

Summary of Nolan Committee's Second Report

Introduction

Local public spending bodies are 'not for profit' bodies which are rarely elected and whose members are not appointed by Ministers. They provide public services, often delivered at local level, and are largely or wholly publicly funded. This study covers over 4,500 such bodies with nearly 70,000 voluntary board members responsible for spending over £15bn of public funds each year. A high proportion of the bodies are new in their present form and many of those serving on their governing bodies are doing so for the first time.

There is a high level of dedication on the part of volunteers who serve on governing bodies. On the evidence we received, the rare cases of mismanagement, maladministration, and misconduct seem to be isolated occurrences. We have been impressed by the remedial action which has been taken by regulators, funding bodies, and representative associations. The best practice in local public spending bodies conforms to the principles set out in our first report.

A common concern about the creation of new bodies to provide local services is the need to ensure local accountability. We believe that there is a responsibility on national government, and on its agencies and regulators, to ensure that centrally funded bodies are able to respond to local needs, and to have arrangements in place which enable local concerns to be raised.

A constant complaint from all the bodies we have been examining is that they are subjected to excessively detailed central control. Good auditing of the new service providers, using the best principles of public sector audit, including performance audit, is essential. But detailed local control should not be replaced with detailed central control. Instead the bodies need to be given as much freedom of action as possible within clear policy guidelines and operating boundaries, supported by strong and well-understood sanctions. Regulation needs to be clear and explicit .

We believe it is essential that the standards set out in our first report on appointments procedures, openness, codes of conduct, training, and whistleblowing should apply in full to these bodies although practice needs to be proportional to the size and adapted to the nature of the bodies.

We set out two fundamental propositions:

- *Where a citizen receives a service which is paid for wholly or in part by the taxpayer, then the government or local authority must retain appropriate responsibility for safeguarding the interests of both user and taxpayer regardless of the status of the service provider.*
- *Central control of autonomous but centrally-funded local bodies should be limited as far as possible to setting policy guidelines and operating boundaries, to ensuring an effective audit framework, and to the effective deployment of sanctions. Government and Parliament should aim to ensure that local mechanisms to influence the activities of local bodies exist, and should give them the support necessary to ensure accountability.*

We also make two general recommendations:

R1. The principles of good practice on appointments, training, openness, codes of conduct and conflicts of interest, set out here and in our first report, should be adopted with suitable modifications across the sectors covered in this report.

R2. Local public spending bodies should institute codes of practice on whistleblowing, appropriate to their circumstances, which would enable concerns to be raised confidentially inside and, if necessary, outside the organisation.

Higher and further education

The systems of governance in the higher and further education sectors reflect both the origins of the institutions and of recent legislation. The 'old' universities are governed by charter or specific Act of Parliament. Former polytechnics became 'new' universities as a result of the 1992 Further and Higher Education Act, which also set down the system of governance for further education institutions. In addition to providing resources, funding councils for the sectors have a role in regulation and dissemination of best practice.

Many of the institutions have evolved systems of governance over many years and it would require evidence of substantial misconduct to justify sweeping changes. We received no such evidence. However, we urge institutions to review their practices and procedures in the light of best practice identified in this report. We believe it is particularly important for institutions to follow best practice in limiting the use made of commercial confidentiality and in explaining themselves to their communities.

While the principle of academic freedom is applicable to the right of individuals to pursue research and express opinions without political pressure, it does not justify a lower level of accountability for higher education institutions. Our recommendations on confidentiality clauses, appeals, disputes and whistleblowing tackle those aspects of academic freedom which are relevant to our terms of reference.

R3. Appointments to the governing bodies of universities and colleges should be made on the basis of merit, subject to the need to achieve a balance of relevant skills and backgrounds on the board.

R4. The automatic representation of the TECs and LECs on college governing bodies should be ended.

R5. Individual universities and colleges should be encouraged to set out key information to a common standard in their annual reports or equivalent documents where they do not already do so. Material on governance should be included in the annual reports or equivalents of further and higher education institutions. Representative bodies should take the lead in promoting this with the support of the funding councils.

R6. Representative bodies, with the help of the funding councils, should produce a common standard of good practice on the limits of commercial confidentiality, and should encourage all institutions to be as open as possible subject to those limits. All institutions should have publicly available registers of interests.

R7. Institutions of higher and further education should make it clear that the institution permits staff to speak freely and without being subject to disciplinary sanctions or victimisation about academic standards and related matters, providing that they do so lawfully, without malice, and in the public interest.

R8. Where it is absolutely necessary to include confidentiality clauses in service and severance contracts, they should expressly remind staff that legitimate concerns about malpractice may be raised with the appropriate authority (the funding council, National Audit Office, Visitor, or independent review body as applicable) if this is done in the public interest.

R9. Students in higher education institutions should be able to appeal to an independent body, and this right should be reflected in the Higher Education Charters.

R10. The higher education funding councils, institutions, and representative bodies should consult on a system of independent review of disputes. A similar process of consultation should be undertaken by the equivalent further education bodies.

