

Response to Consultation on the Independent Report on the Governance Arrangements of Further Education in Wales

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Introductory Remarks

ColegauCymru is pleased to respond to the recommendations in the Independent Review of the Governance Arrangements of Further Education Institutions in Wales (the Humphreys Report) published in March 2011.

This response is based on feedback received from governors, principals, senior managers and clerks at: the three consultation events held by the Department for Education and Skills (DfES) on 9 May, 10 May and 11 May 2011; the ColegauCymru Board held on 10 May 2011; the ColegauCymru national governors' conference held on 25 May 2011; and a meeting of the clerks' network on 16 June 2011. The response is also based on discussions with a range of specialists.

The consultation paper stated: *"The review panel identified a number of recommendations in their research and it is these that you are asked to consider in your response to this consultation"*.

This response makes some general points including comments on the purposes of further education and comments on each of the 41 recommendations. Unless otherwise noted, references to paragraph numbers refer to those of the Review report.

ColegauCymru / CollegesWales

ColegauCymru represents the 19 further education colleges and the two FE institutions in Wales¹. ColegauCymru has submitted detailed written and oral evidence to the Review Group and trusts that this evidence helped shape the work of the Review Group.

Colleges generally accepted the recommendations set out in *Responsibility and Responsiveness*², the report of the First Governance Review published in May 2010. It is noted that the report of the Second Review has supplanted these recommendations, although a number remerge.

Context

Changes to the membership and responsibilities of governing bodies have taken place in roughly 20 year cycles. The 1968 Education Act (No 2) led to local authorities setting up governing bodies of colleges from 1970 onwards. The Education Reform Act 1988 gave delegated powers to college governing bodies and was followed by the Further and Higher Education Act 1992 which set up FE corporations with responsibilities over finance, staff and strategy from 1993.

¹ In this response, the words 'college' or 'FE college' are used to cover FE colleges and FE institutions. Merthyr Tydfil College, University of Glamorgan is counted as a college although it has different governance arrangements from FE colleges.

² Responsibility and Responsiveness – Stakeholder Review of FE Governance Arrangements. WAG Information Document May 2010.

Since 1993, colleges have evolved in different ways to take account of the education and training needs of their local communities. Each college has a unique portfolio of courses and services offered to a wide range of full-time and part-time students aged from 14 to 90+.

In 2011, in response to the social and economic challenges facing Wales, colleges are working in partnership with a wide range of other providers, seeking to continue to drive up standards and widen access.

ColegauCymru notes the comments made during the DfES consultation events that the Review was not set up because of concerns about the current performance of FE governing bodies. The evidence in fact points in the opposite direction. The current model of governance has served colleges and their learners very well and this has been acknowledged in numerous Estyn reports. However in the context of mergers and partnerships and other challenges facing the post-16 sector in Wales, it is right to test whether the current model of governance is appropriate and whether a different form of governance might equip colleges to face the challenges of the next 20 years.

General comments on the report's recommendations

ColegauCymru welcomes the recognition that “*further education as a set of institutions, activities and outcomes is a public good*” (para 13).

ColegauCymru also acknowledges that the four pillars of governance – clarity of purpose, capacity and effectiveness, ownership, scrutiny and accountability – set out in the report (para 46) provide a helpful framework for the report's recommendations.

The purpose of further education

The broad purposes of further education (para 12) are an accurate description of what colleges do. It would be useful to add another purpose taken from the Minister's priorities' letter³: “*Promoting individual progression through the stages of learning and into sustainable employment.*”

The new arrangements will need to be phased in. Some governing bodies are currently planning for, or have just carried out, a merger. New governing bodies have been established, often with new members. For colleges planning to merge, establishing a new governing body under the existing legal arrangements while at the same time setting up a new governing body under the proposed new arrangements would be time-consuming and possibly disruptive. Perhaps a three-year phasing in period would be useful. It would also be useful for colleges to be invited to pilot the proposed new arrangements once relevant legislation has been passed.

³ *Priorities for the Further Education Sector*. Letter sent to Heads of FE Institutions by Leighton Andrews, Minister for Children, Education and Lifelong Learning, 31 March 2011.

The proposals set out in the report are innovative and radical. ColegauCymru broadly supports the overall approach which addresses the future direction of colleges and post-16 education and training in Wales and sets out arrangements which reflect the needs of fewer but larger colleges working in partnership with other providers. However, there are a number of areas which require further consideration, particularly the responsibilities, membership and operation of membership bodies. The devil will of course be in the detail. ColegauCymru will wish to work closely with DfES in introducing the reforms.

