



An independent review of the governance arrangements of further education institutions in Wales

Rob Humphreys
Chair of the Review Panel

March 2011

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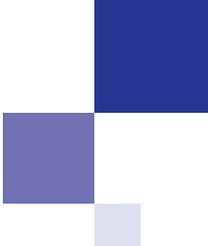
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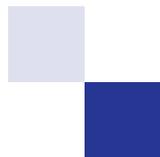
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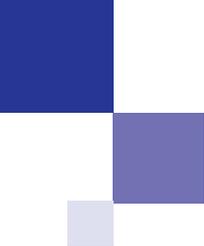
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Foreword

Governance is a necessary feature of modern organisations. If carried out effectively, it is often invisible to the wider public and even to users or customers of those organisations but it remains essential in two vital regards. First, it ensures scrutiny, challenge and accountability on behalf of those who are served by, or who fund the organisation, thus ensuring in turn probity and transparency. Second, constructive and rigorous challenge of those who lead the operations of the organisation has the effect of driving up performance levels.

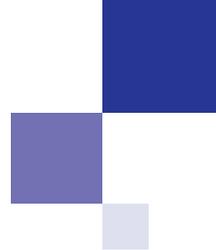
The Minister for Children, Education and Lifelong Learning invited me and my colleagues on the Independent Review Panel to explore how governance in the further education sector might be improved and enhanced. In readily accepting this challenge, we were mindful of the pivotal role that further education plays in promoting both economic prosperity and social justice in Wales. We were aware also of many examples of existing high performance across the sector.

We saw our task as exploring ways in which governance arrangements need to be adjusted and enhanced in order to meet the very significant challenges posed by rapid changes to the external environment (such as economic, labour market, and broader social and demographic change) and by structural change within the sector, including requirements placed upon institutions to work in collaboration to an ever greater degree.

We took the view at an early stage in our deliberations that the public investment in further education means that it should be seen as a 'public good'. While we were not charged with reviewing the configuration of the sector, we did set out to clarify the purposes of further education. It was evident to us that we need clarity around purpose before considering what kinds of governance arrangements best enable further education institutions to fulfil that purpose.

This led us to develop what we describe as four 'pillars' of governance. These are: clarity of purpose; capacity and effectiveness; ownership; and scrutiny and accountability. A key challenge was to develop arrangements that balanced these different aspects of the governance and functions of further education.

In seeking to meet this challenge, we were informed and influenced by the work of, amongst others, the Canadian theorist of governance and public administration, Jocelyne Bourgon, and by the results of research that we ourselves commissioned, on specific examples of governance in further education elsewhere in the UK and internationally.



We were also assisted greatly by the written responses to our call for evidence, and by a number of organisations who eagerly accepted our invitation to address us in person on aspects of governance and answer our many questions. I am pleased to record our thanks to them here.

On behalf of the Review Panel, I wish to record thanks also to the staff from the Department for Children, Education, Lifelong Learning and Skills (DCELLS) who provided the secretariat for the review and who also provided expert advice and assistance whenever called upon.

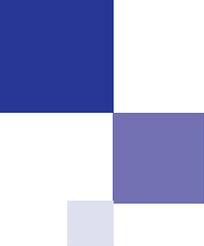
Our proposed new governance structures set the conditions for enhanced scrutiny, challenge and accountability. They will enable further education institutions to increase their 'embeddedness' within, and responsiveness to, their respective communities, localities and regions. They will provide the platform for leadership of institutions to flourish and they will equip institutions and their leaders to meet the challenges of the future.

Our recommendations borrow and adapt aspects of governance from the social enterprise sector. Some may see this as innovative. Yet we see our recommendations as eminently practicable, and believe that they represent an evolution from present arrangements, rather than a clean break involving considerable upheaval.

Should our recommendations be implemented, it will be for **people** to make the new arrangements work by bringing to life a re-invigorated and vibrant culture of scrutiny and challenge that we believe is made possible by, and will flow from, the new arrangements and structures we set out.

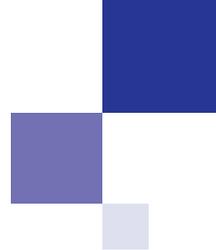
I am enormously grateful for the commitment, expert input and diligence of my colleagues on the Review Panel. On behalf of the Panel as a whole, I am pleased to present this report and our recommendations to the Minister for Children, Education and Lifelong Learning.

Rob Humphreys
March 2011



Context and introduction

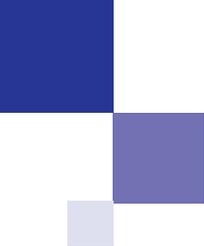
- 1.** Our purpose in conducting this review was to set the right conditions and structures for the enhancement of effective and accountable leadership of further education institutions (FEIs) in Wales. In doing so, we recognised that the sector itself plus the wider contexts in which it sits – such as the economy and labour markets – are changing rapidly. These institutions are responsible for ensuring that the investment of public funds meets the needs of a wide range of learners, users, customers and other stakeholders in support of national, regional and sub-regional strategies. We believe that our findings and recommendations provide the further education (FE) sector with an opportunity to shape the practice of governance and accountability for the better. The Review Panel firmly believes that implementing the recommendations – in cooperation with key stakeholder groups – will enhance governance and thus improve actual performance of FEIs without increasing regulatory burden.
- 2.** This review covers the 16 further education corporations (or governing bodies) in Wales created under the Further and Higher Education Act 1992 (FHEA), that are governed by the framework set out in The Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006. These are the general FE or tertiary colleges in Wales (Annex A).
- 3.** The review also covers the four designated institutions (one denominational sixth form college and three specialist institutions offering community-based or residential courses for adults) created under the FHEA. However it is recognised that these designated institutions have different governing body arrangements and are not governed by the Instrument and Articles of Government, but by frameworks tailored to meet their own circumstances. However we would expect these institutions to embrace the principles and the spirit of the recommendations contained within this review, and indeed to implement changes in line with the recommendations where appropriate.
- 4.** In this report all of the above organisations are collectively referred to as further education institutions (FEIs).



5. Together these institutions deliver around sixty per cent of the post-16 learning that is funded by the Welsh Assembly Government, with over 240,000¹ enrolments in 2008/09. In 2009/10 the Welsh Assembly Government allocated over £343 million of grants or contracts to FEIs to deliver learning which constitutes almost eighty per cent of their total income, with funding ranging from £790,000 to £46 million.

6. However, this review was not about systems of audit or control. Our research in this area provided assurances that the FE system has matured and developed since incorporation under the FHEA and that the Welsh Assembly Government currently has no significant concerns about the general financial health of the FE sector.

¹ Further education, work-based learning and community learning Wales 2008/09 – SDR 60/2010



The challenge

7. We were mindful during our deliberations that our task and remit were to explore and make recommendations on the governance of FEIs, rather than the structure and performance of the sector or of individual institutions. However, it is our belief that transparent and effective governance arrangements are a pre-condition for high levels of performance. But it is not a matter simply of formal arrangements or structures – a working culture of governance that provides consistent, rigorous and searching scrutiny and challenge to management and leadership is also a vital component of a well-run institution.

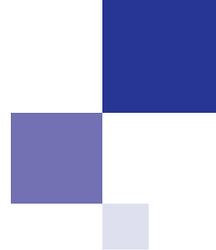
8. We began by considering the purpose of further education in a modern society, and within Wales in particular. Only by being clear as to its purpose is it possible to consider the best form of governance to enable FEIs and the sector to fulfil that purpose to best effect.

9. Our analysis of the purpose of FE – and a number of key organising principles that flow from this – appears below, but our explorations and deliberations led us to another preliminary starting point, namely that taken as a whole, the FE sector has performed well in recent years, with a number of FEIs achieving high levels of performance.

10. Our task was to explore how the present governance arrangements aid or perhaps hinder consistent levels of high performance. In particular, we sought to make recommendations that would not simply enhance performance of the sector as it is presently configured. We sought also to develop robust and responsive governance arrangements that will stand the sector in good stead in the coming decades, as it responds to both the changing external environment and the changing thrust of Welsh Assembly Government strategy and policy.

The purpose of further education

11. While sometimes having a less prominent public profile than schools and the higher education sector, high quality further education is essential in any modern society, and pivotal in securing both economic prosperity and greater social justice in Wales. FEIs are the key institutions for developing and sustaining the vocational skills of individuals and the wider workforce, thus contributing to the economy; and they are usually deeply embedded in the economy, society and culture of their locality and region. But they contribute

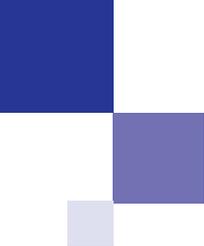


across a range of other crucial policy areas, such as economic development, social and community regeneration, and the development and promotion of active citizenship. A sometimes unnoticed feature – and strength – of most FEIs is that they promote and provide educational opportunities across the age range, with sixty per cent of learners in FE in Wales being over the age of 24, most of these studying on a part-time basis.

12. The following are the broad purposes of further education. Each is inter-related with the others, and they are all interwoven into a fabric that is both institutional and sectoral in form:

- providing high quality learning via diverse modes of delivery to enable learners, ranging from the age of 14 to adult, to achieve their full potential
- supporting economic prosperity by working in partnership with businesses, employers and other users and customers to meet training and skills needs
- raising the aspirations of communities and of learners, overcoming barriers to remaining in or returning to learning
- encouraging the development of active citizens, not only as skilled workers, but by instilling a wider sense of social responsibility
- being major and proactive agents in the collaborative planning and development of the seamless progression routes for learners from the age of 14 onwards
- widening participation through social inclusion and respecting diversity
- supporting regeneration within their communities and region
- working with partners, users, customers and the Welsh Assembly Government to achieve positive economic, environmental, social and cultural outcomes for wider society
- putting the best interests of the learner at the heart of all decision making.

