under-performance.

( LSIS, 2009: 12)

The report is accompanied by Annexes that cover: Definitions of the FE Sector and the FE System; Principles of Good Regulation; The purposes and mechanisms of regulation; and Responses to the Single Voice Consultation Prospectus.

**7.1. Commentary**

The seminars have developed a discourse on SR which is wider than the specific proposals for a self-regulatory system proposed by Single Voice. The key emerging themes from this discourse are arguably the distinction between SR and self-improvement, the balance of external regulation and regulation by the sector, the recognition of different missions and ambitions within the sector.
Appendix 2

Single Voice for Self Regulation (for FE)

Single Voice is owned and managed jointly by the main provider representative organisations. The following bodies have nominated their chair or chief executive to be directors of the Single Voice company:

- AoC (Association of Colleges);
- ALP (Association of Learning Providers);
- HOLEX (National Network of local Adult Learning Providers);
- Landex (Land-Based Colleges Are Spiralling to Excellence);
- MEG (Mixed Economy Group);
- NATSPEC (the Association Of National Specialist Colleges);
- NIACE (National Institute of Adult Continuing Education);
- SFCF (Sixth Form Colleges Forum);
- 157 Group (FE colleges).

(Single Voice 2008: website)

The Prospectus for SR published by Single Voice in November 2008 as a consultative document, recommended that the FE system adopts the following elements of SR:

i. A FE Accord setting out the agreement on regulatory matters between government and a new FE Authority.

ii. A FE Authority as regulatory authority for the sector with the remit to manage the implementation of SR.

iii. The Framework for Performance Management and Improvement, which identifies individual, organisational, collaborative and sector wide responsibilities for managing and improving performance.

iv. The Framework for Accountability, whereby the sector takes responsibility for its own performance and reputation, using approaches which are appropriate to risk, including tackling underperformance.

v. A FE Code agreed and committed to by providers and to which all providers Licensed to Practise adhere.

vi. A licensing system, whereby providers adhering to the FE Code and meeting minimum requirements licence to practise and thereby to receive public funds, and those which do not meet the requirements of the licences removed.

vii. Minimum requirements performance within the FE Code which coterminous with requirements from funding bodies, the Framework for Excellence and the Common Inspection Framework.

viii. The FE Authority to be responsible for managing underperformance and performance risk within the sector, through a system of differentiated intervention and support.

ix. The further development of proposals for, performance assessment framework and Key Performance Indicators.

(Single Voice, 2008a:5)
## Appendix 3

### Third Sector Organisations: Type, Legal Structure & Governance

<table>
<thead>
<tr>
<th>Type of organisation</th>
<th>Incorporated</th>
<th>Unincorporated</th>
<th>Eligible for charitable status</th>
<th>Governance</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Association</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Governing body, often known as management committee. Two tier governance: governing body accountable to wider membership.</td>
<td>Community Association.</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Trustees. Single tier of governance with no members other than the trustees.</td>
<td>Grant awarding charitable trust.</td>
</tr>
<tr>
<td>Company limited by guarantee</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Board of directors. Two tier governance, with directors accountable to members.</td>
<td>Most common form of legal type for charities and very common for VCS and social enterprises.</td>
</tr>
<tr>
<td>Industrial and Provident Society</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Management committee. Two tier governance, with management committee accountable to wider membership.</td>
<td>Housing associations. Cooperatives (*)</td>
</tr>
<tr>
<td>Community Interest Company limited by guarantee</td>
<td>Yes</td>
<td>No</td>
<td></td>
<td>Board of directors. Two tier governance, with directors accountable to members.</td>
<td>Social enterprises (**)</td>
</tr>
</tbody>
</table>

* Co-operatives are owned and controlled by their members  
** Social enterprises are usually owned by their members
Appendix 4

Interview Questions

Local authority stakeholders:

1. Please describe your local authority:
   - type of authority,
   - mode of delivery of adult learning,
   - leadership and governance arrangements for both the council and the adult learning service.

2. The current proposals being developed by Single Voice (Consultation Prospectus Nov 2008) outline a model of SR.
   - What are your views on this model of SR?
   - Are there other models of SR that should be considered?
   - What are the implications of SR?

3. The model of self-governance proposed by Single Voice places legally constituted governing bodies at the centre of SR, with accountability for quality assurance as a central function of governance.
   - What are the implications for governance?
   - Within local authorities who should be the equivalent legally responsible body?

4. How do the proposals for SR within the FE sector fit within the new CAA?
   Are there potential tensions between SR of local authorities’ adult learning services and the wider requirements of the CAA?

5. How aware are local authority leaders, responsible for governance, of the proposals for SR and their implications?

6. What support will those in positions of leadership and governance within local authorities require to make the transition to SR?

Third Sector stakeholders

1. Please describe your organisation:
   - type of organisation, legal structure etc
   - mode of adult learning delivery e.g. direct delivery, sub-contracted
   - leadership and governance arrangements for both the organisation and the adult learning provided

2. The current proposals being developed by Single Voice (Consultation Prospectus Nov 2008) outline a model of SR.
   - What are your views on this model of SR?
   - Are there other models of SR that should be considered?
3. The model of self-governance proposed by Single Voice places legally constituted governing bodies at the centre of SR, with accountability for quality assurance as a central function of governance.