ColegauCymru acknowledges the view expressed by the Chair of the Review Group at the consultation events that the model of governance (the Board and Membership Body) should be treated as a whole. The recommendations stand or fall on the whole package being accepted. Thus a small, professional board would only work if a membership body was also established on the lines set out in the Report.

In respect of the recommendations in the Report, the following are required:

- clear advice and guidance from DfES about the respective responsibilities of the Executive Board and the Membership Body
- an effective training programme devised for governors and members of membership bodies
- a clear understanding and explanation of the role of the Governance Officer (the Clerk)
- legal advice on the membership of Board committees particularly in the light of those committees which have restricted membership such as the Special Committee, the Reporting Committee and the Audit Committee when certain governors are not allowed to be in membership
- a timetable for implementation.

Accountability

ColegauCymru agrees with the view contained in *The Good Governance Standard for Public Services*⁴ that a governing body should make clear to itself to whom it is accountable and for what. It should then assess the extent to which each relationship serves its purpose including whether any relationships need to be strengthened and whether any dominate to the detriment of other stakeholders.

Fresko⁵ argues that accountability can be strengthened through strong participative development processes; clear success criteria; effective, appropriate and trustworthy information tailored to different audiences/stakeholders; annual meetings; audit and inspection letters in the public domain; and the use of reliable and accurate financial and performance information.

⁴ *The Good Governance Standard for Public Services*. Office for Public Management, Rowntree Trust 2004

⁵ Adrienne Fresko, *Applied Issues in Accountability*. Office for Public Management 2004

Responsibility and Responsiveness concluded that:

“methods of accountability have to be rigorous, transparent and proactive. To be effective they have to be based on proactive engagement by Government with the institution rather than reactive ‘post-hoc’ monitoring which too often only brings intervention when systems fail.”

The Welsh Government provides on average almost 80% of college funding, although there is considerable variation between colleges. This funding includes recurrent funding allocated through the National Planning and Funding System; deferred capital grants; funds given for a specific purpose (e.g. financial contingency fund); and contracts awarded for work-based learning. Each of these funds is monitored depending on the rules.

Colleges are currently held to account for the use of this income. The financial memorandum between the Welsh Government and FE colleges, for example, sets out the conditions imposed by the Welsh Government when it makes payments to FE colleges.⁶ *Responsiveness and Responsibility* (appendix 5) listed 18 legislative, financial and audit regulations and control mechanisms which ensure that colleges operate within an effective legal and financial structure. Estyn inspections cover governance. Colleges are subject to the Quality Effectiveness Framework which annually reviews the performance of colleges.

Colleges are essentially local institutions serving their local communities. 97% of their learners come from within Wales. Led by their governing bodies, colleges have made remarkable progress over the last few years in respect of standards, responsiveness to employers and their local communities and improvements in efficiency and value for money. Colleges are not complacent. They are keen to build on their success, set themselves challenging targets and respond to the changing external context.

The test of the proposed Membership Bodies will be whether they meet the criteria for accountability set out by Fresko and in *Responsibility and Responsiveness* and whether they operate effectively within the regulations and control mechanisms of the Welsh Government.

Ensuring responsiveness

ColegauCymru in its written evidence urged members of the Review Group:

“...not to introduce changes to governance that would increase bureaucracy, add additional regulations to the already demanding regulations that exist, reduce responsiveness, make accountability less clear and generally undermine current progress – or to put it more colloquially, ‘don’t throw the baby out with the bath water’. At the same time ColegauCymru would welcome recommendations that

⁶ Financial Memorandum between Welsh Assembly Government, FE Institutions and Higher Education Institutions providing further education in Wales 1 January 2007, Welsh Government

improve the overall governance of FE colleges in Wales and ensure that their learners receive a constantly improving service.”

This advice has been broadly followed although there are legitimate concerns about the additional workload and some added bureaucracy in respect of setting up and running Membership Bodies.

Liability

Under the proposed Board/Membership Body proposals, the issue of liability needs to be addressed. The Board is ultimately responsible for decisions. Thus the Board may on occasions have to overrule the contribution of the Membership Body if the latter's advice is misguided, could have negative financial implications or is deemed not to further the interests of learners. There needs to be a clear legal framework setting out the responsibilities, powers and duties in law of the principal, the board and the membership body and advice to the governance officer (the clerk) on how to deal with occasions when the Board and Membership Body are not in agreement. Such creative tension might be of ultimate benefit to decision-making but also runs the risk of slowing down action and reducing responsiveness.