13. As a group, we took the firm and shared view that while FEIs are autonomous organisations, the public investment that they receive means that further education as a set of institutions, activities and outcomes is a public good. This analysis of the sector helped to frame and shape our deliberations and recommendations.



14. Having arrived at a view of the purposes of FE, and that FE constitutes a public good, we then developed three dimensions of governance that provided us with an organising framework for our recommendations. These are: scrutiny and accountability; ownership; and capacity and effectiveness. We discuss each of these in subsequent sections of this report.

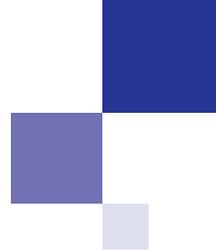
15. We found that FEIs had become increasingly complex delivery organisations, in an environment with an increasing emphasis on network and multi-agency working, with a wider range of learners and other service users, including community organisations. Our analysis demonstrated that FEIs in Wales no longer conform to a single model. While a few remain small, serving a specific area, others are becoming much larger organisations, meeting the needs of a wide range of learners, employers – from small and medium enterprises (SMEs) to multi-nationals – and other stakeholders across a number of local authority boundaries. The wide and inclusive nature of the majority of FEIs, and their key role in supporting a vibrant economy, means they have to engage with an enormous range of users, customers, stakeholders and partners.

16. Our challenge was to develop a system of governance that would enable and enhance the effective governance of all models of FEIs as they currently exist, and that could also be applied to future models that will almost certainly evolve through ever-growing collaborative approaches. This, in effect, is to seek to ‘future-proof’ our recommendations.

17. Our ‘Terms of reference’ also directed the Review Panel to investigate social enterprises² and consider how best practice in their governance arrangements might inform FE.

² According to John Pearce (*Social Enterprise in Anytown*, Calouste Gulbenkian Foundation, 2003), social enterprises have six defining features:

- *having a social purpose or purposes*
- *achieving the social purpose by, at least in part, engaging in trade in the marketplace*
- *not distributing profits to individuals*
- *holding assets and wealth in trust for community benefit*
- *democratically involving members of its constituency in the governance of the organisation*
- *being independent organisations accountable to a defined constituency and to the wider community.*



18. The Welsh Assembly Government itself defines a social enterprise as *'a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners'*³.

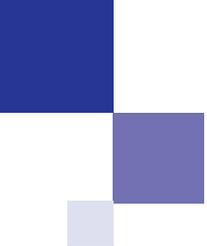
19. Social enterprise is not new in Wales. Many of the most significant social and political organisations and institutions created by the people of Wales since the nineteenth century – such as non-conformist chapels, trades unions and co-operative societies – can be seen as socially entrepreneurial in form and intent. In more recent decades, a variety of social enterprise initiatives and bodies have been developed in Wales, including housing associations and many organisations linked to community development.

20. We found that there is no single legal form used by contemporary social enterprises. For example, social enterprises can include associations, trusts, partnerships, companies limited by guarantee, companies limited by shares, industrial and provident societies, limited liability partnerships, community interest companies and charitable incorporated organisations.

21. As a group we were satisfied that the existing legal structures for FEIs in terms of the ownership and assets being vested in the governing bodies (or corporations) allowed for entrepreneurial activity that did not detract from the central purposes of FE. We saw little benefit in dismantling this legal structure, and incurring the FE sector, and the public, unnecessary and significant expense by creating new legal structures for the purpose of asset owning. On the narrow aspect of the legal status of FEIs we broadly took the view that 'let's not seek to fix something that isn't broken'.

³ Welsh Assembly Government (June 2005) *Social Enterprise Strategy for Wales*. The strategy goes on to say that social enterprises can:

- *provide routes to mainstream employment*
- *create sustainable jobs*
- *retain wealth within the local community*
- *contribute to community regeneration*
- *encourage active citizenship*
- *make money in a socially and environmentally responsible way*
- *identify and promote the needs of local communities*
- *improve service delivery to meet local needs*
- *reach out to those who are economically inactive or disadvantaged.*



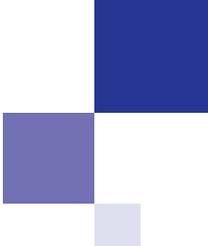
22. Early in the review the FE sector presented us with evidence of activities in some FEIs that could already be considered to be forms of social enterprise. We noted, however, that the nature and extent of this kind of activity varied considerably across the sector. Such activity takes as its starting point that FEIs are primarily educational and have a social purpose. They re-invest surplus derived from their operations and activities rather than distributing profits to shareholders, and the governing body, made up of stakeholders responsible in some way to the wider community, own the assets and land.

23. From FEIs as autonomous organisations there is a clear and robust line of accountability to the Welsh Assembly Government via the legislative framework⁴ and the investment of public money. This line of accountability sits well with the notion of FE as a public good.

24. However, a key question emerged from the evidence presented to us and our deliberations: How can FEIs be more accountable to the wider communities in which they operate and which they serve? To put it another way, could making FEIs' current governance arrangements *more* 'social' make them more effective educationally, more enterprising, more accountable (via scrutiny and challenge) and closer to the communities and businesses in which or with which they work?

25. Our answers to these questions were in the affirmative and led us to the core of our recommendations. While we consider that FEIs might be seen as social enterprises in their current form, and thus that no major legal change is required in this area, there are models of governance in the social enterprise sector that can be borrowed or adapted, in order to enhance both governance and responsiveness of FEIs. We also suggest later that innovative models derived from the co-operative and mutual sectors can be utilised by FEIs in developing new kinds of partnerships with other providers and organisations. In both respects, structural change alone is insufficient; the organisational culture of FEIs may need to shift in order to be more responsive, accountable and socially enterprising.

⁴ This is set out in legislation and other publications, for example the Welsh Assembly Government's Financial Memorandum (updated 2007).



The review process

26. The Review Panel was established in July 2010 and met seven times until February 2011. Its membership and terms of reference are set out at Annex B. The Review Panel's members were chosen to reflect a broad range of experience and expertise, including in the fields of governance, further education, higher education, business and industry, employers, trade unions and social enterprises.

27. Throughout the review, we sought to engage widely and openly with the FE sector and key stakeholders on the benefits and disadvantages of the current governance arrangements.

28. Organisations and bodies invited to share their views with the Review Panel included all FEIs in Wales (both chairs of governors and principals), ColegauCymru/CollegesWales, National Union of Students (NUS) Wales, University and College Union (UCU), Welsh Local Government Association (WLGA), Association of Directors of Education Wales (ADEW), Estyn, Sector Skills Councils, Wales TUC, National Training Federation for Wales (NTfW), National Institute of Adult Continuing Education (NIACE) Dysgu Cymru, Governors Wales and the 157 Group in England. We received 40 written responses from stakeholders, and invited several organisations to present evidence at our meetings. This enabled us to hear about examples of good practice in governance from the FE sector and beyond, including the views, concerns and ambitions of institutions, learners, staff, partners, users and customers.

29. The remit for the Review Panel included an exploration of social enterprise models and their relevance to the FE sector. We were fortunate in that some members of the Review Panel had expertise in this field, and we also sought evidence from organisations including the Wales Co-operative Centre, the Co-operative College and Dŵr Cymru. This was particularly valuable to us in understanding how organisations can be 'fleet of foot' and enterprising, yet at the same time accountable to wider communities. Some of the good practice we identified is reflected in our recommendations.

30. We also commissioned the Learning and Skills Improvement Service (LSIS) to carry out independent research into governance systems in FE sectors in England and Northern Ireland, the North Carolina Community College System, USA and Boxhill TAFE, Australia, to help give the Review Panel a broader view of international best practice and the characteristics of good governance.

Response to the call for evidence

31. In the response to our call for evidence, we found that overall the issues identified in the views of stakeholders were often reflected in the views of FEIs themselves. (Respondents are listed at Annex C.)

32. FE governance is seen by many as an inclusive model that seeks to draw governors from a wide range of backgrounds, and reflects the interests of businesses, the community, staff and learners. Many respondents highlighted the commitment of individual governors, and of governing bodies collectively, to achieving their institutions' strategic goals and to meeting the needs of learners. In our meetings with governors, chairs of governors, clerks and principals, we were left in no doubt that governors themselves are deeply committed to their respective institutions, and gave of their time willingly as an act of public service.

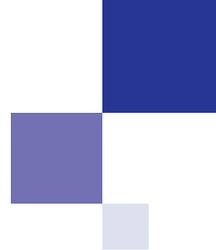
33. Many stakeholders commented on the requirement for FEIs' ability to respond quickly and flexibly to the needs of employers and to government initiatives and changing priorities – particularly their collaborative work under the 14–19 and Transformation Agendas. FEIs also felt that overall, they had clear lines of accountability to the Welsh Assembly Government, and that this translated well to scrutiny and challenge by governors at the level of the individual institution.

34. Estyn's evidence suggested that while many governing bodies achieve a good balance between their 'stewardship' and 'challenge' roles, this is not universally the case.

“Governors are volunteers and tend to want to support more than they want to challenge.

A few chairs of governing bodies do not challenge the executive rigorously enough, and accept too readily the strategic decisions made by the principal. Not all governing bodies evaluate their own performance and effectiveness.”
(Estyn)

35. The call for evidence highlighted a number of other areas where further progress needs to be made. There is some variation in the effectiveness of governance arrangements, and several institutions highlighted difficulties in recruiting governors with the necessary expertise, time or commitment. The role of governors is not always widely understood outside the FEI, and a number of respondents stated that the Welsh Assembly Government should play a key role in promoting a better understanding.



