

Chapter 4

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

Introduction

187. White Papers in 1988^{1,2}, one covering England and Wales and the other Scotland, set out a radical change of policy on training and economic development designed to increase the involvement of local communities, particularly businesses. Among the delivery mechanisms foreshadowed in the white papers were Training and Enterprise Councils (TECs), in England and Wales, and Local Enterprise Companies (LECs) in Scotland.

188. TECs in England and Wales are responsible for both youth training and adult training for the employed and unemployed — a concept known as “lifetime learning”. TECs also have a role in promoting the development of small businesses and self-employment within their area. Following the publication of the White Paper, the Government encouraged the formation of local groups, mainly of businessmen, who had an interest in carrying forward the development of TECs. Working to a prospectus issued by the Government, individual TECs were formed as private sector companies limited by guarantee (with the exception of Hampshire TEC, which is limited by share).

189. The role of a Training and Enterprise Council is to set out a strategic plan for its area, to identify the resources needed to implement the plan, and to make contracts with training providers (including private companies, further education colleges, and voluntary organisations) to deliver the targets in the plan, for example in the form of the number of trainees awarded National Vocational Qualifications (NVQs).

190. Initially 82 Training and Enterprise Councils were set up working under contract to the then Employment Department (and later also the Departments of Trade and Industry and of the Environment). Management of the contracts with the seven Welsh TECs was transferred in 1992 from the Employment Department to the Welsh Office. In April 1994 the Government’s network of Regional Offices was restructured so that in each English region there was a Government Office for the Region under a single Regional Director who reported to four Secretaries of State. Day-to-day management of the English TECs was divided between the ten Regional Offices. In December 1994, following serious concerns about its financial viability, one TEC, South Thames, went into receivership. There are therefore now 74 TECs in England and 7 in Wales. Following the merger of Departments, primary responsibility for TECs now lies with the Department for Education and Employment.

191. A significantly different approach was taken in Scotland with the restructuring of two existing Non-Departmental Public Bodies (NDPBs) and the Scottish operations of the Training Agency into Scottish Enterprise (SE) and Highlands and Islands Enterprise (HIE).

These Enterprise Agencies work under a management agreement with Scottish Office which covers not only training, but most aspects of Scottish economic development. They deliver or purchase their services locally through Local Enterprise Companies with which they contract; as with TECs, the LECs then contract with training providers and others for the implementation of their plans. There are 22 LECs in Scotland; 12 work to Scottish Enterprise, 9 to Highlands and Islands Enterprise, and one jointly to the two. The procedure for formation of the LECs was similar to that for TECs.

192. TECs and LECs are therefore not statutory organisations, but are private sector companies contracting on the one hand directly with Government or an executive NDPB, and on the other with relevant service providers. They receive over 90% of their funding from the public sector, and the Government (or Enterprise Agency) has first call on their assets in the case of winding up.

193. The Government, either directly in England and Wales, or through the Enterprise Agencies in Scotland, has a considerable degree of control over the operation of the TECs and LECs:

- by issuing them with draft Memoranda and Articles of Association which they subsequently need permission to amend
- by setting criteria for eligibility for board membership
- by building into the TEC or LEC contract or licensing agreement detailed provisions about governance and operational matters, and
- by specifying in detail in contracts or licensing agreements the services to be delivered against various budget lines.

194. Governance issues are also addressed in a number of documents produced by the Enterprise Agencies and the TEC National Council (the representative body for TECs). Some of these are prescriptive, others aim to disseminate best practice (see box overleaf).

195. In their evidence to us, the Department for Education and Employment commented:

“in setting these contractual requirements, the Department’s legal advisers consider that the controls go as far as is practical in influencing the practice of a private company without the Secretary of State’s risking becoming a shadow director”.

196. The close relationships between government (or in Scotland the executive NDPB) and a private company set up solely to deliver government programmes are such, however, that we have concluded that the Secretary of State and the Enterprise Agencies are, in effect, acting as regulators of TECs and LECs.

197. In the period when the organisations were first being formed, there were a few cases where competing groups were put together to bid for the contracts, but the practice was not widespread. We are also aware of one case, in the Scottish Enterprise Network, when forthcoming contract renewals were advertised locally to allow competing bids to come forward, but none passed the pre-qualification stage. While we would not wish to discourage the local advertising of the forthcoming renewal of TEC or LEC contracts where there is the potential for competitive bids, we recognise such cases will be the exception.