Models of governance in other education sectors

The reforms if implemented will lead to a model of governance in FE which differs considerably from those in schools, higher education and private training companies. The review of HE governance chaired by John McCormick⁷ puts forward a different approach to governance. Although differences between governance exists under the current arrangements, the appointment of a small professional Board and the setting up of a Membership Body in FE mark a major departure from institutions with which colleges will be seeking partnerships.

There are of course legal differences. Most schools are owned by local authorities, albeit with delegated budgets; higher education institutions (HEIs) have a legal status not dissimilar to FE colleges but come under Privy Council regulations. The governance of private training agencies receiving funding through work-based learning contracts has never been considered by the Welsh Government in spite of the fact that large sums of public funds are invested in them.

Designated institutions

ColegauCymru notes that the four designated institutions (Coleg Harlech/WEAN, St David's Catholic College, WEA South, YMCA Community College) (para 3) are covered by the Report but have different governance arrangements. The report 'expects' that these should embrace the principles of the report and implement appropriate recommendations. In addition, Merthyr Tydfil College, University of

⁷ *Achievement and accountability*. Report of the independent review of higher education governance in Wales March 2011. This report recommends a governing body of 12-18 members including staff and students with the majority external to the HEI.

Glamorgan, is a wholly owned company of the University of Glamorgan with a distinct governance structure. The report is silent on this college.

Comments on Specific Recommendations

This response covers each of the 41 recommendations. There is inevitably some repetition and cross-referencing where appropriate.

Recommendations to the Welsh Government:

R1. *Revise the regulatory framework within which a further education corporation operates, The Further Education Corporations (Replacement of Instrument and Articles of Government) 2006, to enable a new system of governance involving a Board and Membership Body.*

Although the legal status of colleges is not changed, there will have to be amendments to the instrument and articles of government which will require legislation.

R2. *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.*

Opinion within colleges is divided over whether non-executive directors (NEDs) should be remunerated. It is difficult to justify FE governors being unpaid when public appointments to other public bodies such as health boards involve remuneration. It is noted that the HE governance review has recommended (R16) that: “*institutions should have the discretion to introduce a system of payment for attendance at meetings.*”

A general principle should be that no governor is out of pocket as a result of carrying out governing body duties. However, governors are volunteers and a major strength of governance has been the willingness of governors to give of their time freely. ColegauCymru’s evidence to the Review drew attention to the fact that the unpaid nature of the work attracts a selfless membership with community interests in mind.

Remuneration might affect the relationship between NEDs and the executive directors (EDs) at the college. The role and responsibilities of NEDs and EDs need to be carefully explained to avoid misunderstandings and particularly to avoid NEDs straying into duties which are properly the responsibilities of managers. The governance/management divide will need to be clearly understood by all parties.

Remuneration could never be set at a level which would adequately compensate a senior business executive but some form of honorarium would be an acknowledgement of the contribution made by individual governors.

A number of questions need to be considered. Would there be a standard rate of remuneration covering every college or would the rate be varied in proportion to the size of a college's budget? Could there be separate levels of payment for the Chair compared with other Board members? Would remuneration be linked to performance in any way, for example, to attendance, as recommended in the McCormick review?

Presumably if remuneration was introduced, payment would come from a college's internal budget and not be funded separately by the Welsh Government. The introduction of remuneration for governors at a time of financial stringency might not be opportune.

R3. 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.

ColegauCymru strongly supports the abolition of categories of governor. The key principle that directors should be selected on the basis of merit and chosen on the basis of their skills, qualities and experience is sound. Guidance will need to be issued by the Welsh Government as how EDs and NEDs are selected. The principal is automatically a member. An independent search committee should make recommendations to the Board on which senior managers (if any) should be appointed to the Board and which people should be appointed as NEDS.

It will be important that any rules on length of service start on day one of the new arrangements to prevent a sudden and large turnover of experienced governors.

R4. 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.

Given the strong emphasis on partnerships and on the regional dimension, the consideration of national and regional roles could help determine the strategic direction of a college. Many governing bodies currently take into account the regional and national context. This is demonstrated by, for example, the FE sector's constructive and positive response to the Transformation agenda.

ColegauCymru has no objections to this additional duty but emphasises that this should be part and parcel of a college's strategic and business planning.

R5. 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.

The notion of Boards reporting back on performance is sound. Guidance will need to be given on how this reporting should be carried out. It is suggested that performance indicators (PIs) should be at a broad strategic level with a few key PIs. It would not be helpful to have a long list of PIs.

One approach might be to report back on an exceptional basis i.e. on those PIs where the Board has exceeded or not met the PI targets.