36. Both FEIs themselves and other respondents acknowledged that governing bodies are not always fully representative of the communities they serve. Several respondents suggested that governors should be more accountable to their local communities, and that governing bodies should actively seek to achieve a more balanced membership in terms of gender, age, ethnicity and social background.

37. The evidence from employers and Sector Skills Councils suggested that – examples of good practice notwithstanding – FEIs could be better engaged with the needs of business and industry, and that SMEs, in particular, do not have enough of a ‘voice’ in influencing the FE sector.

38. Several respondents suggested that the current system of governance is too focused on the individual institution rather than reflecting a strategic role for FEIs or the sector more widely – for example in a region containing more than one institution. Some also felt that it is difficult for institutions to achieve the right balance between their accountability to government, to communities, and to the interests of the institution itself. It was suggested that more transparency is needed to show how FEIs respond to the needs of their communities.

39. FEIs themselves felt that governance arrangements should ensure that FEIs, schools and higher education institutions (HEIs) can work together more effectively. There was a strong view that such arrangements needed to be reciprocal, and that all partners must be equally committed to collaborative working rather than pursuing their own organisation’s interests. Concerns were raised about the extent to which some schools are not collaborating with FEIs as they should be.

Outcomes

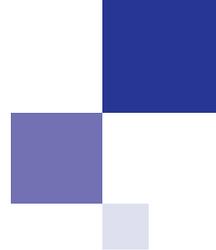
40. The current model allows freedom for governing bodies to set the strategic direction, ethos and objectives for the FEI. This remains one part of the foundation on which this review is built. Our recommendations, if accepted and implemented appropriately, will create a robust system of governance that will at the same time enable FEIs to retain their 'fleetness of foot' and become even more flexible and responsive to the needs of their learners, users, customers and stakeholders.

41. From the evidence presented to us, we did not feel that expanding the size of the governing body or being overly prescriptive on the membership would help FEIs to run their businesses more effectively. Therefore, in 'Chapter 2 – Scrutiny and accountability', we recommend a leaner and smaller governing body. This comprises one part of our proposed new model of governance. We propose some changes to the terminology to help signify this change.

The current term 'governing body' comprising of 'governors' will be replaced with the term 'board' comprising of Executive and Non-Executive Directors. Where we have used the terms 'governing body' and 'governors' in this report, we are referring to the current arrangements.

42. Complementing this leaner board, in 'Chapter 3 – Ownership', we recommend a body whose purpose is to increase engagement with, and enhance scrutiny and accountability on behalf of, the various stakeholders and communities served by the FEI. We refer to this body as the 'membership body', and a 'member' is an individual who sits on this body. This is the element of our recommended governance model that borrows heavily from the social enterprise sector.

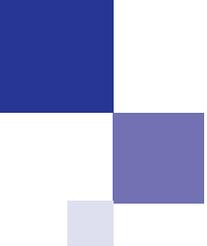
43. It is important that both elements of the new governance arrangements are seen as component parts of one structure. Each has a specific role, but the model is an holistic one requiring both elements. Together, the board and membership body form an integrated system of governance for FEIs. Directors and members will have distinct but complementary roles, responsibilities and obligations that are set out in Annex D.



44. In 'Chapter 4 – Capacity and Effectiveness', we look at the issues of collaboration, the freedom of FEIs to operate effectively, and links with employers. We have made recommendations to enable them to become more enterprising in the contexts of ever-increasing collaboration, and the current pressing economic challenges. During discussions on the capacity and effectiveness of FEIs the Review Panel was aware of other work instigated by the Welsh Assembly Government that could significantly influence the future shape of the FE sector, namely:

- the proposed introduction of the Education Measure which is firmly focused on improving the delivery of education through the better use of public resources through collaboration; where there are difficulties developing collaborative solutions, the Measure will help speed up the pace of change
- the Education Review Task and Finish Group that has been considering the case for change to existing service structures, in particular which education services should be provided at national level, regional consortia level, by local authority level and which should be devolved to clusters of providers.

45. The recommendations set out in this report are intended to support both of these agendas.



Four pillars of effective governance

“Governance can be defined as the ‘traditions, institutions and processes that determine the exercise of power in society’. It speaks to how society makes decisions on issues of public concern, how citizens are given voice in public decision-making, and how social partners work together to create public goods.”

(Bourgon, 2008)⁵

46. Good governance lies at the heart of any organisation, large or small. It ensures probity, transparency, and gives structure to notions of ownership and belonging. It also provides scrutiny over, challenge to, and the holding to account of those at a senior level charged with running the organisation. It is a pre-requisite of excellence of performance. Based on our review of the evidence, we have identified four ‘pillars’ of governance for the FE sector that we have used as the basis of this report. These are:

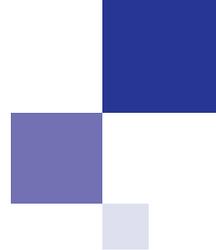
- clarity of purpose
- capacity and effectiveness
- ownership
- scrutiny and accountability.

47. We have already discussed the purposes of FE, as we see them (paragraphs 11 and 12). In the following sections we outline our understanding of the remaining three ‘pillars’ of governance.

Capacity and effectiveness

48. Governance arrangements should be such that they enhance the ability of FEIs, and – critically – the sector as a whole, to operate with fleetness of foot and in a responsive manner to learners, users and employers. Rapidly changing labour markets, sectors of economic and employment growth (and indeed sectors in decline) and inward investment opportunities mean that the demands on FEIs and the sector to respond at pace have never been greater.

⁵ J Bourgon (2008) ‘The Future of Public Service: A search for a new balance’, *The Australian Journal of Public Administration*, vol. 67, no. 4, pages 390–404, citing J V Denhardt and R B Denhardt (2003) *The New Public Service: Serving not Steering*, New York and London: M E Sharpe



49. The ability to be ‘fleet of foot’ must also include a well-developed capacity for flexibility in FEIs in the area of developing innovative and output-driven partnerships with other providers (including schools and universities), the third sector, community organisations and employers.

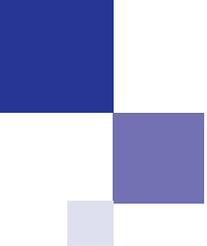
50. FEIs – and we emphasise once again, the sector as a whole – must also be able to respond quickly, creatively and strategically to Government policy, which may be set out on a national and/or regional basis, rather than on a local basis alone.

51. We recognise that all public bodies are operating with reduced resources from the tax payer. We recommend that FEIs maximise income from third party sources to reduce their reliance on public funding including via partnership and collaboration with other providers and bodies where they can seek to utilise models derived from the co-operative and mutual sectors.

52. Some of the issues above – only touched upon here – relate to the structure and operation of the sector and institutions. Our interest in these matters relates solely to the ways in which models and practice of governance best enable FEIs to develop and enhance such capacity and effectiveness while at the same time ensuring that there is proper and robust scrutiny and challenge. Capacity and effectiveness in operational terms – including moving to a more pro-active and socially enterprising way of working – will be enhanced where FEIs and the sector as a whole are scrutinised, challenged and held to account by those who are funders of, and those who are served by, the institutions and the sector.

Ownership

53. Earlier we introduced the notion of further education as a public good, deriving from the legislative framework and public investment in the sector and individual institutions. In one sense, then, if one asks the question ‘Who are the rightful owners of FEIs or of FE?’ the answer is the wider public or citizenry, for it is on their behalf that the government makes the investment, regulates and holds to account.



54. However, the notion of ownership is more multifaceted than this. Citizens might also be said to have a stake in – or lay claim as ‘owners’ – to a particular FEI that is located in their community or that serves their needs vocationally or as members of that community. We were struck by a statement made by one of those who gave evidence to us, that this facet of ‘ownership’ will exist when citizens talk of ‘our college’ rather than ‘the college’ when referring to their nearest FEI.

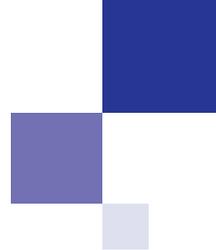
55. Learners, too, have a two-fold relationship with FEIs, as both citizens and students. Similarly, employers have a two-fold relationship as tax-paying bodies and users and customers of individual FEIs. Other stakeholders such as local authorities, third sector or community organisations can also be seen as having a rightful interest in the FEI that serves their geographical area or sectoral needs.

56. Governance structures therefore need to be constituted to enable those who populate them to undertake their duties and responsibilities in such a way as to make meaningful these multi-faceted sets of stake-holdings and ‘ownerships’. To make this manifest is no easy task.

Scrutiny and accountability

57. Scrutiny and the holding to account of those charged with running an organisation is at the heart of governance. The senior executives of an FEI, who are charged with developing and implementing strategy, and deploying public resources and the assets of an institution, must be open to rigorous challenge and scrutiny, and must be held to account – both to ensure high performance, and to ensure probity and transparency. This process – which should be carried out as a continuous process – is a necessary feature of a well-run and successful organisation, and high quality leaders thrive and perform at their best, within this kind of environment.

58. From our description and analysis of the differing forms of ‘ownership’ outlined above, we have identified that there is an overarching accountability to the taxpayer, made manifest by the powers over FE vested in the Welsh Assembly Government, and by the fact of public funding itself.



59. A significant and emerging development is that of public funding being deployed on a regional basis, rather than solely to individual FEIs. In this regard, there may be a weakness in the present governance arrangements.

60. Estyn is also an important body in holding FEIs to account, via its statutory powers held on behalf of the wider public, in the area of quality of provision.

61. The greater challenge for the scrutiny and accountability aspects of governance is that of ensuring that the wider sets of 'owners' of FE are able to have a meaningful role within governance arrangements. It is this aspect that is most directly addressed by our proposed new model of governance.