Governance requirements of TECs and LECs

Governance Issue	Scottish Enterprise — LECs	Highlands & Islands Enterprise — LECs	TECs
Statement of Governance	Annual statement of corporate governance required ⁷	No formal requirement	Should pay 'due regard' to best practice ⁶
Directors' term of office	Time limit (Unspecified) recommended ³	No formal time limit	Time limit (unspecified) recommended ⁵
Register of Interests	Required ² and must be made public ³ (staff register also required ⁷)	Required ² and must be made public ⁴ (staff register also required ⁷)	Required ^{1,6} recommended made public ⁵ (staff register also required ⁶)
Conflicts of Interests	Must be declared and action to avoid conflict (eg non-participation in meeting or not voting) minuted ⁷	Must be declared and action to avoid conflict (eg non-participation in meeting or not voting) minuted ⁷	Must be declared and action to avoid conflict (eg non-participation in meeting or not voting) minuted ⁶
Openness — general	Must comply with Scottish Enterprise openness code ³	Must comply with HIE accountability through openness statement ⁴	Should pay 'due regard' to 'Code of Best Practice on access to government information'. (Firm requirement for Welsh TECs ⁶)
Openness — award to contract over grant to director	Details to be published in Annual Report ³	Details published as awarded and in Annual Report ⁴	Recommended availability indicated in Annual Report ⁵
Openness — all contracts	No requirement to publish	Details available on request (commercial confidentiality may only delay) ⁴	Recommended made available on request subject to commercial confidentiality ⁵
Openness — board meetings	Practice varies	Summary of decisions published ⁴	Practice varies
Openness — public meeting	Annual meeting required	Annual meeting required	Annual meeting required
Openness — publications	Annual report and accounts and synopsis of business plan ³	Annual report and accounts and synopsis of business plan ³	Annual report and accounts ⁶ and summary of corporate and business plans
Staff Code	Practice varies	Practice varies	Practice varies
Whistleblowing	No formal procedure	No formal procedure	No formal procedure
Complaints	Formal procedure required ³ , independent adjudicator planned ⁸	Formal procedure required ³ , independent adjudicator planned ⁸	Establishment of procedure recommended ⁵ ; contract requirement for Welsh TECs ⁶ .

1. TEC Memorandum and Articles of Association.
2. LEC Memorandum and Articles of Association.
3. Local Enterprise Companies Code of Practice, the scope of and adherence to which is a term of LEC contracts with Scottish Enterprise.
4. HIE 'Accountability Through Openness'.
5. TEC National Council 'Framework for Local Accountability'; TECs are required to pay 'due regard' to this in their contracts
6. TEC Contract/Licence/Operating Agreement.
7. LEC Contract.
8. Scottish Office response to Scottish Affairs Committee report on LECs.

198. Two recent reports by Parliamentary Select Committees are relevant to our work: that by the Scottish Affairs Select Committee on the operation of the Enterprise Agency Networks³ and that by the Employment Select Committee on the work of the TECs⁴. Our remit is narrower than that of either of these committees, and we do not concern ourselves with questions about the success of the organisations in delivering services. We have been impressed by the considerable efforts that have been made by all involved with TECs and LECs in recent years to overcome many of the propriety and governance problems of their early years and to develop and implement effective rules; best practice is now fully in line with our seven principles of public life. Progress still needs to be made in spreading that best practice throughout the sector; in ensuring the system of regulation is adequate to sustain best practice; and in opening up further the operations of TECs and LECs to the influence and understanding of local communities.

Training and Enterprise Councils

199. The 1995/6 budget for TECs in England was to £1.68bn. Individual TEC budgets range between £47m (Merseyside) and £4m (Isle of Wight). In Wales the overall budget for seven TECs was £102m.

200. Staff in the Government Offices for the Regions and in the Welsh Office negotiate contracts with TECs and agree in detail and monitor their operational and strategic plans. In order to carry out their monitoring role, regular visits are made to TECs and they are required to make detailed information returns.

201. TEC witnesses were concerned about the burden placed on them by the detail of these information requirements. Sir Garry Johnson of The TEC National Council told us:

“we struggled to make sense of the Government’s intention to handle public expenditure in a different, fresh innovative way and the clash of cultures which occurs in that between a regulatory centralised Civil Service whose duty is to guard the public purse ... and an organisation which suddenly thinks that it has been given licence to loose energy, enterprise and initiative”.

We share those concerns. The present system carries the risk that issues of real concern can be lost in the sheer quantity of information provided. Excessive central monitoring reduces the scope for TECs to act with enterprise and innovation: it encourages a culture of dependency.

202. The Department for Education and Employment has recently conducted an efficiency scrutiny⁵ which proposes a considerable simplification of TEC budgets, planning procedures, internal audit, and financial appraisal, together with a review of inter-Departmental requirements on TECs. The Welsh Office has undertaken its own work on reducing information requirements as part of a wider review of their contractual relationship with TECs.

203. We welcome these reviews and note in particular that in response to the efficiency scrutiny the DfEE is reviewing TEC audit and financial appraisal arrangements with a view to phasing in recommendations as early as possible in the 1996/7 and 1997/8 audit years. We comment further on the question of audit in paragraphs 260 onwards.