It will be important to distinguish between the performance of the college and that of the Board. Although the performances of both are closely linked, it is possible that a college could perform very well but have a poorly performing board – or vice versa. Some measure of added value brought by the Board would be helpful.

Recommendations to the new Boards:

R6. 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.

The proposal to have Executive Directors (EDs) as well as Non-Executive Directors (NEDs) is a major departure from current practice. At present only the Principal serves on the governing body. Each Board will have to draw up a procedure on the appointment of senior managers to serve as EDs, probably through the independent search committee or equivalent which advises on the appointment of NEDs (see comment on R3). Senior post-holders attend meetings of governing bodies. It is assumed that colleges will not be required to appoint EDs (with the exception of the principal). Not appointing EDs will free up places for external NEDs.

The 'fewer than 2:1 ratio' between NEDs and EDs is acceptable. Some boards might not wish to appoint EDs other than the Principal. The proposal that the Non-Executive Chair should have a casting vote (in the rare circumstances when a vote is required) is sensible.

The report recommends that the Welsh Government Minister should appoint the first Chair of the Board. While such an approach should kick start the process, it is assumed that a nomination would be received from the college and endorsed by the Minister. Subsequent Chairs would be appointed by the Board.

There needs to be clarity on the role and responsibilities of EDs. Would they have the same responsibilities as NEDs or would there be some differences? Who would manage them in respect of their internal college roles? There is much evidence on the role and responsibilities of EDs which can be learnt from the governance of other public bodies where senior executives serve on Boards.

FE colleges are 'exempt charities'. This means that they have clear 'educational objects' and are able to take advantage of their charitable status in terms of paying reduced business rates, not charging VAT on course fees etc. During 2011 they will become regulated by the Charity Commission which will ensure that colleges operate within charity legislation. At present only the Principal is eligible to serve on a governing body. The Charity Commission will need to approve the principle of the appointment of Executive Directors.

R7. 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.

At present governing bodies can range from 12 up to 20 governors (21 exceptionally in the case of Coleg Gwent). To reduce this range to 6 up to 12 directors is a radical shift. This is intended to lead to a smaller and more professional Board. We recognise the comments made during the consultation workshops that the proposed governance model involving a Board and Membership Body needs to be treated as a whole and that one cannot exist without the other.

In evidence given to the Review, ColegauCymru showed that in 2010 the average size of FE governing bodies was 19 with a range of 15 to 21 governors. The recommendation to reduce the size of a Board might lead to an average size of around 10 – an average loss of about nine governors per college. Assuming 18 colleges from August 2011, this equates to around 160 governors in total. There is a risk of much expertise being lost to the sector. Under the transition to the new arrangements, it is hoped that much of the existing expertise and experience can be maintained.

Under current governance arrangements, governors sit on a range of governing body committees. These committees can include people who are not governors. Under the new proposals, members of the Membership Body could be invited to serve on Board committees. However some committees concerned with the dismissal of senior post-holders must only be dealt with by existing governors. The current Article 5(6)⁸ states any committee established by the Corporation may include those who are not members of the Corporation. However, this provision does not apply to the Reporting Committee and the Special Committee or '*any other committee formed for the purposes of Article 10 or 11*' [articles dealing with dismissal of senior post-holders and staff].

⁸ The Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006 No 13.

The Chair, Vice-Chair Principal and staff and student members are currently not allowed to serve on the Reporting Committee (Article 10(4)). In addition, the Special Committee (Article 10(6)) cannot include members of the Reporting Committee as well as the Chair, Vice Chair Principal and staff and student members. In the event of an appeal against the decision of the Special Committee to dismiss a senior post-holder, the employee has the right to an appeal to the governing body. In the case of an appeal, members of the Reporting Committee, the Special Committee and staff and student members can take no part. We have therefore a problem of numbers. For example, a small board of six members with four non-executive directors (NEDs) and two executive directors (EDs) would not be able to fulfil requirements under employment legislation.

Legal advice on disciplinary procedures will be required to ensure that employment practices in respect to grievance and discipline comply with employment legislation.

R8. *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.*

The principle that board members be appointed on the basis of their skills and expertise is a sound one. Currently the search committee advises the governing body on the appointment of co-opted, business, local authority and community governors but not that of the principal (an ex-officio governor) or of elected staff and student governors (Article 5(3)).

The skills identified in R8 are useful but should not be prescriptive. The overall balance of skills required for a board will vary depending on the broad mission and educational character of the college. And a note of caution: the skills of NEDs should complement not duplicate those of the senior management. This avoids the risk of NEDs seeking to manage in the areas where they have expertise.