62. While the discussion above flows from purpose, through capacity to ownership and accountability, we introduce our detailed conclusions and recommendations in reverse order, in order to start from the current arrangements.

Scrutiny and accountability

“Governing body composition should not be a ‘one fit for all’ across Wales. Representation should reflect the college’s current and emerging profile. If a college is a significant provider for a particular industrial sector then the composition should reflect this . . . equally, reflecting transformational change, flexibility for partner engagement at board level should be permitted.”

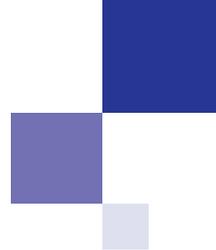
(FE college)

63. We propose the establishment of a new board for each FEI, that would comprise of Non-Executive Directors and Executive Directors (including the principal of the institution) at a ratio of not fewer than 2:1. This would be one component part of a new structure of governance, to be complemented by the establishment of a membership body (discussed in the following section). Staff or learners could also apply to become Non-Executive Directors.

64. The board would inherit the existing responsibilities for corporations, as set out in the Replacement of Instrument and Articles of Government (Wales) Order 2006 (summarised at Annex D) and would be responsible for its overall strategic direction and for scrutinising and challenging the institution’s senior management.

65. We do not believe that an overly prescriptive approach should be taken to determine the exact membership of each board, although we believe that the board should comprise fewer in number than existing governing bodies. Instead, a template approach should be adopted that allows each board:

- to develop structures that allow for the prudent and effective management of public funds and related accountability
- to support innovation and entrepreneurial activities that would increase income for re-investment in the primary purposes of the institution and, where appropriate, reduce dependence on public funds
- to define the size and composition of boards that are relevant to the board’s objectives and geographical coverage; this may vary according to the size of the FEI
- to facilitate its operation by the inclusion of strategic cross-sector representation.



66. Directors would need to ensure that they are fully aware of the code of conduct for their FEI, and to use their influence to ensure high standards of conduct, personal integrity and independence of judgement. They must put the interest of the FEI ahead of their own interests or those of any other group with which they are involved. Working practices must be fully in line with the recommendations of the Nolan Committee's report *Standards in Public Life*.

67. Non-Executive Directors must have sufficient skills and knowledge to exercise proper scrutiny and should not be involved in operational decision making. They will, however, hold senior managers to account for their implementation of strategy and achievement of objectives and targets.

68. The board as a whole should have a duty to consider the national and regional functions of the FE sector and the needs of those served by the sector at a regional and national level. This duty to consider should include a requirement to consider the roles and potential roles of other educational providers alongside their own in meeting those needs. This should form part of the self-assessment process of governance.

69. As a Review Panel we do not underestimate the challenges faced by existing governors, and the commitment required to undertake this role effectively. Feedback from FEIs highlighted the difficulty of recruiting governors with both the expertise to provide the necessary leadership, and the time to engage with a complex role that encompasses preparation, meetings, paperwork and training.

70. Many FEIs also acknowledged that their governors are not fully representative of the diversity of the different communities they serve, for example gender, age, ethnicity and socio-economic profile. Finding the right people who are willing and able to commit to governor duties is not an easy task. Some FEIs suggested that the status of governors, and lack of remuneration, exacerbates the problem.

71. These issues cannot be ignored, and our recommendations are intended to help address them through the establishment of a new, more inclusive model of governance. Consideration should be given to allowing FEIs to remunerate the chair and Non-Executive Directors of the board based on clear, robust and evidence-based cases.

72. Measures of the impact of the FEIs on its communities and region and of the communities and region on the FEIs should be developed by boards as part of strategic planning, and reviewed through an annual self-assessment that should include engagement with, and challenge by, the membership body and innovative engagement methods with the wider public. For example:

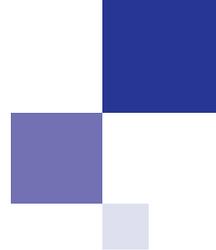
- How does the FEI enhance the career chances of local residents?
- What proportion of local employers and third sector/community organisations use the FEI?
- How has the FEI helped to alleviate social disadvantage?
- How does it support the local, regional and national economy?
- Is the FEI effectively collaborating with other organisations?

73. The Welsh Assembly Government has a key role to play in establishing key performance indicators for boards, and should require each one to publish annual statements and reports on how they have performed against these indicators for consideration by the community through the membership body.

Recommendations

We recommend the Welsh Assembly Government should:

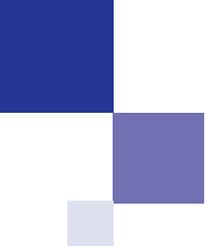
- R 1** Revise the regulatory framework within which a further education corporation operates, The Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006, to enable a new system of governance involving a board and membership body.
- R 2** Give consideration to enabling boards to introduce remuneration for the chair and other Non-Executive Directors if they so wish, subject to discussions between the Charity Commission and appropriate bodies. If implemented by the Welsh Assembly Government, boards wishing to do so should be able to demonstrate clear, robust and evidence-based cases for remuneration.
- R 3** Remove categories of membership from the Instrument and Articles, allowing for Directors of the board to be chosen on the basis of the skills, qualities and experience that are useful to the FEI.



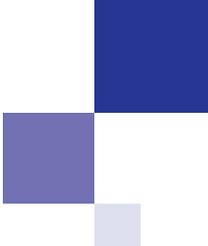
- R 4 Place a duty on boards to consider national and regional roles and strategies of the FE sector and the needs of those served by the sector at regional and national levels. This duty to consider should include a requirement to consider the roles and potential roles of other educational providers alongside their own in meeting those needs.
- R 5 Establish clear annual and longer-term performance indicators for boards to report on and publish, including:
- learner outcomes
 - financial health
 - community and employer engagement
 - collaboration with other deliverers of 14+ learning
 - measures to alleviate social disadvantage
 - measures to progress the skills and employment agenda.

We recommend the new boards should:

- R 6 Comprise Non-Executive and Executive Directors at a ratio of not fewer than 2:1 with a Non-Executive Chair who would have a casting vote.
- R 7 Have no fewer than six and no more than 12 Directors, with an optimum of nine, to be appointed by the board, following a Search Committee, operating under Nolan Principles.
- R 8 Appoint Directors on the basis of a matrix encompassing skills and knowledge in fields including education, business and enterprise, finance, leadership, management, law and human resources.
- R 9 Be able to evidence that in the search and appointment process appropriate and meaningful steps have been taken to identify Non-Executive Directors that reflect the diversity of the different communities they serve including language, gender, age, ethnicity and socio-economic profile (to be informed by the equality strands set out in the Equality Act 2010).
- R 10 Include the Principal/Chief Executive as an Executive Director.
- R 11 Meet not less than six times a year in addition to an Annual General Meeting that would be attended by all Directors with the membership body invited, and open to the public.

- 
- R 12 Inherit the existing responsibilities and committee structure for FE corporations as set out under the Replacement of Instrument and Articles of Government (Wales) Order 2006.
 - R 13 Establish effective arrangements to ensure that the views and considerations of stakeholders, including learners and staff, are fed into the board. Such arrangements may involve individuals from the membership body, but should also include wider sets of consultees.
 - R 14 Be required to publish an annual statement reporting its progress in achieving performance indicators set by the Welsh Assembly Government.
 - R 15 Directors must participate in a national training programme developed by the Welsh Assembly Government in conjunction with the FE sector, to ensure the effectiveness of the board and governance more widely.
 - R 16 Undertake an annual self-assessment that is fully informed by feedback from the membership body.
 - R 17 Ensure that a Governance Officer is in place who is accountable to the board and responsible for ensuring the effective operation of the board and the membership body. This post would have a similar role and responsibilities to that of the present Clerk to the Governors.

74. Proposed transitional arrangements to enable the establishment of the new board structure are set out in paragraphs 86–89.



Ownership

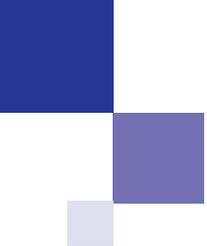
“Membership sets particular governance challenges for how members influence the board. Sustaining active membership becomes more difficult with increasing size . . . but when membership is active, it can be a considerable strength.”⁶

75. We believe that FEIs should move towards governance models that:

- promote an ethos and vision that attracts members of the wider community and region to support the institution actively and to provide informed and robust scrutiny and holding to account
- see themselves, and are seen, as drivers within the community and region as agents of both skills development and economic, social, and cultural regeneration
- promote transparent outcomes for the community, building in explicit societal/community benefits and social responsibility strategies
- encourage the development of active citizens, as well as skilled workers, as part of their wider sense of social responsibility.

76. Under the present arrangements, governors need to balance their role in overseeing the strategic direction of the institution with their responsiveness to stakeholders’ needs and views. We believe that, while there are some examples of effective learner, employer and community involvement in FE governance, this does not go far enough in ensuring that all FEIs are accountable to their communities and stakeholders. To achieve this we need hybrid models that can combine the features of public, private and philanthropic/mutual organisations. These need to be developed pragmatically and as part of a process that is valuable in its own right, rather than prescribed from above.

⁶ *For Love and Money – Governance and Social Enterprise*, National Council for Voluntary Organisations, December 2007



“The Transformation Agenda has widened the community served by a college and therefore the stakeholder membership should be reviewed, and an element of flexibility introduced into the system to develop and reflect the college’s new community.”
(FE college)

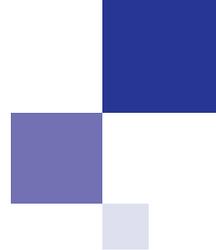
77. We therefore propose the establishment of a new body that represents the interests of the citizens of the wider community and other key stakeholders served by each FEI, to which the board will report on its performance and achievements.