Supervision and Regulation

204. Supervision of the English TECs has been devolved to the Government Offices for the Regions by central departments. This has encouraged a clearer regional focus for each TEC. The Secretary of State for Education and Employment also has an independent advisory committee, the TEC Assessors Committee. Its limited remit is to advise on the development of TECs, on the grant of Licences and on the appointment of directors who do not fulfil the strict eligibility criteria (see paragraph 209). Members of the TEC Assessors Committee visit up to 24 TECs a year and report privately on broad issues to the Secretary of State.

205. The formal sanctions that can be brought to bear on an under-performing TEC or LEC would appear to be limited. TECs and LECs are in practice monopoly suppliers and purchasers of a service that the Government has chosen to provide; there are very limited opportunities for others to enter the market; and they are highly unlikely to lose their contracts to a competitor. As an example of the potential difficulty, which causes us some concern, we note that it was not possible for the Government Office to impose change in South Thames TEC before reaching a point where the only solution was to petition for receivership. Sir Geoffrey Holland told us:

“it will be a bold moment when a contract of a Training and Enterprise Council is revoked, but I think that it would be a very healthy shock to the system if there was a non-performing TEC”.

206. While maintaining that they are in a contractor/supplier relationship, the Government Offices for the Regions and the Welsh Office are also, in practice, acting as regulators through the detailed controls we summarise in paragraph 193 above. This confusion is particularly unfortunate given the unusual nature of TECs. We therefore believe that there needs to be a much clearer acknowledgement of the regulatory relationship between the Government and the TECs. This relationship should concentrate on setting the framework under contract and ensuring compliance with standards, rather than excessive monitoring of day to day operations. Such a relationship would provide a clearer focus for addressing concerns about standards and propriety as they arise. In part, this would reflect the practice in Scotland, where the LECs, with a significantly wider remit encompassing in particular economic development, are answerable to NDPBs. Notwithstanding differences of detail, that approach has merit.

207. It is true that in England the structure of economic development bodies is different, with a mix of national bodies, such as English Partnerships and the Invest in Britain Bureau, and regional and local bodies. It would not therefore be possible simply to adapt the Scottish framework and apply it in England. Although it might be desirable to have a single national regulatory body, it would be unwise, for example, to divorce the Government Offices for the Regions, with their wide economic development role, from the supervision of TECs.

208. We have concluded, therefore, that there would be advantage in seeking to develop a more visible regulatory framework from existing structures. We believe that this could be done with a minimum of upheaval and bureaucracy, and at a cost which could be offset by reducing the present excessively detailed monitoring by the Government Offices for the Regions.

209. It should be made explicit that each Government Office for the Region is acting as regulator for the TECs in its area. Regulation should be carried out within a framework laid down nationally, which sets appropriate minimum requirements in respect of conflicts of interest, disclosure, and openness, as well as financial standards. The regulatory role should be given a focus by requiring the Government Office for the Region to produce an annual stewardship report in respect of the TECs in its region. Such reports should comment on broad regional issues affecting TECs and provide an overview of the performance of individual TECs as well as commenting on progress on complying with best practice on governance and finance. This would complement the more detailed information contained in individual TEC annual reports.

210. We see merit in the Government being provided with an external source of advice in its regulatory role. One way of achieving this would be through the TEC Assessors Committee. Membership of the Committee could be expanded to include people with a wider range of expertise; they could have an input into setting the national regulatory framework; and individual members or sub-groups could be responsible for working with each Government Office for the Region.

211. A similar arrangement should be considered for Wales, including the possibility of involving the Welsh Development Agency and the Development Board for Rural Wales in a way similar to the Scottish model.

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 Regions on its implementation.

Local Enterprise Companies

212. The overall budget for the Scottish Enterprise Network (SEN) and Highlands and Islands Enterprise (HIE) in 1995/96 was £549m. Between 80% and 85% of this is spent through Local Enterprise Companies. The links between the Enterprise Agencies and the LECs are considerably closer than those between Government and the TECs. Scottish Enterprise, together with their LECs, form the Scottish Enterprise Network. The majority of the staff of these LECs are employed by Scottish Enterprise and work in individual LECs. Approval is needed from Scottish Enterprise for any individual LEC expenditure exceeding £250,000.

213. In the Highlands and Islands Enterprise area, although most staff are employed by the LECs, there is considerable interchange through secondments and HIE provide a number of central services including accounting, property and legal advice. Approval is needed from HIE for any individual LEC expenditure exceeding £50,000.

214. LECs vary considerably in size and many are much smaller than the TECs. The smallest, Skye and Lochalsh Enterprise, serves a population of just 12,000 and has a budget of £2.2m; the largest, Glasgow Development Agency, has a budget of £56m.