R9. *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).*

Governing bodies currently 'may make rules specifying the procedures for the conduct of the search committee and a copy of such rules ...and the remit of the search committee, are to be made available for inspection by any persons' (Article 5 (4)(b)). Search committees currently take into account the diversity of the communities they serve. Ensuring that the diversity of the different communities is served is crucial for ensuring a balanced board. This diversity needs to be balanced with the appropriate skills and knowledge (see comment on R8). Many colleges currently use a matrix to assist in the appointment of governors. An addition to the list in R9 should be 'disability'.

R10. Include the Principal/Chief Executive as an Executive Director.

Every Principal/Chief Executive currently serves on the governing body although membership is optional. This recommendation is welcome.

R11. 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.

On average, governing bodies meet around seven times in a year. Many colleges have held poorly attended annual general meetings (AGMs) with the result that (in 2010) only 22% of colleges held an AGM. The most successful in terms of attendance are those where the AGM is combined with another function such as a college open day, an employers' breakfast/lunch/dinner or some other function to which the public is invited. There needs to be a valid reason and motivation for members of the public to attend an AGM.

With the establishment of a membership body, there is more scope to develop AGMs and make them more meaningful. However AGMs need to have a clear purpose. Is it to approve the annual report or enable the local community to hold the governing body and the college to account? The latter role may now be taken over by the Membership Body.

R12. 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.

The instrument and articles of government, which are legal documents, will have to be revised to take account of changes in composition, rules regarding committees and changed responsibilities.

The recommendations, for example, on the composition of the board and of the membership body impact on the instrument of government. Those recommendations to establish the Membership Body and the requirement for the governing body to take account of the regional and national dimension require amendments to the articles of government.

R13. 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.

Effective governing bodies seek to ensure that the views of stakeholders are fed into the decision-making process. Colleges have done this successfully. Boards do not and cannot live in a 'bubble'. The contribution of members of membership bodies will be invaluable in ensuring that a wide range of views are fed into the board. Members themselves will be part of broader networks.

R14. Be required to publish an annual statement reporting its progress in achieving performance indicators set by the Welsh Government.

All governing bodies currently produce an annual report and an annual audit statement. The Welsh Government should consult on the performance indicators to make sure they are few in number, at a high level of abstraction and relevant to the needs of the communities served by the college.

R15. Directors must participate in a national training programme developed by the Welsh Government in conjunction with the FE sector, to ensure the effectiveness of the Board and governance more widely.

The issue here is whether such training is compulsory and attendance at governor training becomes a condition of appointment. Would this compulsion apply to EDs as well as NEDs?

ColegauCymru accepts that directors should take part in training programmes. The training materials for governors produced in 2001 needs to be updated. ColegauCymru wishes to work closely with the Welsh Government in drafting an updated version.

R16. Undertake an annual self-assessment that is fully informed by feedback from the Membership Body.

Governing bodies have considerable experience in drawing up annual self-assessment reports. As noted in the response to R14 above, governing bodies produce an annual report and annual audit statement. The involvement of the Membership Body is likely to change the way that evidence is collected for drawing up the self-assessment report. It is suggested that there might be some guidance on the content of such reports which can be expected to link closely to the performance indicators (R5 above).

R17. 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.

The roles and responsibilities of the Governance Officer will be considerably enhanced as s/he takes on responsibility for the work of the Membership Body including ensuring the appointment of members is properly carried out, ensuring the proper conduct of meetings, and making arrangements for distributing information between and at meetings. ColegauCymru has met one organisation which has a membership body, Glas Cymru. The company secretary of Glas Cymru emphasised that considerable time is required to ensure the membership body operates efficiently and effectively.

ColegauCymru through its active Clerks' Network wishes to work closely with the Welsh Government in clarifying the enhanced roles and responsibilities of clerks. ColegauCymru also strongly recommends that the Welsh Government should update the training materials for clerks produced in 2001. ColegauCymru would be keen to help in this.

R18. In conjunction with stakeholders develop guidance to assist FEIs in establishing Membership Bodies.

Colleges would welcome clear guidance on how best to set up Membership Bodies and to ensure they fulfil their functions.

ColegauCymru is carrying out research into the effective operation of such Bodies. A meeting was held recently with the company secretary of Glas Cymru. It will be important that these Bodies play an active, constructive and positive role in helping the Board shape future strategy, monitoring the performance of the Board and generally adding value.

ColegauCymru would wish to work closely with the Welsh Government in drafting advice.