78. This entity, known as the membership body, should be established for every FEI in Wales. It forms the second component part of the complete governance model, complementing the board. It should be sufficiently flexible to meet the needs of institutions of different sizes, including those operating across more than one local authority area. It would include individuals from organisations involved with business and industry, education, the public and third sectors, regeneration and economic development, as well as learners, parents/carers and staff. Members would be invited or would apply to join and would each have an equal ‘voice’ on the membership body; they would be volunteers, who are committed to the business and values of the institution, and with responsibilities and obligations relating to both the institution and the wider sector at regional and national levels.

79. The membership body would act as a sounding board and scrutinising body for the FEI and would assist the board in setting the FEI’s strategic direction and would have a triple role of:

- informing the board of issues, concerns, opportunities and developments relevant to the FEI’s work
- challenging the board, holding it to account on the achievement of objectives and targets and evaluating its responsiveness to stakeholders
- ratifying and re-appointing Non-Executive Directors, including the chair.

80. Given the emerging regional dimension of the sector, it may be desirable for a membership body to be established that relates to a cluster of FEIs, in addition to a single FEI. It may also be possible to



have a smaller representative body of members at a national level, to assess performance of the sector as a whole, and to advise the Minister and officials as regards strategy for the sector.

81. The membership body will need to attract community and stakeholder members who have vision and commitment, and this will be achieved if there are transparent outcomes for the wider community from the work of the institution. Membership would carry with it obligations and responsibilities, and the effectiveness in carrying out these governance functions should form part of the FEI's self-assessment, and be subject also to formal inspections carried out by Estyn.

82. One of the main themes that emerged from stakeholder evidence was learner representation. Currently, FEIs are required to have one student member on the governing body, and good practice guidance issued by the Welsh Assembly Government in 2010 recommends two student members so that they can support one another. However, several responses to the call for evidence highlighted difficulties in securing meaningful learner involvement in strategic decision-making.

“There are numerous reasons for the trend of poor or inconsistent student representation in colleges. Student demographics are usually more diverse and transient, the motivation of a student attending college is often different and the pressure placed upon student representatives is often off-putting. These factors have led to a general lack of engagement from the sector as, individually, many have tried and failed to encourage representation structures.”
(NUS Wales)

83. We are proposing the establishment of a leaner model of governance through the board, and we do not therefore think it is appropriate to prescribe the number of learner or staff members. It may well be that FEIs judge that these categories are best placed within the membership body. However, the new model of governance will give individual institutions flexibility in the categories of member they appoint to the board. It will also require each institution, through its membership body, to demonstrate accountability to its learners, staff members, communities and full range of stakeholders.

84. As with the board, it is not our intention that the membership body should be structured, populated or operated in accordance with overly prescriptive guidelines. Instead, we suggest FEIs should have flexibility in establishing arrangements that will meet their own needs and those of their local areas, within the broad parameters of Welsh Assembly Government guidance, and taking account of the diversity of the locality and wider region. It should be emphasised that the membership body is not an extended board, but will have its own distinct responsibilities and obligations as part of the overarching governance structure in steering the FEI. Its role should be guided by the content and spirit of the Nolan Principles.

85. Nonetheless we believe firmly that both learners and staff must be adequately represented on the membership body, regardless of whether they are represented on the board, as they have significant stakes in and relationships with the institution. FEIs with multiple campuses should take this into account in allocating places for both learners and staff on the membership body. We take the view also that learner and staff representation on the membership body should not replace or diminish other necessary normal and routine consultation processes and structures involving learner representatives, the NUS, staff and trades unions.

Recommendations

We recommend the Welsh Assembly Government should:

R 18 In conjunction with stakeholders develop guidance to assist FEIs in establishing membership bodies.

We recommend the new membership body should:

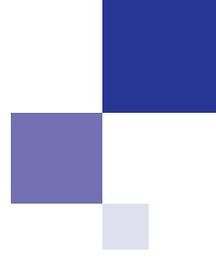
R 19 Be established for every FEI in Wales.

R 20 Reflect the diversity of the different communities they serve, including language use, informed by the equality strands as set out in the Equality Act 2010.

R 21 Be engaged with and endorse the strategic direction of the FEI.

R 22 Act as a sounding board on the impact of the FEI in meeting the needs of the communities it serves.

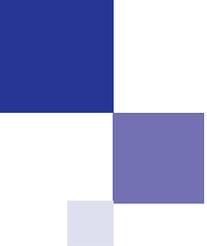
R 23 Scrutinise and challenge the board on the performance and achievements of the FEI to ensure the needs of the learner and the interests of the community and stakeholders are at the heart of decision making.



- R 24 Meet no fewer than three times a year and participate in an Annual General Meeting (which will be open to members of the public).
- R 25 Be governed by a framework developed by the Welsh Assembly Government and which is informed by the Nolan Principles.
- R 26 Consist of not fewer than 25 and not more than 50 members.
- R 27 Elect a chair to facilitate meetings (supported by the Governance Officer), who will attend meetings of the board as an observer with speaking rights.
- R 28 Be responsible for ratifying the appointment of the Non-Executive Directors and approving their re-appointment, including the chair of the board, when their terms of office come to an end.

We recommend that members should:

- R 29 Include individuals with knowledge or expertise in:
 - business, industry and enterprise
 - the public sector as employer
 - skills and labour market issues
 - regeneration and economic development
 - the third sector
 - the delivery of education at a local or regional level (that can range from primary to higher education).
- R 30 Include learners.
- R 31 Include staff of the FEI.
- R 32 Participate in a national training programme developed by the Welsh Assembly Government.
- R 33 Be identified on the basis of written application following a recruitment process that is managed by an independent panel.
- R 34 Have their appointment approved by the board for three years and for a maximum of three terms.
- R 35 Not be mandated to represent or speak on behalf of other groups or individuals.



Transitional arrangements

86. In terms of transitional arrangements, we recommend that the new arrangements are achieved by the setting up of a shadow board as early as possible in the 2011/12 academic year with the aim that the board assumes full governance control with effect from 1st August 2012. We recommend that the appointment of the first chair of the new board be made by the Minister for Children, Education and Lifelong Learning. Following this, the chair will appoint the Non-Executive Directors, identified through a search process conducted in accordance with the Nolan Principles, and give consideration on the appropriate Directors.

87. We recommend that each chair and Non-Executive Director be appointed for a three-year term for a maximum of three terms. However we recommend giving staggered terms of office in the first instance, to avoid a complete change of Non-Executive Directors at the end of any three-year period. The appointment of the Non-Executive Directors will be ratified by the members, and all re-appointments will be subject to the agreement of the members. This process will also apply to the chair of the board.

88. We also recommend that the membership body be in place by 1 August 2012. Members too should be appointed for three years and for a maximum of three terms, again staggering initial terms to ensure continuity of the Body. Members will be identified by an independent search committee through written applications. The independent search committee will then recommend members to the board for approval.

89. A Governance Officer (who will hold a similar role to the current Clerk to the Governors) should be appointed at an early stage in the transitional process in order to assist in the process itself.

Capacity and effectiveness

“New systems of accountability [should] balance the impact of rules and constraints to pursue policy goals, with reasonable risk-taking to innovate and improve performance, and with the obligation to maximise the achievement of results for citizens.”⁷
(Jocelyne Bourgon)

90. Governing bodies should ensure that learners’ needs and interests are at the heart of all decision making. The drive for greater partnership and collaboration calls for FEIs to be less focused on what’s best for the institution and more focused on what is best for the learners, and the wider community and region, creating and sustaining seamless routes of learning opportunities.

91. Institutions must respond and adapt to the needs of employers, including anticipating wider labour market change as well as short-term demand. In April 2010 Estyn published a remit report on the effectiveness of employer engagement in the FE sector. Overall this found that many FEIs in Wales work well with employers; in most cases they have an up-to-date knowledge of the training needs of employers. A few larger FEIs manage employer engagement particularly effectively through a dedicated service unit. However, in some FEIs employer liaison takes place through individual faculties or departments, and as a result arrangements for consulting employers are not systematic enough. There is a particular need to engage with SMEs, who are often under-represented on governing bodies and their stakeholder groups.

92. Accountability exists not only for individual institutions, but in conjunction with other providers on a regional and national basis, as a result of systematic investment in collaborative delivery and national programmes.

93. Since incorporation in 1992, the FE sector has altered significantly, and this change has gathered pace over the last decade. Crucially, FEIs are pivotal to the success of a collaborative agenda; they need to work closely with schools and with higher education institutions (HEIs) to ensure that learners have access to a wide range of curriculum choices and to seamless progression opportunities. The Welsh Assembly Government’s Transformation Programme is also driving increased collaboration between FEIs, with several mergers taking place in recent years and more on the horizon. The FE sector

⁷ J Bourgon (2008) ‘Reclaiming Public Administration’, *Ethos* Issue 4

is rightly praised for its responsiveness to the collaboration agenda, but our analysis showed that governance arrangements need to evolve to reflect this new landscape. We have sought to address this in our proposed model of governance outlined in previous sections.

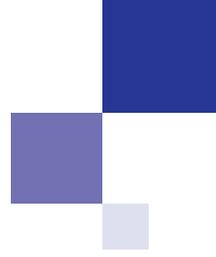
94. We believe that there are further steps relating to governance and representation that should be taken to enhance capacity and effectiveness. We propose that by establishing regional observatories, FEIs can build on their existing employer networks to take a more strategic, long-term view of the needs of industry. Ideally, representation would be from across the company sizes, local sectors and types of business.