215. The relationship between the Enterprise Agencies and the individual LECs therefore appears to be much closer to the model of being a combined funder (and parent company) and regulator than that of the Government to the TECs in England and Wales. This close relationship was further marked in 1995/96 when for the first time the SE and HIE accounts were consolidated with those of their LECs to produce group accounts.

216. In May 1995, the Scottish Affairs Select Committee published a report on *The Operation of the Enterprise Agencies and the LECs*⁶, to which the Government responded in December 1995. We welcome the Government's acceptance of all those recommendations relating to governance issues. We were particularly pleased to note that the Government has agreed to set up an independent complaints adjudication system for the LECs.

217. In Scotland, the Enterprise Agencies' annual reports include sections on the performance of individual LECs. In line with our recommendation for the TECs (R23) we believe they should also include material on governance.

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

Specific Issues

Accountability

218. The unique nature of TECs and LECs gave rise in their early days to a tension between, on the one hand, a belief on the part of some directors that as members of the board of a private company they were entitled to privacy and, on the other, the openness and accountability necessary for bodies spending public funds. Some of the reasons for these tensions were undoubtedly transitional — the result of the phenomenon described to us by DEMOS as:

“all Governments create appointed bodies. Inevitably, at the time of their introduction, Ministers are less concerned with accountability arrangements than with their purpose and effectiveness”.

219. However, Government did recognise the need for public accountability in the TECs and LECs. In the Memorandum and Articles and Operating Agreements clauses were included to deal with these issues, for example, by requiring boards to pay 'due regard' to

the Cadbury Code of Corporate Accountability and, more recently, the TEC National Council *Framework for Local Accountability* (Appendix 4). Despite this, concerns about the governance of TECs, in particular, gained currency. There were suspicions, frequently given exposure in the media, that TEC and LEC directors had privileged information about contracts and grants which created potential or actual conflicts of interest.

220. This belief was reinforced by a number of well-publicised cases in which directors' companies had won contracts or grants from TECs and LECs. While in no case was actual wrong-doing proved, the alleged secrecy surrounding some of these events, and the failure in some cases to follow proper procedures (for example over the minuting of actions taken at board meetings where there was a potential conflict of interest) damaged the reputation of TEC and LECs. We believe that insufficient attention was paid initially to the fact that the risk of conflicts of interest which is inherent in the TEC/LEC structure required both strong and open procedures if public anxiety was to be assuaged. Considerable progress has, however, since been made on tackling these problems.

221. In July 1995 the TEC National Council, the representative body for TECs, published its *Framework for Local Accountability* and, in October 1995, *Standards of Conduct for Members of Boards of TECs*. These two documents, agreed by all TECs, set out best practice or minimum standards for governance issues. Professor Robert Bennett, an academic observer of the TEC movement told us that the Framework was:

“a major step forward, but its existence only in 1995, five years after the start of TECs seems to come late in the day ... it was agreed by TECs only after some difficulty in some cases. As a result, it is in some senses a lowest common denominator”.

222. Nevertheless, the TEC National Council, and the TECs individually, should be congratulated on the progress they have made on governance issues with the development of the two documents. Commenting on the Framework, the Employment Select Committee said:

“We welcome — as far as it goes — the introduction of the TEC code of practice, and hope that it will receive general acceptance and speedy implementation among TECs. We recommend that conformity to the code of practice become one of the absolute requirements for achieving a three-year licence.”

223. We agree. While it may be necessary to leave detailed implementation to individual TECs in the light of their circumstances, we believe that there should be a more formal requirement for TECs to comply with the Framework than is at present implied by the need to pay “due regard” to it.

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.

224. We consider that the TEC *Framework for Local Accountability* should be strengthened or adapted in some areas to address current concerns. These are:

- tighter rules on openness
- clearer guidance on handling complaints
- codes of conduct for staff
- a procedure for dealing with staff concerns about impropriety.

We deal with some of these in more detail below.

225. In Scotland, Highlands and Islands Enterprise developed in 1993 a policy for its LECs known as *Accountability through Openness* (see Appendix 5). The principle that lay behind this initiative was that if LECs were to be open about as many of their operations as possible, then suspicion would diminish and understanding increase. The Scottish Enterprise Network separately has been developing its own detailed governance rules, and is now implementing the same principles through contracts with individual LECs. We commend these initiatives.

Membership of Boards

226. The process by which new directors for TECs and LECs are appointed is not well understood by the public. As TECs and LECs are private companies, only members of the company may elect new directors. Despite progress in some TECs and LECs in widening membership, in the majority directors are the only members of the company, with a potential new director also being elected to membership of the company.