Recommendations on Membership Bodies

R19. Be established for every FEI in Wales.

In the context of points made above, this is noted. The Membership Body needs to have the right balance of people with appropriate skills.

There will be additional costs incurred through setting up Membership Bodies. This covers management and administrative costs but also the costs of people attending meetings and claiming expenses. The Welsh Government should quantify the likely overall costs.

R20. 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.

This is accepted. It will be important to ensure that the membership body reflects the diversity of the communities they serve.

Clear guidance needs to be published on the eligibility for membership and termination of membership. For example, failure to attend more than two meetings without the permission of the Membership Body might be a criterion for a person losing membership. The instrument of government sets out reasons for people to be

ineligible to serve as governors (paragraph 8). This includes bankruptcy, criminal convictions etc. It is recommended that similar criteria would apply to Membership Bodies.

R21. Be engaged with and endorse the strategic direction of the FEI.

As noted in response to R18, it is important to ensure that this key function is carried out effectively and in a way that helps the college respond to the needs of the community and the priorities laid down by the Minister. The Membership Body should operate at a broad level and avoid becoming involved in matters that are properly the responsibility of the Board or of the Principal.

At its best a Membership Body can support the college in setting a clear future direction by harnessing the expertise of its members drawn from the communities served by the college. At its worst, a Membership Body could act as an anchor preventing change or reducing responsiveness. Colleges will need to work hard to ensure the former outcome.

R22. Act as a sounding board on the impact of the FEI in meeting the needs of the Communities it serves.

As with the response to R21, this responsibility needs to be carried out effectively. A major challenge with a larger sized Membership Body will be to ensure that all members have a chance to participate. In a meeting of say 40 members, only a few will be able to contribute. Thus more imaginatively organised meetings using groups and discussion sessions should replace formal presentations where appropriate.

R23. 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.

An effective Board scrutinises and challenges the principal and senior managers. The Board in turn can be challenged to ensure it is carrying out its role effectively.

The Membership Body will need to have effective tools in place to scrutinise and challenge effectively, positively and constructively. This will have to be carried out against a number of clear indicators against which performance can be judged. There will also have to be a clear distinction between the role of the principal, the governing body and the college as a whole.

The difference between monitoring and scrutiny needs to be understood. While the Membership Body might be able to check progress and keep under review the performance of the Board, scrutiny is at a more detailed level and has to be carried out with great care. The challenge for every Membership Body will be effectively to scrutinise the work of a Board in a way that adds value.

R24. Meet no fewer than three times a year and participate in an Annual General Meeting (which will be open to members of the public).

This is a reasonable number of meetings. Meetings should be synchronised with those of Board meetings. Regular attendance will be important. A member who misses one meeting could find a nine month gap between meetings. Such a pattern of attendance would make it difficult for that person to carry out the role effectively.

R25. Be governed by a framework developed by the Welsh Assembly Government and which is informed by the Nolan Principles.

This is accepted. Members will need to be familiar with and meet the seven principles of public life.

R26. Consist of not fewer than 25 and not more than 50 members.

The wide range of membership gives colleges the flexibility to decide on the appropriate number that suits their circumstances. A college covering a very wide and diverse area might see fit to have a membership body at the upper end of the spectrum. A smaller college might wish to go for a smaller group.

Glas Cymru has a membership body of around 60 people. It has been in existence for around 10 years. Members are drawn from around Wales and reflect geography, customers, and key economic sectors. The Membership Body has attracted high quality and committed people.

Colleges serving a small area or with neighbouring colleges close by may find some difficulty in attracting a sufficient number of people with the skills and experience to sit on Membership Bodies.

It is strongly recommended that at least one college be invited to pilot the setting up and running of a Membership Body to identify good practice and lessons to be learnt.

It is also suggested that various models of Membership Bodies be explored. For example, would it be feasible for a Membership Body to serve an area larger than a college and cover more than one college? Could a Membership Body be more regionally focused? Clearly such approaches require careful consideration.

The size of the Membership Body is important: too small and it cannot reflect the diverse community served by a college; too large and it becomes unwieldy and it is the less likely that an individual can make an effective contribution. As set out in the response to R22, it might be necessary to consider breaking the Membership Body into groups during meetings to enable members to make a contribution and avoid meetings being dominated by a few individuals.

See also comments on eligibility in response to R20 above.

The costs of setting up a Membership Body and holding meetings need to be recognised. If members have to travel considerable distances to meetings, they will need to be reimbursed (or at least reimbursement of expenses will need to be offered). There will also be the time investment of the Governance Officer and college senior managers.