- What are the implications?
- Within Third Sector organisations who should be the equivalent legally responsible body?

4. How do the proposals for SR within the FE sector fit with other quality assurance regimes that Third Sector organisations may be subject to?

Are there potential tensions between SR of adult learning services and these other quality assurance regimes?

5. How aware are Third Sector managers and those responsible for governance, of the proposals for SR of learning and skills and their implications?

6. What support will those in positions of leadership and governance within the Third Sector require to make the transition to SR?
Appendix 5

Organisations participating in the project

Twenty staff from nineteen organisations were interviewed either individually or in focus groups as part of the research. Ten individual interviews were conducted plus focus groups, one of local authority staff and one of Third Sector staff.

Details of the organisations who participated are given below.

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Role of respondent</th>
<th>Interview/focus group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birmingham Churches Together</td>
<td>Training and Development Officer</td>
<td>Interview</td>
</tr>
<tr>
<td>Birmingham City Council</td>
<td>Head of adult learning service</td>
<td>Focus group</td>
</tr>
<tr>
<td>Derbyshire County Council</td>
<td>Head of adult learning service</td>
<td>Interview</td>
</tr>
<tr>
<td></td>
<td>Assistant Director</td>
<td>Interview</td>
</tr>
<tr>
<td>Dudley Metropolitan Borough Council</td>
<td>Head of adult learning service</td>
<td>Focus group</td>
</tr>
<tr>
<td>ENTA</td>
<td>Business Development Manager</td>
<td>Focus group</td>
</tr>
<tr>
<td>Groundwork</td>
<td>Development Manager</td>
<td>Focus group</td>
</tr>
<tr>
<td>Herefordshire Council</td>
<td>Head of adult learning service</td>
<td>Focus group</td>
</tr>
<tr>
<td>Humber Learning Consortium</td>
<td>Chief Executive</td>
<td>Interview</td>
</tr>
<tr>
<td>Kent County Council</td>
<td>Head of adult learning service</td>
<td>Interview</td>
</tr>
<tr>
<td>NCVO Governance Hub</td>
<td>Ex-Chair</td>
<td>Interview</td>
</tr>
<tr>
<td>Norfolk County Council</td>
<td>Head of adult learning service</td>
<td>Interview</td>
</tr>
<tr>
<td>Nottinghamshire County Council</td>
<td>Head of adult learning service</td>
<td>Interview</td>
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<td>Shropshire County Council</td>
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<td>Staffordshire County Council</td>
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<td>Focus group</td>
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<td>Stockton on Tees Borough Council</td>
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<td>Telford &amp; Wrekin Council</td>
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<td>West Sussex County Council</td>
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<tr>
<td>Worcestershire County Council</td>
<td>Head of adult learning service</td>
<td>Focus group</td>
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</tbody>
</table>
References


Learning and Skills Improvement Service, 2009. Self-regulation - shifting the paradigm. LSIS, Coventry.


Between 2006 and 2009, the CEL/LSIS research programme was directed by Professor David Collinson of Lancaster University Management School. During this time the programme published 12 edited volumes of practitioner research reports, 6 individual practitioner research reports and 20 individual HE research reports, all exploring leadership issues in the learning and skills sector. All these publications are available from LSIS (in hard copy) and from the LSIS website (http://www.centreforexcellence.org.uk/default.aspx?Page=Practitioner Projects) in electronic form, as follows:

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<table>
<thead>
<tr>
<th>Volume</th>
<th>Title</th>
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</thead>
<tbody>
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<td>Volume 1</td>
<td>Researching Leadership in the Learning and Skills Sector: By the Sector, On the Sector, For the Sector (2005-06)</td>
</tr>
<tr>
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<td>Developing Middle Leaders (2006-07)</td>
</tr>
<tr>
<td>Volume 3</td>
<td>Leading Quality Improvement (2006-07)</td>
</tr>
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<td>Volume 4</td>
<td>Leadership and the Learner Voice (2006-07)</td>
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<td>Volume 5</td>
<td>Collaborative Leadership (2006-07)</td>
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<td>Volume 6</td>
<td>Researching Disabilities (2007-08)</td>
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<td>Volume 7</td>
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<tr>
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<td>Distributed and Shared Leadership (2007-08)</td>
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<td>Leadership Development and Succession (2007-08)</td>
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<tr>
<td>Volume 10</td>
<td>New Directions in Leadership Excellence: Towards Self Regulation (2007-08)</td>
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<td>Volume 11</td>
<td>Personalising Learner Voice (2007-08)</td>
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<td>Volume 12</td>
<td>Researching Self Regulation in FE Colleges (2008-09)</td>
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<thead>
<tr>
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<tr>
<td>Leading Multi-Faith Support Teams in the Learning and Skills Sector (2007-08)</td>
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<td>Ian Yarroll, NIACE</td>
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</tr>
<tr>
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</tr>
<tr>
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<td>Diversity, Identity and Leadership (2006-07)</td>
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<tr>
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<tr>
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</tr>
<tr>
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<td>Professor David Collinson, Lancaster University Management School</td>
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