227. The criteria for board membership reflect the Government's view that TECs and LECs should be business-driven organisations aimed at stimulating businesses in their area. At least two thirds of the directors must be the chair, chief executive or senior local manager of a private sector company or professional partnership; to qualify as a TEC chair the organisation must have a turnover of more than £5m or 25 or more full-time employees. All members are appointed in a personal capacity and not to represent specific interests.

228. The witnesses we heard from agreed that it was appropriate to retain the emphasis on business leadership of TECs/LECs. We accept this viewpoint, provided appropriate safeguards are in place to handle conflicts of interest in a proper manner, appointments are made on merit within the specific criteria, and it is made clear that directors have a non-representational role. However we have a number of points of detail.

229. First, we believe that it is essential that boards should have the benefit of the experience of non-business people who have an interest in the training provision and economic development of their area. While most TECs and LECs set the business membership at two thirds of the board the present criteria would, in theory, allow them to have an entirely business-based board. This would be too narrow.

230. Second, a number of our witnesses, particularly in England, argued that there were many senior business people of energy and vision who were excluded from TEC

directorships because they were not at chair or chief executive level. In England a TEC board can apply to the Secretary of State to accept, subject to the advice of the TEC Assessors Committee, the appointment of a director who does not fulfil the strict eligibility criteria. This is the only case in which the Secretary of State accepts a director (such cases are referred to as wild card appointments). Around nine such appointments were made over the last year. While we believe that the ability to appoint a director who the board believe can contribute special qualities, but who does not strictly comply with the criteria, is valuable, we doubt the need for the Secretary of State's prior acceptance. We believe the Government should examine the possibility of giving more discretion to boards themselves to decide when to relax the criteria, subject if necessary to only one member of the board being a wild card appointment and the reasons being clearly and publicly stated. In any event we think that the principle of wild card appointments could usefully be extended to Scotland and Wales. We note that the Employment Select Committee also recommended some minor relaxations of the membership criteria.

231. Third, the Scottish approach to non-business board members is far less prescriptive than that adopted in England and Wales. The former requires that the non-business directors should be drawn from senior figures in the local community who support the aims of Local Enterprise Companies; the latter specifies that they must be chief executives or equivalents from the Education, Economic Development, Trade Unions, Voluntary Organisations or the Public Sector. While this list is wide-ranging, it has the effect of excluding from consideration for membership (unless they also fulfil one of the other categories) elected members of local authorities, bodies with which a TEC must work closely. We do not propose that local authority elected members should have a right to board membership (any more than any other group), but we see no good reason for excluding a significant group of people who may have much to contribute to the working of a TEC.

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.

232. A number of our witnesses, notably the Association of British Chambers of Commerce (ABCC), argued for a place on the board for an individual to *represent* a specific cause. The ABCC recommended that:

“Accredited Chambers of Commerce should be empowered to appoint a corporate director or directors to a TEC board to act as representatives of a wider business community than provided by a TEC board elected from within a small group of business and on a rather informal basis.”

233. While we believe that it is important for the proper governance of TECs and LECs for the widest possible range of community interests to have a voice in their operations, we recognise that a board constructed on representative lines would mean a fundamental

change in their operation. There is also a strong view among the bodies themselves that they can operate more effectively with small, tightly-focused, boards. We believe that there are several other methods of reflecting the interests of specific groups which have their own advantages. We discuss these in the next section.

234. Both the *Framework for Local Accountability* and Articles of Association impose a maximum term of service for directors. Normally directors are entitled to seek re-election, which must be by positive resolution of the members of the company. Some TECs have also specified a maximum number of terms of office which a director may serve before becoming ineligible for re-election. We believe that all directors should be appointed for specific terms but that setting a maximum number of terms should be a matter for local discretion, subject to the general principle set out in recommendation R48.

235. Even in TECs or LECs where membership is limited to the board, the system of identifying suitable candidates varies widely. For some, particularly in the early days, the main source was “networking” by the Chairman and Chief Executive. Others have set up a more formal structure under a nominations/appointments committee to seek potential candidates. Sources of candidates include: recommendations from existing board Members and the Chief Executive; members of consultative committees dealing with specific areas of the TEC/LEC work; self-nomination; formal nomination by non-director members; and (in a few cases) advertising in the local media. Current best business practice recommends a formal process for identifying potential directors, overseen by a nominations Committee of the main board. We consider that TECs and LECs should comply fully with the standards of good practice on appointment procedures we have set out in the first chapter of this report.

236. A number of TECs and LECs have commented to us on the usefulness of advertising for potential directors. Rodney Skidmore, Chief Executive of Central England TEC told us, “We advertise openly for all potential non-executive directors and all candidates that stand for election by the membership at the AGM”. Advertising has the function both of identifying useful candidates and of opening the process more to public understanding. Such advertising may be used both at the time of a potential vacancy and on an occasional basis to build up a register of potential candidates.