95. The FEI should also have enough flexibility to increase revenue and income, which is then reinvested into the institution for the benefit of learners, especially given the current economic climate. They may want to consider embarking on a wider range of activities, on the grounds that these may directly or indirectly benefit their educational mission, but retaining that mission as the core purpose. Here, there are opportunities to utilise models – including aspects of governance – from the co-operative and mutual sectors in developing innovative collaboration and partnerships with other providers and bodies. Where such practice and arrangements prove successful, they may in due course, where practicable and appropriate, be used to further enhance the model of governance recommended in this report.

Recommendations

We recommend FEIs should work together to:

- R 36 Ensure that for each region, a single collaborative group is in place to provide oversight, leadership and encouragement in supporting partnership arrangements with other providers. It is important that development on the ground can move forward rapidly and coherently and therefore representation should be at the right level, e.g. Principal and Director of the board.
- R 37 Establish Business/Employer/Industry Observatories⁸ – on a regional basis in partnership with other FEIs as appropriate – building on FEIs' existing employer networks and other bodies that represent the interests of businesses.



We recommend that ColegauCymru/CollegesWales should:

R 38 Develop principles and a code of governance, working in conjunction with the Welsh Assembly Government for approval by the Minister for Children, Education and Lifelong Learning, incorporating the Seven Principles of Public Life.

We recommend that the Welsh Assembly Government should:

R 39 Support FEIs to develop innovative and mutually beneficial partnerships with other bodies, including clusters of FEIs and other public bodies for the provision of shared services, that do not disadvantage the FEIs in either a financial or legal capacity. Consideration should be given to the utilisation of models and governance arrangements for such partnerships and collaborations that are drawn from the co-operative and mutual sectors.

R 40 In conjunction with the FE sector, develop an all-Wales training programme for all those involved in governance of FEIs, whether members of boards or membership bodies.

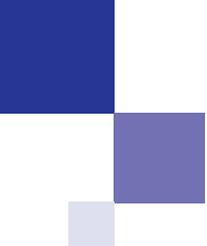
We recommend that Estyn should:

R 41 Ensure that formal inspections of FEIs include an evaluation of governance arrangements and effectiveness, taking into account the distinct roles of – and relationship between – the board and membership body, the regional dimension of FE and an assessment of the responsiveness to the needs of the communities and sectors served by the institution⁹.

⁸ Forums that provide intelligence to inform strategic planning, usually including:

- conducting research
- disseminating information and good practice
- 'horizon scanning' to identify emerging trends
- bringing together information and views from a range of stakeholders.

⁹ Guidance for the inspection of further education institutions from September 2010 www.estyn.gov.uk/english/inspection/inspection-guidance/further-education/



Conclusion

96. We were asked in our 'Terms of reference' to consider the cost implications of any recommendations. Excluding any costs that would be incurred if the chair or Non-Executive Directors were to be remunerated, there are likely to be some modest initial set-up costs to be borne during the transitional period. Thereafter, we believe that the costs of the new governance arrangement will be cost-neutral or incur costs that may be marginally more than the present arrangements. Any marginal additional cost will be significantly outweighed by the benefits of the new system. Remuneration of the chair or Non-Executive Directors would increase the costs to an extent, although not significantly so when seen in the context of the FE sector budget as a whole, and no doubt the Welsh Assembly Government will take this into account when giving this matter consideration.

97. We see our recommendations as a linked set of proposals, and would therefore wish to see them implemented in this way. The new board and membership body are two parts of the same structure – one cannot be implemented without the other.

98. We are confident that our recommendations will enhance governance arrangements of both FEIs and the FE sector as a whole. We believe also they will equip institutions and the sector to meet the challenges of the future as well as those that are more immediate.

99. Our proposed new governance arrangements are practicable. They bring a wide and necessary set of 'ownerships' to bear upon FEIs, but do this with a clarity and simplicity of structure that neither increases bureaucratic burden nor impedes the effectiveness of institutions. Indeed, we believe firmly that by enhancing governance, the new arrangements will enable FEIs and the sector to fulfil their purposes with greater effect and with higher levels of performance.

100. If the new structures are put in place, they will still need the commitment, expertise and skills of the individuals who will occupy positions within those structures. As we have noted at a number of points in this report, a working culture of challenge and scrutiny is an essential ingredient of good governance. This in turn sets the context for high performing institutions. If our recommendations are implemented, a significant challenge will pass to those involved in both governance and leadership of institutions. It will be for them to seize the opportunity presented by the new structures to make them work, and work well.

Annex A: Further education institutions in Wales

FEI type	Name of FEI	Course offer and age range of students
General FE colleges (11)	Barry College Bridgend College Coleg Ceredigion Coleg Llandrillo ¹⁰ Coleg Menai Coleg Morgannwg Coleg Powys Deeside College ¹¹ Pembrokeshire College Gower College Swansea ¹² The College, Ystrad Mynach	A wide range of academic, vocational and professional courses for full-time and part-time students of all ages.
Tertiary colleges (3)	Coleg Glan Hafren Yale College, Wrexham Neath Port Talbot College	The majority of the 16–19 academic and vocational provision in an area (a few schools retain sixth forms) and a variety of courses for adult students.
Part-tertiary colleges (2)	Coleg Gwent Coleg Sir Gâr	One or more campuses located in tertiary area.
Catholic sixth form college (1)	St David's Catholic College	Mainly full-time academic courses for students 16–19, although increasing vocational provision.
Adult residential college (1)	Coleg Harlech WEA (N)	Courses for adult learners and some residential provision.
Specialist FE institutions (2)	YMCA Community College WEA (South)	Designated educational institutions running courses for part-time adult learners using premises based in communities.

¹⁰ Coleg Llandrillo merged with Coleg Meirion Dwyfor in April 2010.

¹¹ Deeside College merged with land-based college Welsh College of Horticulture in August 2009, and Coleg Llysfasi in August 2010.

¹² Swansea College and Gorseinon College merged to become Gower College Swansea in August 2010.

Annex B: Review Panel membership and terms of reference



Rob Humphreys (Chair)

Rob Humphreys is Director for Wales at The Open University, a post he has held since 2007, having previously been Director of NIACE Dysgu Cymru. In 2008–09 he was Specialist Adviser to the Welsh Affairs Committee of the House of Commons during its Inquiry into Cross Border Services and was reappointed to this role in 2010. He was a member of the Rees and Graham Reviews of higher education fees and funding, and of the All-Wales Convention, which reported in 2010 on the future powers of the National Assembly for Wales.



Lis Burnett

Lis Burnett is Head of the University of Glamorgan's Social Entrepreneurship Hub. The Hub provides an independent resource to the social enterprise sector and acts as a critical friend to social entrepreneurs. More recently Lis has worked with the Wales Co-operative Centre researching awareness and perceptions of social enterprise in Wales to inform their marketing strategy and with Newport City Homes to develop their social enterprise activities.



Maggi Dawson MBE

Maggi Dawson is the Chief Executive/General Secretary of Workers' Educational Association for South Wales, former Coordinator of Lifelong Learning with Neath Port Talbot County Borough Council and consultant with WDA Community Enterprise Unit.



Roger Evans MBE

Roger Evans is Plant Director of Schaeffler UK Ltd, Chair of the Welsh Manufacturing Forum, Director of the Welsh Automotive Forum, Director of the Wales Management Council and Vice Chair of Coleg Sir Gâr.



Duncan Forbes

Duncan Forbes is Chief Executive of Bron Afon Community Housing. He has particular expertise in the various legal frameworks affecting social enterprise, and co-authored *Voluntary but not Amateur: A guide to the law for voluntary organisations and community groups* (London Voluntary Service Council, 2000). He was previously the county borough solicitor for Torfaen and was appointed to the Ministerial Advisory Group on Social Enterprise in July 2009.



Alison Itani

Alison Itani is the Director of Wiltan Ltd, member of Wales Employment and Skills Board (WESB) and former member of the Merfyn Jones Higher Education Review. She initially trained as a nurse at the John Radcliffe Hospital in Oxford and moved to Wales 18 years ago, she has worked at managerial level within the healthcare, retail and media sectors. She is also a member of Torfaen County Borough Council Basic Skills Strategy Group and Wiltan Ltd is named as a Strategic Partner in the council's cradle to grave Basic Skills Strategy.



David Jenkins OBE

David Jenkins is the Chair of the Aneurin Bevan Health Board which is responsible for the planning and delivery of all NHS services in Blaenau Gwent, Caerphilly, Monmouthshire, Newport and Torfaen. He was appointed to this position in June 2009, prior to which he chaired the Government's National Leadership and Innovation Agency for Healthcare in Wales. David is also the Chair of the Wales Co-operative Development and Training Centre, a position he has held since the early 1990s. Between 1983 and 2004 David was the General Secretary of the Wales TUC and was awarded an OBE in 2004 for his contribution towards improving industrial relations in Wales.



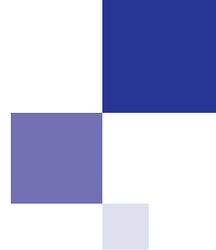
Ioan Morgan CBE

Ioan Morgan is an education consultant. He retired as Principal of Warwickshire College in the summer of 2010. He has led three colleges and three mergers in the English FE system. He was Principal of Pembrokeshire College and a Commissioner for Employment and Skills. He contributed to the Foster Report on Further Education and was a board member of the Quality Improvement Agency (QIA), Qualifications and Curriculum Authority (QCA) and was an adviser to Bill Rammell, Minister for Skills in the last Labour Government. Ioan was appointed a CBE in 2007 for services to further education.



Professor Stephen Yeo

Professor Stephen Yeo is the former Chair of the Co-operative College, Manchester, and former Principal of Ruskin College in Oxford.