R27. Elect a Chair to facilitate meetings (supported by the Governance Officer), who will attend meetings of the Board as an observer with speaking rights.

Advice will need to be given on the election of the Chair. This needs to be handled carefully and sensitively to make sure that the person with the appropriate skills and knowledge comes forward. An effective Chair can have a major positive impact on the performance of the membership body.

R28. 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.

Again, this responsibility needs to be handled carefully and sensitively and in a way that does not slow down the appointment of Board members. It will be important for open and transparent procedures to be in place for appointing Board members.

An alternative approach worth considering is that the Membership Body should focus more on ensuring that the procedures are in place for appointing Board members rather than ratifying the appointment of individual board members. The process of appointing board members could be slowed down considerably if every individual Board member has to be formally approved by the Membership Body.

It is to be assumed that the Board would continue to have employment responsibility for senior post-holders and that the principal would retain the current employment responsibility for all staff who are not senior post-holders.

Recommendations to Members

R29. 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).

The list of knowledge and expertise, although broad, is not exhaustive. The list is helpful and in practice colleges will wish to reflect these when appointing members of Membership Bodies.

See comments on eligibility on R20 above.

R30. *Include learners.*

It will be important to include more than one learner to ensure an effective learner voice. A student can often feel more confident and thus able to play a more active role when other students are in membership. Learners should as far as possible reflect the student composition in respect of age and gender. The majority of students are part-time adults. Students should not be mandated (see comment on R35 below).

There needs to be guidance on the appointment of student governors. At present student governors are elected. It is assumed that appointment to the membership body would be carried out in the same way as for other Membership Body members.

Student members should as far as possible reflect the student profile at the college. Most students are part-time and aged over 19. Student governors work best when they bring their individual knowledge and understanding of the college to bear on matters to be determined by the governing body. They operate worst when they seek to represent the views of outside interests, against the clear requirements set out in the current instrument of government.

R31. *Include staff of the FEI.*

Staff can make a valuable contribution to the Membership Body as long as they are not mandated or serving one particular interest group (see comment on R 35 below).

There needs to be clear guidance on the appointment of staff governors. At present staff governors are elected. It is assumed that appointment to the Membership Body would be carried out in the same way as for other Membership Body members. As with student members (see R30), staff members should as far as possible reflect the staff profile at the college. Staff and student governors work best when they bring their individual knowledge and understanding of the college to bear on matters to be determined by the governing body. They operate worst when they seek to represent the views of outside interests, against the clear requirements set out in the current instrument of government.

R32. *Participate in a national training programme developed by the Welsh Government.*

ColegauCymru would be pleased to work with the Welsh Government in shaping the content of a training programme and in developing training materials. This could be carried out in conjunction with the development of training materials for governors (see response to R 15).

R33. *Be identified on the basis of written application following a recruitment process that is managed by an independent panel.*

The appointment of members of the Membership Body requires considerable thought. Guidance will need to be issued on the precise way in which members are selected. There will need to be clear selection criteria for appointing board members involving written application, shortlisting and interviewing – a very demanding job for an independent panel. There will need to be an appeals mechanism for unsuccessful candidates.

It is assumed that this procedure would apply to staff and student members (see response to R30 and R31 above). See also comments on eligibility (response to R20 above).

Agreeing an open, transparent and rigorous procedure for appointing the members is crucial. Glas Cymru has set up an independent selection panel to oversee and carry out the appointment of membership body members. Those serving on the selection panel are remunerated. They attend meetings of the Membership Body and are therefore in a position to assess the contribution of members. This is important in determining whether a person should be reappointed to the Membership Body. This panel does not make recommendations with respect to Board membership.

Rather than setting up separate independent panels for each college, it might be worth considering the setting up of independent panels covering a region or sub-region.

R34. *Have their appointment approved by the Board for three years and for a maximum of three terms.*

A limit of nine years is reasonable. However student members need to be appointed for one year only with a possible extension if a student member continues to be a student after a year.

R35. *Not be mandated to represent or speak on behalf of other groups or individuals.*

This is an important point. Members of the Membership Body need to bring their professional judgment and independence of mind to matters that are being considered by the Membership Body. If members are mandated, then meetings will be dominated by sectional interests; trade unions, for example, could see this as an opportunity to raise employment matters and local interest groups could seize the opportunity to raise specific issues that do not recognise the wide footprint of the college. There are procedures in place for trade unions legitimately to raise employment matters and for interest groups to raise issues with the principal – these lie outside the governance framework. Businesspeople serving on the Membership Body must not be able to gain a competitive advantage by virtue of their membership of the Membership Body.