237. A recent report from the Department for Education and Employment on *TECs and Their Boards*⁷ indicated a widespread lack of public understanding of the role of TEC directors. It recommended a clearer national statement of directors’ roles and responsibilities. We believe that it is necessary to go further by identifying the key skills and qualities sought from any new director. We believe that boards should set out job and person descriptions in writing and that they should have regard to the balance of experience and skills needed in setting criteria for particular vacancies.

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.

Involvement of the Local Community

238. Members, in Companies Act terms, of a TEC or LEC can propose and vote on resolutions at the Annual General Meeting and Extraordinary General Meetings of the organisation; stand for election to the board; vote in an election for directors; and pass a vote of no confidence requiring the board to stand down. Directors are therefore accountable in strict terms to such members.

239. There are many different models of membership. For example Central England TEC has an open and free membership scheme with organisations and individuals in the area entitled to join as legal members of the company. South London TEC invites a variety of individuals to join a Council: the membership of the Council reflects the membership criteria for the board, and Council members are full members of the company with nomination and voting rights for directors.

240. A further recent development in England has been the merger between some Training and Enterprise Councils and Chambers of Commerce. This widens the membership base of the TEC since the members of the Chamber of Commerce (mainly from the business community) become members of the Chamber of Commerce Training and Enterprise (CCTE) with full voting rights.

241. We see these various moves as genuine attempts to provide closer integration between the TEC and its local community, particularly the business community. We are however concerned that in some of these models there is a danger in reflecting the somewhat exclusive nature of the board into the wider membership. For example, the Chamber of Commerce Training and Enterprise model would appear to exclude from membership those who would not traditionally have joined, or been eligible to join, a Chamber of Commerce; and some TECs which have wider membership schemes set qualifying criteria at the same level as board membership.

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.

242. Although the number of TECs and LECs which have established such membership schemes so far is limited, most TECs and LECs have developed mechanisms for consulting and involving their local communities in their work through various types of ad hoc consultative groups. In a typical example, the TEC will bring together representatives of the local community to deal with issues by subject (for example on NVQs), by sector (small firms), by geographical area, or by a mixture of some or all. Many have groups dealing with training for those with special needs to demonstrate the organisation's commitment to such provision.

243. We note above that many TECs and LECs use these groups as a source of nominations for directors. It is equally important for the groups to be able to contribute to and influence board decisions. In some TECs and LECs all of the sub-groups are chaired by a board director. This ensures that there is a clear two-way flow of information and views

between the board and the group. A further way of formalising this may be to require that the Chairman of the sub-group should present its conclusions and recommendations for discussion at main board meetings.

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.

Conflicts of Interest

244. The award of contracts or grants to organisations with which TEC or LEC directors are associated have featured in most of the publicised cases of concern. Some TECs exclude directors' organisations entirely or in part from receipt of such awards. Such restrictions exist in other areas of public life, and we would not wish to discourage TECs who choose to adopt this position. However, we recognise that it would be impossible, in an area which is intended to be business led, to insist on a policy which for some could provide a significant disincentive to board membership. But if such practices are to be permitted, it is essential that the most robust and open procedures for dealing with conflicts of interests are in place and are seen to be operating properly, and that a proper framework of regulatory supervision should be established.

245. Both TECs and LECs are required to maintain registers of directors' interests. For LECs it is clear that these registers must be open to the public. Although this is recommended as good practice for TECs, there is no formal contractual requirement. We believe this is essential and should be a condition for awarding a licence or contract. It would be secured by a condition requiring compliance with the TEC National Council Framework (see Recommendation R25).

246. All TECs and LECs must also have in place clear procedures for handling board discussions and distribution of papers where there might be a conflict of interest, which, by the nature of their work, may occur quite frequently. It is essential not only that these procedures are followed carefully, but also that minuting the process demonstrates that they have been followed. Declaration of interest and withdrawal from the meeting are essential, as would be required by recommendation R25.

247. In line with best private sector practices some TECs and LECs have developed policies for making public details of contracts or grants awarded to organisations with which their directors (or close family members) are associated. As we note in paragraph 38, Financial Reporting Standard 8 now makes this standard accounting practices for companies, and it is particularly important in the special circumstances of TECs and LECs. Highlands and Islands Enterprise makes announcements on financial assistance as they occur and they are summarised in the annual report. Scottish Enterprise LECs are required to publish details in their annual report. The *Framework for Local Accountability* suggests TECs do likewise, but this is not yet a widespread practice in TECs. While publication in the Annual Report fulfils a basic requirement of openness, we commend the HIE practice of publicising details regularly.

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.