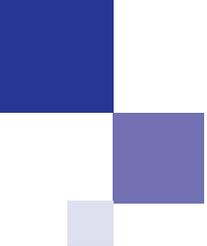
Terms of reference

Context

- 1** Further education institutions (FEIs) are already committed to the Wales-wide agenda of improving skills, ensuring a framework of provision in which all learners can access a broad and relevant vocational and academic curriculum, widening participation to new generations of students and ensuring progression to higher education.
- 2** In March 2010 Cabinet agreed to adopt the recommendations of a stakeholder review which had considered the suitability of governance arrangements in the context of existing arrangements and the Transformation Agenda in terms of partnership working. The conclusions and recommendations from this stakeholder review provide a good model for effective governance under the current arrangements, and the recommendations will be implemented by the Welsh Assembly Government in partnership with other organisations.
- 3** Building on these findings, an expert Review Panel will be established to explore different models of governance in FE but this time in the context of the current socio-economic environment.

Aim

- 4** This review will consider whether the current arrangements, as set out in the Instrument and Articles of Government, are still relevant for the challenges and expectations that face the FE sector and the wider economy to meet current and future employer, individual and community needs.
- 5** In its considerations the Review Panel will consider the implications of the One Wales agenda and of the changes that have been and are being implemented in 14–19 education and training. The Panel will also set its considerations in the context of the key post-16 strategies, Skills that Work for Wales and For Our Future, and the Welsh Assembly Government's Learning and Skills Measure, Economic Renewal Programme and Social Enterprise Action Plan.

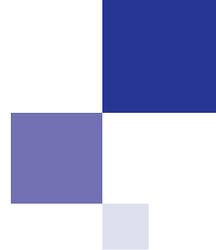


Rationale

- 6 *Promise and Performance*, an independent review into the mission and purpose of further education, which was published in December 2007, for the Welsh Assembly Government, made a number of recommendations on a wide range of areas including the governance of FEIs. The report emphasised that governance needs to be accountable for the performance of the institutions and its contribution to networks. The review acknowledged the good practice that exists in some FEIs in ensuring governors play an important evaluative part in quality assessment and performance processes, but that this needed to be adopted more generally.
- 7 As part of its programme to build a strong and confident nation, in *One Wales* the Welsh Assembly Government sets out its intention to '*maximise the economic, social and cultural impact of colleges and universities on learners and on the wider community*'. It also makes a commitment to '*equip people with the skills they need, at all levels, to enable them to make the best possible contribution to the economy and their communities, and to fulfil their individual potential*'.
- 8 The Welsh Assembly Government is resolved to developing a further (and higher) education system that will offer a broad range of learning opportunities, is responsive to the needs of students and employers, and tackles poverty and disadvantage.
- 9 One Wales also supports the development of social enterprises. The Welsh Assembly Government's Social Enterprise Action Plan, launched in 2009, recognises that, in the current economic climate, social enterprise is more not less relevant. The Welsh Assembly Government's goal is to expand and grow social enterprise across Wales.

Remit

- 10 The Panel will review the Welsh Assembly Government's policies in relation to further education, regeneration and social enterprise with a view to advising on a new model of governance that will enable FEIs to meet the modern needs of the communities and societies they serve. Within this context, the Panel will assess FEIs' current and potential contribution to the economic and social advancement of Wales, and specifically the role of governance in enabling this. Therefore, there is a



need to ensure that appropriate governance arrangements for FEIs are in place to contribute to the development of a successful and vibrant economy.

- 11** The Review Panel will develop a model of governance that is responsive to the current and future needs of citizens, learners, employers and communities in terms of learning delivery with a focus on:
- partnership and collaboration with other deliverers and national and regional stakeholders, such as employers, becoming an intrinsic element of further education provision in Wales
 - actively supporting the long-term development of strong local economies through FEIs' role as skills deliverers, employers and procurers of goods and services
 - supporting the delivery of wider Welsh Assembly Government policy initiatives to improve regeneration and maximise the value of the Welsh pound
 - contributing to the social and economic needs of their communities and to national education, social and economic policy imperatives.

Issues to consider

- 12** The Review Panel's advice will particularly need to take account of:
- progress to date and existing good practice in the further education sector
 - comparability with governance arrangements emerging in further education policy developments in the other home countries, in Europe and globally
 - governance arrangements in related areas such as social enterprises and co-operative organisations, and elements that can be adopted by the further education sector
 - the outcomes of the review into governance arrangements in further education, conducted by a stakeholder review panel which concluded in February 2010 and accepted by the Cabinet on 15 March 2010

- implications arising from Skills that Work for Wales (especially the Transformation Agenda) and For Our Future
- the Welsh Assembly Government's priorities set out in *One Wales*
- implications arising from the 2010 *Review of the cost of administering the education system in Wales*
- the need to evaluate any recommendations against budgetary and financial considerations.

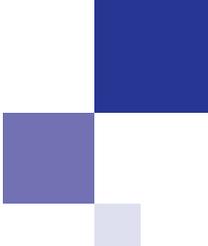
Equality

- 13** The Review Panel will need to be mindful of the key principles of equality of opportunity, and the Welsh Assembly Government's policies on race equality, disability and promoting bilingualism; sustainable development; and social justice including the Welsh Assembly Government's objectives relating to child poverty.

Evidence, reporting and support

- 14** The Panel will seek input from external stakeholders and experts and will particularly source evidence, views and opinions from officers and members of ColegauCymru/CollegesWales.
- 15** The business of the Panel will be set up where possible to work around members' other commitments.
- 16** The chair is asked to produce a report which reflects the Review Panel's work. This will be produced in winter 2010 and will be presented to the Minister for Children, Education and Lifelong Learning.
- 17** The Panel will be assisted by a dedicated Welsh Assembly Government official. The facility is available to commission independent research should that be required.

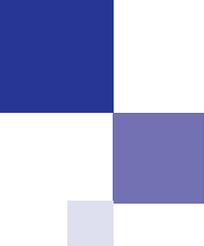
May 2010



Annex C: Call for evidence

Written responses were received from the following individuals and organisations.

- Head of College, YMCA Community College
- Chair of Governing Body, Barry College
- Chair of Governing Body, The College, Ystrad Mynach
- Chair of Board of Directors, Merthyr Tydfil College
- Clerk to the Corporation, Coleg Glan Hafren
- Principal, Gower College Swansea
- Principal and Chair of Governors, Bridgend College
- Principal and Chair of Governors, Yale College
- Principal, Coleg Llandrillo
- Principal, The College, Ystrad Mynach
- Principal, Pembrokeshire College
- Acting Principal, Barry College
- Principal, Coleg Morgannwg
- Principal/CEO, Coleg Sir Gâr
- Dean and Chief Executive, Merthyr Tydfil College
- Clerk to the Corporation, Coleg Morgannwg
- Principal and Chair of Governors, Coleg Menai
- Clerk to the Corporation, Neath Port Talbot College
- Lecturer, Coleg Glan Hafren
- Acting Principal, Coleg Harlech WEA (N)
- Principal, Coleg Powys
- Clerk to the Corporation, Deeside College
- Clerk, St David's Catholic College
- Chair, WEA South Council
- Association of Colleges
- Higher Education Funding Council for Wales (HEFCW)
- Governors Wales
- Association of Teachers and Lecturers (ATL) Cymru
- Association of Managers in Education (AMiE)
- Her Majesty's Inspectorate for Education and Training in Wales (Estyn)
- Summit Skills
- NIACE Dysgu Cymru
- Energy and Utility Skills, Wales
- National Union of Students, Wales
- Department for Employment and Learning, Northern Ireland
- Scottish Government, Scotland's Colleges Team
- Welsh Local Government Association (WLGA)
- ColegauCymru/CollegesWales
- Undeb Cenedlaethol Athrawon Cymru (UCAC)
- University and College Union (UCU)



The following individuals and organisations also provided oral evidence either to the Chair or the Review Panel as a whole.

- ColegauCymru/CollegesWales
- Chairs of Governors of further education institutions
- Principals of further education institutions
- Coleg Llandrillo
- Deeside College
- Merthyr Tydfil College, University of Glamorgan
- Pembrokeshire College
- Wales Employment and Skills Board (WESB)
- National Union of Students (NUS) Wales
- University and College Union (UCU)
- The 157 Group
- Co-operative College Manchester
- The Department for Business, Innovation and Skills (BIS)
- Dŵr Cymru
- Wales Co-operative Centre
- WCL (specialist advisory practice on change in the public and the private sectors)
- Learning and Skill Improvement Services (LSIS)

Annex D: Governance roles as distributed across the new structure

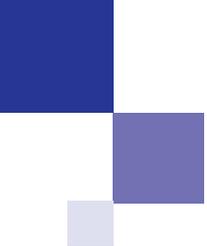
Responsibilities of the board (as set out in the Instrument and Articles of Government 2006 (a– g))

- (a) the determination of the educational character and mission of the institution and for oversight of its activities;
- (b) the effective and efficient use of resources, the solvency of the institution and the corporation and for safeguarding their assets;
- (c) approving annual estimates of income and expenditure;
- (d) the appointment, grading, appraisal, suspension and determination of the pay and conditions of service of the holders of senior posts and the clerk (including where the clerk is, or is to be appointed as, a member of staff, his or her appointment, grading, suspension and determination of his or her pay in his or her capacity as a member of staff);
- (e) the dismissal of the holders of senior posts and the clerk;
- (f) setting a framework for the pay and conditions of service of all other staff; and
- (g) if there is to be no academic board, ensuring that arrangements are in place for advising the Principal on the standards, planning, co-ordination, development and oversight of the academic work of the institution, including arrangements for the admission, assessment and examination of students and the procedures for the expulsion of students for academic reasons.

Additional requirements set out in this report include the following.