Evidence from organisations with Membership Bodies where unions have a place show that the Membership Bodies are less effective.

At present, Governors share collective responsibility for their decisions. Under the Instrument of Government, “every member is to act in the best interests of the Corporation” and is accordingly “not bound in speaking and voting by mandates given to him or her by any other body or person”. This prevents governors bringing in their own particular interests.

Recommendations for FEIs

R36. 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.

A single collaborative group in each region, while laudable, may not be a requirement. The Thomas Review⁹ – which reported the week after the Governance Review – recommended two forms of regional arrangement (chapter on conclusions para 15). Any way forward needs to take account of Welsh Government’s response to the Thomas viewpoint.

A regional group needs to add value and not add a bureaucratic layer. There are examples of innovative regional partnerships in Wales. The Regional Learning Partnership in South West Wales has brought together colleges and other providers in exploring how best to collaborate for the benefit of learners in the region. While a model of good practice, each region needs to determine the best way forward. So a regional approach, yes; but with flexibility built in.

R37. 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.

A number of regional observatories are currently in operation in Wales. Local Service Boards and regional economic fora have involved colleges. ColegauCymru would be pleased to work with colleges and other providers in taking this forward.

⁹ The Structure of Education Services in Wales: Independent Task and Finish Group report March 2011.

Recommendations for ColegauCymru / CollegesWales

R38. *Develop principles and a code of governance, working in conjunction with the Welsh Government for approval by the Minister for Children, Education and Lifelong Learning, incorporating the Seven Principles of Public Life.*

ColegauCymru welcomes this recommendation and will be pleased to work closely with the Welsh Government.

Recommendations for the Welsh Government

R39. *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.*

ColegauCymru recently carried out a survey showing that colleges on average are saving around £100,000 per year in shared services. The survey showed that sharing services saved money but not enough to meet the necessary savings in the current tough financial climate. At present there are no governance arrangements in place for sharing services. Advice on how best to progress might help develop these structures.

Colleges will be interested in any support from the Welsh Government for taking forward partnerships and collaborations.

R40. *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.*

ColegauCymru would be pleased to work with the Welsh Government in developing a training programme which should also be aimed at Governance Officers. As noted in response to R15, R17 and R32, such a training programme should also include training materials. These can be made available electronically.

Recommendations for Estyn

R41. 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.

ColegauCymru would expect Estyn to evaluate the effectiveness of the new arrangements and to make recommendations as to how best the new model works and to identify good practice. It is suggested that Estyn allows time for the new arrangements to bed-in before carrying out such a study.

Concluding points

ColegauCymru:

- broadly welcomes recognition of existing legal structures (para 21)
- welcomes the statement that “*further education as a set of institutions, activities and outcomes is a public good*” (para 13)
- acknowledges that the four pillars of governance – clarity of purpose, capacity and effectiveness, ownership, scrutiny and accountability – set out in the report are a helpful analysis
- notes that the report acknowledges the success of current governance arrangements but puts forward a model for the future in the context of the changing nature of post-16 education and training
- broadly supports the concept of Board/Membership Body as an example of a social enterprise model - although the devil lies in the detail
- notes some concerns over whether bureaucracy might be increased. The new model of governance must not lead to a slowing down in responsiveness or a reduction in entrepreneurialism
- points out that the process for selecting Membership Body members (especially if membership is at the upper end of the 25-50 range) is likely to be challenging. Finding sufficient people with the right balance of skills and expertise may be difficult in a small geographical area. It may be useful to set up a pilot to enable good practice to be developed. Regional or sub-regional approaches should also be explored.
- notes the additional costs of establishing Membership Bodies, running meetings and paying expenses
- recommends that the Welsh Government publishes eligibility criteria for the appointment of members of membership bodies

- proposes clear procedures to ensure that the selection of Membership Bodies is open and transparent and allows for appeals against non-appointment. Independent panels need to be appointed to select members. There will also need to be a recognition of the importance of avoiding conflicts of interest of members
- proposes that the Governance Officer is enhanced to become more of a company secretary as colleges merge and become increasingly complex and the responsibilities of Boards are enhanced
- suggests wherever possible the skills and expertise of current governors should be harnessed under the new arrangements. There is not an unlimited supply of people seeking to become members of boards
- supports the development of training programmes for directors, members of Membership Bodies, and Governance Officers
- suggests a phasing-in period of around three years for the new arrangements. Those colleges recently merged or going through mergers have recently set up new governing bodies and recognition should be made that these colleges will be setting up effectively a third such group.