248. HIE LECs are further required to publish details of all financial assistance, subject only to withholding details for a time, if necessary, in the interests of commercial confidentiality. As most of the TECs are much larger than these LECs, it has been argued that a policy of publishing details would be onerous, although TECs already hold this information in their records. In its report on TECs, the Employment Select Committee recommended that they should adopt a policy on disclosure similar to that of HIE. We support that recommendation. We consider, as a minimum, that details of financial assistance should be available and open to scrutiny on request, and that a summary list should be published regularly.

Handling Complaints

249. Formal systems for handling complaints from the public, training providers and trainees are widespread in TECs and LECs. The two Enterprise Agencies in Scotland, in consultation with the Scottish Office, are in the process of setting up an external independent complaints adjudication procedure, in effect a LEC Ombudsman. This will implement one of the recommendations of the Scottish Affairs Committee's report on LECs. Welsh TECs will be required to have an external independent element in their complaints procedures as part of their 1996/7 contract. *The Framework for Local Accountability* recommends the establishment of a route for independent external review of complaints for TECs; this would become a contractual requirement as a result of our recommendation R25.

250. We welcome these developments, but believe that, as part of their regulatory role, the Welsh Office and the Government Offices for the Regions should satisfy themselves that adequate complaints procedures, including an independent element, are in place; these could be established at a regional level.

Staff Codes and Whistleblowing

251. Staff, particularly those at a senior level, within TECs and LECs may be responsible for substantial grants or contracts and the potential for conflicts of interest is clear. Where staff move to an organisation with which the TEC or LEC has had a contractual relationship, it is important to ensure that no risk of impropriety exists or appears to exist. However staff should not be put under unfair constraints over future employment, and we recognise there will be advantages in interchange with, for example, major training providers. We believe therefore that rules for approving such appointments should be introduced which are at least as strong as the business appointment rules operating in the Civil Service.

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.

252. Most TECs and LECs have developed their own staff codes including rules for handling relationships with outside contractors. All TECs and LECs need to have such codes and there are many good practices which need to be disseminated and shared more widely. We are concerned, however, that there do not seem to be widespread formal arrangements for reporting wrongdoing. The expectation seems to be that staff will invariably know what to do. We have come across one example of a more detailed set of rules for whistleblowers (there may well be others) from Humberside Training and Enterprise Council. These rules were drawn up with the help of the charity Public Concern at Work and contain the key elements we specify in chapter 1.

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.

Openness

253. The concern that TECs and LECs are secretive organisations has been tackled in recent years by the organisations themselves, the Enterprise Agencies, the TEC National Council and Government (and there is a contractual requirement for them to pay due regard to the government's Openness code of practice). There is however a widespread view among TECs and LECs that the efforts they have made to improve their openness have not won recognition, particularly from the media. This may change over time.

254. There remain some areas in which progress has been slow. The first is publication of contracts made with organisations in which directors have an interest (see paragraph 247 above). The other area, and one on which there is considerable reluctance by both TECs and LECs to take a more open stance, is the publication of board papers, including agendas and minutes. It is argued that publication would drive the decision-making process into smaller sub-groups, and make the work of the whole board much more difficult and less effective. While we recognise that this is a danger, we believe it should be possible to develop practices, in line with the criteria set out in paragraphs 230 and 231, to allow greater disclosure. Even where confidentiality is necessary, it can frequently be subject to a defined time limit. In practice, some TECs have found it possible to make papers available. Lincoln TEC told us:

"board minutes and supporting papers [are] placed in the public domain by library services including [a] quarterly performance report"

255. Highlands and Islands Enterprise told us about an intermediate stage to the publication of papers. Their LECs provide a summary of board assistance decisions to the media and, where there is further interest, offer a more detailed briefing. We commend this process, but we consider that it could be used in parallel with a system of more open access to board papers and minutes.

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.

256. Both TECs and LECs are required by their contracts to have one annual public meeting each year. Most, if not all, go further. In addition to formal consultative meetings, many organise open meetings by sector or subject; others, serving a variety of discrete communities, organise road-shows, or other events, in those communities. Disappointingly, these events tend to be costly and not very well attended. Many TECs and LECs are seeking ways to address that problem.

257. TECs and LECs believe that their consultative and open meetings are often an important opportunity for interested parties to contribute to the preparation of their strategic plans. These are then discussed in draft with the funding agency or Department. Because the final detail of the plan will depend on the outcome of funding discussions, we recognise there may be difficulties in publishing them more widely in draft form, but we believe that there is much to be gained in terms of actual and perceived local accountability by being more open about the process. Although both government and enterprise agencies lay considerable stress on taking local views into account, we think that there is a need to go further by reviewing the scope for publishing all or part of TEC and LEC strategy documents on a consultative basis.

258. More generally, we believe that TECs and LECs need to do much more to explain locally their policies on accountability, propriety, governance and openness. All produce annual reports, but the information provided is not always as extensive as is found in the best company annual reports. We believe more effort to improve practice is needed, perhaps through an award such as exists for housing associations. Thought should also be given to providing key information in a form that can easily and cheaply be reproduced and updated.