R11. The Secretary of State for Education and Employment should re-examine the practice of appointing vice-chancellors and principals of English institutions to the board of HEFCE to determine whether an alternative exists, which avoids perceived conflicts of interest, and to ensure that existing rules protect against any potential conflict of interest as the council is presently constituted.

Grant-maintained schools

Grant maintained schools are schools in which responsibility for budgets, staff appointments, pay and the ability to shape the overall aims and policy of the school - previously vested in representatives of local authorities - have been transferred to voluntary governors, whether appointed or elected, of individual schools. In England financial oversight is the responsibility of the Funding Agency for Schools; in Scotland and Wales it remains directly with the Government.

It is important that systems are in place to minimise the risk of problems arising in grant-maintained schools and to enable their swift resolution, although on the evidence put to us, such problems as have occurred appear only to have been isolated incidents.

We note that three bodies, the DfEE, OFSTED and FAS, are involved in issues of school governance. We believe that it is necessary for the Secretary of State to clarify the roles of these bodies, and to delegate casework wherever possible.

Amendments are needed to the methods and terms of appointment of governors to ensure that they meet best practice and no one group can exercise undue influence.

R12. The regulators, funders and professional and representative bodies should produce and promote a model code of best practice on governance and model standing orders.

R13. The powers of the local government ombudsman in respect of grant-maintained schools should be extended to cover complaints about maladministration in setting admissions criteria.

R14. While retaining ultimate authority in governance matters affecting grant-maintained schools, as far as possible the Secretary of State should delegate operational responsibility to FAS.

R15. FAS should consider setting up regional committees to deal with discretionary funding and governance questions.

R16. Steps should be taken to ensure that key decisions, such as budget making, major capital spending, and the appointment or dismissal of the Head, cannot be made without the support of a broad consensus of governors, including elected governors.

R17. The government should replace the term 'first governor' with 'community governor'. Such a change would not alter the status of first governors but would accurately reflect their role and the community from which they are drawn and to which they should be answerable.

R18. The government should remove the regulation which prohibits non-teaching members of staff from becoming first governors.

R19. Any donation leading to the appointment of a sponsor governor must be reported in full in the annual report and accounts.

R20. The government should reduce the term of office for first, foundation and sponsor governors to four years in line with the term of office for elected governors and make re-appointment or re-election for a third term the exception rather than the rule.

R21. The Secretary of State should consider how best to promote conciliation and mediation arrangements in the grant-maintained school sector, perhaps along the lines proposed for universities.

R22. Staff Appeal Committees should be strengthened by the inclusion of at least one independent person experienced in grant-maintained schools, or in the education or personnel field more generally, to serve in addition to the school's own governors.

Training and Enterprise Councils (TECs) and Local Enterprise Companies (LECs)

Training and Enterprise Councils and Local Enterprise Companies are unique organisations, being private sector companies set up at the Government's instigation to deliver training strategies under contract. In Scotland, LECs have a wider economic development role. TECs and LECs are monopoly suppliers, and there are considerable obstacles to others entering the market.

We have concluded that although the Government sees TECs and LECs as contractors, the relationship between the bodies and government also involves an element of regulation and that this should be recognised as such. The regulation of LECs exercised by the Enterprise Agencies in Scotland is more public and hence better understood than that in England and Wales; we believe this should be remedied by giving a stronger regulatory role to the Government Offices for the Regions and the Welsh Office.

We welcome the steps that have been taken by TECs and LECs to improve their practices on governance, openness and propriety. When the rules that have been developed and promulgated over the last year are fully implemented, these will, to a significant extent, tackle many of the concerns which have been expressed about the organisations and which have featured in those cases that have been given publicity. Nevertheless we are concerned that the local accountability of some TECs remains weak and we believe that

the organisations themselves need to do more to improve and explain their policies on local accountability, governance and propriety.

R23. The regulatory relationship between government and TECs should be more explicitly acknowledged within a formal structure. This could be done by enhancing and restructuring the role of the Government Offices for the Regions, which should be required to produce an annual report on the operation, performance and governance of TECs within their regions. The Government Offices for the Regions should work within a published national regulatory framework. The TEC Assessors Committee might have a role in advising on this and in working with the Government Offices for the Region on its implementation.

R24. Annual reports of the Enterprise Agencies should include a section specifically dealing with governance in their LECs

R25. Compliance with the most recent version of the TEC National Council Framework for Local Accountability should be a firm requirement for awarding a TEC licence or contract.

R26. Provision for the appointment of a director who does not fit the strict eligibility criteria should be made in Wales and Scotland; consideration should be given to permitting such appointments to be made without prior acceptance by government; the eligibility requirements for non-business directors of TECs should be simplified to widen the potential pool of non-business board members, including, in a personal capacity, elected members of local authorities.

R27. TECs and LECs should have a formal procedure for identifying potential board directors, ideally overseen by a nominations committee of the board. The procedure should take account of the need to produce person and job specifications and the need to produce a balanced board. Consideration should be given to the use of advertising either for specific vacancies or in general terms.