The board as a whole should have a duty to:

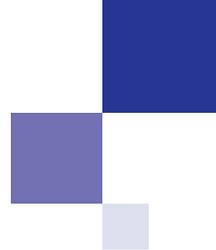
- (h) consider the national and regional functions of the FE sector and the needs of those served by the sector at a regional and national level. This duty to consider should include a requirement to consider the roles and potential roles of other educational providers alongside their own in meeting those needs. This should form part of the self-assessment process of governance;
- (i) ensure effective arrangements, to ensure the views and considerations of stakeholders including learners and staff, are fed into the board. Such groups may contain individuals from the membership body, but should also include wider sets of consultees;
- (j) publish an annual statement reporting its progress in achieving performance indicators set by the Welsh Assembly Government;
- (k) participate in a national training programme developed by the Welsh Assembly Government in conjunction with the FE sector;

- 
- (l) ensure a Governance Officer is in place who is accountable to the board and responsible for ensuring the effective operation of the board and the membership body; and also
 - (m) Non-Executive Directors must have sufficient knowledge and skills to exercise proper scrutiny and should not be involved in operational decision making. They will hold senior managers to account for their implementation of strategy and achievement of objectives and targets.

Responsibilities of the membership body

- (a) to hold the directors to account for the performance of business;
- (b) to scrutinise and challenge the board on the performance and achievements of the FEI to ensure the needs of the learner and the interests of the community and stakeholders are the heart of decision making;
- (c) be engaged with, endorse and monitor the strategic direction of the FEI;
- (d) monitor performance vs targets and sectoral benchmarks;
- (e) ensure strategy, policy, etc. to promote the best interests of the FEI;
- (f) to bring personal skill, experience or qualification to further the FEI's goals;
- (g) to act as a sounding board on the impact of the FEI in meeting the needs of the communities it serves;
- (h) to elect a chair to facilitate meetings (supported by the Governance Officer), who will attend meetings of the board as an observer with speaking rights; and
- (i) be responsible for ratifying the appointment of the Non-Executive Directors and approving their re-appointment, including the chair of the board, when their terms of office come to an end.

NB: The board will adopt an open and transparent approach when discussing key issues of strategy and performance with members, but members will not set strategy or be involved in day-to-day management.



The role of a member is fulfilled by:

- (a) seeking reassurance from Directors that processes are in place to maintain high standards of financial and operational governance and compliance;
- (b) constructive challenge – asking questions (not just at members meetings); and
- (c) put the interest of the FEI ahead of their own interests or those of any other group with which they are involved. Working practices must be in the spirit of the recommendations of the Nolan Committee’s report *Standards in Public Life*.

Annex E: Recommendations

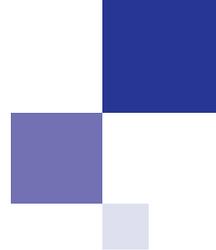
Scrutiny and accountability

We recommend the Welsh Assembly Government should:

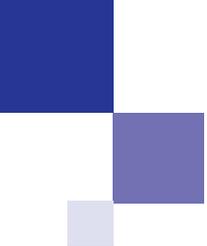
- R 1 Revise the regulatory framework within which a further education corporation operates, The Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006, to enable a new system of governance involving a board and membership body.
- R 2 Give consideration to enabling boards to introduce remuneration for the chair and other Non-Executive Directors if they so wish, subject to discussions between the Charity Commission and appropriate bodies. If implemented by the Welsh Assembly Government, boards wishing to do so should be able to demonstrate clear, robust and evidence-based cases for remuneration.
- R 3 Remove categories of membership from the Instrument and Articles, allowing for Directors of the Board to be chosen on the basis of the skills, qualities and experience that are useful to the FEI.
- R 4 Place a duty on boards to consider national and regional roles and strategies of the FE sector and the needs of those served by the sector at regional and national levels. This duty to consider should include a requirement to consider the roles and potential roles of other educational providers alongside their own in meeting those needs.
- R 5 Establish clear annual and longer-term performance indicators for boards to report on and publish, including:
 - learner outcomes
 - financial health
 - community and employer engagement
 - collaboration with other deliverers of 14+ learning
 - measures to alleviate social disadvantage
 - measures to progress the skills and employment agenda.

We recommend the new boards should:

- R 6 Comprise Non-Executive and Executive Directors at a ratio of not fewer than 2:1 with a Non-Executive Chair who would have a casting vote.



- R 7 Have no fewer than six and no more than 12 Directors, with an optimum of nine, to be appointed by the board, following a Search Committee, operating under Nolan Principles.
- R 8 Appoint Directors on the basis of a matrix encompassing skills and knowledge in fields including education, business and enterprise, finance, leadership, management, law and human resources.
- R 9 Be able to evidence that in the search and appointment process appropriate and meaningful steps have been taken to identify Non-Executive Directors that reflect the diversity of the different communities they serve including language, gender, age, ethnicity and socio-economic profile (to be informed by the equality strands set out in the Equality Act 2010).
- R 10 Include the Principal/Chief Executive as an Executive Director.
- R 11 Meet not less than six times a year in addition to an Annual General Meeting that would be attended by all Directors with the membership body invited, and open to the public.
- R 12 Inherit the existing responsibilities and committee structure for FE corporations as set out under the Replacement of Instrument and Articles of Government (Wales) Order 2006.
- R 13 Establish effective arrangements, to ensure that the views and considerations of stakeholders including learners and staff, are fed into the board. Such arrangements may involve individuals from the membership body, but should also include wider sets of consultees.
- R 14 Be required to publish an annual statement reporting its progress in achieving performance indicators set by the Welsh Assembly Government.
- R 15 Directors must participate in a national training programme developed by the Welsh Assembly Government in conjunction with the FE sector, to ensure the effectiveness of the board and governance more widely.
- R 16 Undertake an annual self-assessment that is fully informed by feedback from the membership body.

- 
- R 17 Ensure that a Governance Officer is in place who is accountable to the board and responsible for ensuring the effective operation of the board and the membership body. This post would have a similar role and responsibilities to that of the present Clerk to the Governors.

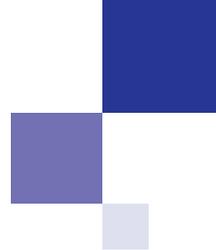
Ownership

We recommend the Welsh Assembly Government should:

- R 18 In conjunction with stakeholders develop guidance to assist FEIs in establishing membership bodies.

We recommend the new membership body should:

- R 19 Be established for every FEI in Wales.
- R 20 Reflect the diversity of the different communities they serve, including language use, informed by the equality strands as set out in the Equality Act 2010.
- R 21 Be engaged with and endorse the strategic direction of the FEI.
- R 22 Act as a sounding board on the impact of the FEI in meeting the needs of the communities it serves.
- R 23 Scrutinise and challenge the board on the performance and achievements of the FEI to ensure the needs of the learner and the interests of the community and stakeholders are the heart of decision making.
- R 24 Meet no fewer than three times a year and participate in an Annual General Meeting (which will be open to members of the public).
- R 25 Be governed by a framework developed by the Welsh Assembly Government and which is informed by the Nolan Principles.
- R 26 Consist of not fewer than 25 and not more than 50 members.
- R 27 Elect a chair to facilitate meetings (supported by the Governance Officer), who will attend meetings of the board as an observer with speaking rights.



R 28 Be responsible for ratifying the appointment of the Non-Executive Directors and approving their re-appointment, including the chair of the board, when their terms of office come to an end.

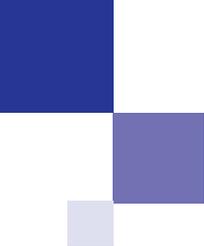
We recommend that members should:

- R 29 Include individuals with knowledge or expertise in:
- business, industry and enterprise
 - the public sector as employer
 - skills and labour market issues
 - regeneration and economic development
 - the third sector
 - the delivery of education at a local or regional level (that can range from primary to higher education).
- R 30 Include learners.
- R 31 Include staff of the FEI.
- R 32 Participate in a national training programme developed by the Welsh Assembly Government.
- R 33 Be identified on the basis of written application following a recruitment process that is managed by an independent panel.
- R 34 Have their appointment approved by the board for three years and for a maximum of three terms.
- R 35 Not be mandated to represent or speak on behalf of other groups or individuals.

Capacity and effectiveness

We recommend FEIs should work together to:

- R 36 Ensure that for each region, a single collaborative group is in place to provide oversight, leadership and encouragement in supporting partnership arrangements with other providers. It is important that development on the ground can move forward rapidly and coherently and therefore representation should be at the right level, e.g. Principal and Director of the Board.
- R 37 Establish Business/Employer/Industry Observatories – on a regional basis in partnership with other FEIs as appropriate – building on FEIs’ existing employer networks and other bodies that represent the interests of businesses.



We recommend that ColegauCymru/CollegesWales should:

R 38 Develop principles and a code of governance, working in conjunction with the Welsh Assembly Government for approval by the Minister for Children, Education and Lifelong Learning, incorporating the Seven Principles of Public Life.

We recommend that the Welsh Assembly Government should:

R 39 Support FEIs to develop innovative and mutually beneficial partnerships with other bodies, including clusters of FEIs and other public bodies for the provision of shared services, that do not disadvantage the FEIs in either a financial or legal capacity. Consideration should be given to the utilisation of models and governance arrangements for such partnerships and collaborations that are drawn from the co-operative and mutual sectors.

R 40 In conjunction with the FE sector, develop an all-Wales training programme for all those involved in governance of FEIs, whether members of boards or membership bodies.

We recommend that Estyn should:

R 41 Ensure that formal inspections of FEIs include an evaluation of governance arrangements and effectiveness, taking into account the distinct roles of, and relationship between, the board and membership body, the regional dimension of FE and an assessment of the responsiveness to the needs of the communities and sectors served by the institution.