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

259. We set out in the box below some of the areas that might be covered in such a *local accountability statement*.

Example of items for inclusion in Local Accountability Statement

- *Method of appointment of directors, including:*
 - *nomination (including self-nomination)*
 - *advertising*
 - *role of directors*
 - *maximum period(s) of service*
- *Membership schemes (where appropriate)*
- *Sub-group structure*
- *Other arrangements for public consultation*
- *Availability of Register of Interests*
- *Outline of rules on handling interests in board discussions*
- *Availability of details of all contracts and those in which Director has interest*
- *Outline of (or reference to availability of) procedures for handling complaints*
- *Reference to internal staff code and code for handling internal concerns about propriety*

In all cases a contact point for more information and reference to further documents should be made.

Financial appraisal and Audit

260. The unique nature of TECs and LECs gives rise to particular questions about the level of financial monitoring and both internal and external audit.

261. We have already noted that the relation between Government and the TECs and LECs is much closer than simply one of supplier/contractor and that around 90% of funding of TECs and LECs come from the public purse. In turn, TECs and LECs use the majority of the public funds at their disposal to place substantial contracts locally with both the private and public sectors. For audit purposes, therefore, TECs and LECs cannot be seen simply as private sector bodies: they are disbursing public funds and should be subject to proper auditing of public money.

262. The need to track public money is recognised in the current arrangements for financial monitoring and audit, which give the National Audit Office (NAO) access to TECs for the purposes of examining the accounts of the departments which fund them and for examination of how those departments have secured value for money from their resources; access to the LECs is through a combination of informal agreement and documents supplied to the NAO by the enterprise agencies. Many TECs and LECs complain, however, about the number of bodies involved. Definitions vary, but it has been suggested that up to seven separate levels of audit are required (see box). A number of witnesses suggested to us that too many audit levels could be counter-productive. They argued that a single team of auditors would know that it had sole responsibility for getting it right; with several levels there might be an assumption that others would pick up problems. We broadly agree with that analysis, however we recognise that there would be difficulties in moving to that ideal; for example at present the Companies Acts do not recognise the Comptroller and Auditor General as a “Companies Act” auditor.

<i>Levels of Audit for TECs and LECs</i>	
<u><i>Training and Enterprise Councils</i></u>	<u><i>Local Enterprise Companies</i></u>
<ul style="list-style-type: none"> • <i>TECs own internal audit</i> • <i>External audit (Companies Act)</i> • <i>Audit by the Department for Education and Employment and Welsh Office internal auditors</i> • <i>Audit as part of the Government Offices for the Regions and Welsh Office “Financial Appraisal and Monitoring” (FAM) programmes</i> • <i>Limited access by the NAO for the purposes of examining and certificating the accounts of the sponsor departments (and assessing value for money of departments’ programmes)</i> • <i>For European projects excised by the European Court of Auditors</i> 	<ul style="list-style-type: none"> • <i>LECs own internal audit</i> • <i>External audit (Companies Act)</i> • <i>Audit by Enterprise Agency</i> • <i>Audit trail by Scottish Office auditors of Enterprise Agency books</i> • <i>Informal access by the NAO as a result of contracts with Enterprise Agencies</i> • <i>For European projects excised by the European Court of Auditors</i>

263. A number of recent developments are relevant. From 1 April 1995 the Enterprise agencies in Scotland have been required to produce consolidated accounts with their LECs. This will have the effect of providing greater access than hitherto for the National Audit Office. However it also confuses further the issue of whether the LECs are public or private sector bodies. In England the DfEE has accepted the findings of an efficiency scrutiny on TECs⁵ and is implementing a review to rationalise internal audit and financial appraisal functions. The Welsh Office has produced a discussion document on the audit of its TECs. Finally the Government's consultative document, *Spending Public Money : Governance and Audit Issues*⁸, considers the question of public audit of bodies such as TECs and LECs.

264. In their evidence to us the NAO proposed that they should have a formal right of access to TEC and LEC accounts. The NAO argued that this would enable them to carry out selective reviews of the economy, efficiency and effectiveness with which these bodies had carried out their functions funded from the public purse. They say that this access could be achieved with minimum additional burdens on these bodies and within their existing resources. The TECs on the other hand feel that the NAO has very wide access.

265. We have sympathy for both these views. We consider it essential that TECs and LECs should be subject to the full weight of public audit as we recommend for all local bodies. At the same time, we believe that the audit arrangements need to be such that a single external audit, carried out by one auditor reporting to different bodies as appropriate, should as far as possible encompass all the public audit requirements of the various public bodies concerned. Any changes to the framework for achieving this will need to take account of the developments mentioned in paragraph 263 above.

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.