R28. TECs and LECs should be encouraged to establish wider Companies Act membership schemes. It should be made clear that these are open to all bodies who support the aims of the TECs or LECs and wish to contribute to their work and development.

R29. The Enterprise Agencies, the Government Offices for the Regions and the TEC National Council should disseminate widely examples of good practice in establishing and running local consultative groups.

R30. It should be a condition of licence or contract for TECs and LECs that they should regularly publicise contracts or grants awarded to organisations with which their directors or close family members are associated.

R31. TECs and LECs should develop rules designed to avoid conflicts of interest when staff move to or from an outside organisation. They should be drawn up in such a way that such movement is not unfairly prevented.

R32. As part of their staff code, TECs and LECs should draw up clear procedures for the confidential reporting of concerns about propriety and governance issues. These should include a means of reporting concerns outside the normal management chain.

R33. All TECs and LECs should seek to adopt good practice by opening as many board papers as possible (including agendas and minutes) to public scrutiny and briefing the media and other interested parties on the outcome of board discussions.

R34. TECs and LECs should make available (and update annually) a statement of their policies in relation to local accountability, propriety, governance, and openness.

R35. The relevant departments should ensure that TECs and LECs are subject to the full weight of public sector audit, but that as far as possible a single external auditor should be responsible for all aspects of public audit. The framework to achieve this should be devised in consultation with the national auditing agencies and other relevant bodies.

Registered housing associations

Registered housing associations are voluntary bodies which are major suppliers of social rented housing. They are regulated by and receive grants from the Housing Corporation, Scottish Homes, or Tai Cymru, but also receive substantial private funding. In some areas local authorities have transferred their entire housing stock to housing associations formed for that purpose.

Housing associations are well-regulated and generally well-run. They have themselves examined their governance and produced new codes of practice. They need to pay particular attention to securing genuine tenant involvement and to improving accountability through membership schemes. The regulators need to publish more information about their regulatory activities.

R36 Housing associations receiving public funds should be expected to secure tenant involvement in housing management, and external restrictions on the composition of boards should be avoided wherever possible.

R37. Housing associations should be encouraged to develop membership schemes as a means of increasing accountability.

R38. The housing regulators should continue to be concerned as much with proper conduct as with financial probity, and should not hesitate to intervene to secure this.

R39. No general change in the practice that chief executives of housing associations are not board members is necessary, but regulators should be prepared to approve rule changes which permit this in individual cases.

R40. Section 15 of the Housing Associations Act 1985 should be retained, but responsibility for granting exemptions should be fully devolved to the regulators.

R41. Safeguards designed to prevent conflicts of interest when staff leave should now be introduced not only by the Housing Corporation, but by all executive and other non departmental public bodies which are regulatory or funding bodies. It should be clearly understood that such rules are not designed to prevent movement between bodies.

R42. The Housing Corporation, Scottish Homes and Tai Cymru should publish more information on their regulatory activities, and in particular they should publish reports on regulatory interventions in individual cases where serious mismanagement or fraud has occurred.

R43. The housing regulators should pay especially close attention to the stewardship of LSVT housing associations, and of others which are monopolistic suppliers in specific localities.

Common themes

There are a number of issues which apply to all the bodies covered in this study or which have force in more than one area of the report.

We consider that payment of salaries or allowances to board members of local public spending bodies would undermine the voluntary principle. The position is less clear-cut as regards compensation for loss of earnings or benefit payments, but we do not believe this should be introduced at this stage. Members of governing bodies should, however be able to claim expenses, including those for child care.

Many witnesses and correspondents raised the question of their personal liability for losses incurred by their institutions, including claims for damages. This is particularly relevant in the event of the institution becoming insolvent and it is something that the government should address.

We suggest a series of pilot projects to encourage local authorities and other local interests to examine with the local bodies concerned issues which are relevant to them.

We also propose standard terms of office for board members, external adjudication of complaints and access to outside impartial assistance in resolving, or adjudicating on, disputes.

R44. The principle of unpaid voluntary service by board members of local public spending bodies should be retained, but the scope of eligibility for out of pocket expenses should be widely drawn.

R45. The government should seek to ensure broad consistency and adequate protection in respect of the personal liability of all appointed or elected members, directors, trustees or others responsible for bodies providing public services.

R46. Regulators and funders should seek to reduce detailed monitoring and collection of information; to make fewer changes in their requirements and to give adequate notice of such changes; and to place more reliance on audit reports.

R47. The government should consider promoting and studying pilot schemes, involving local authorities and others, designed to increase the local accountability of non-elected bodies providing local public services.

R48. Terms of office, which should be renewable, should not normally exceed four years, and reappointment for third or subsequent terms should be the exception rather than the rule .

R49. Where mechanisms for external adjudication on customer complaints do not exist, or do not incorporate basic requirements of publicity and access, they should be introduced or improved.

R50. Organisations should consider the merits of making provision in their rules for external advisers to assist in resolving internal disputes, and the regulatory bodies and trade associations should consider providing general guidance and assistance on this topic for their organisations.