

24 February 2012

Mr Michael Russell MSP/BPA
Cabinet Secretary for Education and Lifelong Learning
The Scottish Government
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

Dear Cabinet Secretary

Initial Response from Scotland's Colleges to the *Report of the Review of Further Education Governance in Scotland*

Thank you for your letter dated Tuesday 7 February 2012 seeking input from the college sector on the recommendations set out in the *Report of the Review of Further Education Governance in Scotland* by Professor Russel Griggs.

Scotland's colleges very much welcome the opportunity to provide this input. What we have provided should be considered as our initial response – it represents the outcomes of ongoing discussions with the Chairs' Congress and Principals' Convention on the key issues emerging from the report proposals.

While we are aware of your desire to make swift progress on moving forward and making your own response, we believe the time available has only allowed the sector to start to consider the implications of the proposals: how they may work in practice, and where risks may lie in creating unintended consequences.

The changes to governance of colleges proposed in these recommendations we believe, would be of greater magnitude and significance than incorporation. It is, therefore, important that change be managed effectively and that all due diligence is observed; anything less risks the success of the reform.

As we have indicated to you before, colleges will support the reform agenda, but we would welcome a reassurance from you that this initial response will be the starting point of our engagement with you on how to implement the new system of governance to support reform.

You will see that we have set out responses in terms of areas requiring planning, clarification and negotiation. Of these, the most urgent issue we would identify as requiring clarity is the status and structure of a new regional board. Colleges have been exploring, and in many cases agreeing, ways forward on regionalisation – working with partners towards mergers, collaborative or federated models of delivery, as they see as best meeting the needs of their area. There are concerns that the model proposed in the report would not easily support these different approaches. Before colleges can progress these plans, they must understand that the model has the flexibility to support them, having undertaken these discussions in earnest.

Scotland's Colleges is a trading name of both the Scottish Further Education Unit and the Association of Scotland's Colleges

Tel: 01786 892000 E-mail: info@scotcol.ac.uk Web: www.scotlandscolleges.ac.uk

Scottish Further Education Unit | Company Limited By Guarantee | Registered in Scotland No: 143514 | Scottish Charity No. SC021876 | VAT No. 617148346
Association of Scotland's Colleges | Company Limited By Guarantee | Registered in Scotland No: 143210 | Scottish Charity No. SC023848

Registered Office: Argyll Court, Castle Business Park, Stirling, FK9 4TY

We welcome your invitation to meet with chairs and principals on Tuesday 28 February 2012 to further discuss these issues. While it may not be possible at that time to provide guidance on all the points raised in this initial response, we hope that the main issue of the status and structure of the new regional board can be addressed, and that solutions can be developed, to allow progress to continue.

We look forward to hearing from you, and to our future discussions on the reform process.

Yours sincerely

John Spencer
Chair of the Principals' Convention

John Russell
Pro tem Chair of the Chairs' Congress

cc: Michael Cross, Deputy SRO, The Scottish Government
George Reid, Review of College Governance, The Scottish Government
Members of the Chairs' Congress
Members of the Principals' Convention

Initial Response from the Chairs' Congress and Principals' Convention on the *Report of the Review of Further Education Governance in Scotland* by Professor Russel Griggs

Chairs and principals/chief executives considered the core content and recommendations of the *Report of the Review of Further Education Governance in Scotland* and categorised these under three sector work streams:

1. **Planning** – things to get on with and do
2. **Clarification** – things we need further information on
3. **Negotiation** – things we think could be improved; where we can shape a better way forward and offer solutions to the Scottish Government.

In the sections below we summarise these outputs under the key themes of the report:

- **National Strategy and Direction**
- **Ministerial Guidance and the Status of Colleges**
- **National Structure – Regionalisation of Colleges**
- **Governance and Leadership**
- **Staff**
- **Learners**
- **Finance.**

An overarching concern is the short timescale to respond and the lack of opportunity of engagement with the wider sector – particularly board members. The sector, therefore, submits this on the understanding that it is an **initial** response.

National Strategy and Direction

Planning

1. The Scottish Government should work with colleges to determine the strategic direction of the sector. The **Strategic Forum** should only be established after the structure and shape of membership of regional colleges is determined. We have considered Griggs' concerns that with the inclusion of college principals, the forum may slip into operational issues. We consider that **principals** as academic advisors and professional experts should be included **as members of the Strategic Forum**. This arrangement would parallel the governance arrangement locally where college boards consider strategic advice from their executive.
2. The colleges should help to shape the Scottish Government's **Regeneration Strategy**.
3. It is essential that interests of **learners and employers** are included within the *Report of the Review of Further Education Governance in Scotland*.

Clarification

1. Considering the pace and scale of change, we would request that a Scottish Government's risk register is developed by the Change Team to enable a national framework for **risk mitigation and management**.

2. The Griggs review suggests a central and national approach to both **capital projects** and **management information systems (MIS)**; both have potential operational, legal and financial implications. The college sector would welcome dialogue on how to take this forward.
3. Consideration is required with regard to the **diverse size and geography** of the proposed new regions, in order to retain sector wide focus – ‘one size does not fit all’.
4. When will change happen? A **transition plan** is required, with timescales, to determine when the new boards take effect and the existing boards step down.

Negotiation

1. **Principals should be part of the Strategic FE Forum**, to ensure advice is received at a strategic level.
2. The recommendation to remove the bar to appointment of a council member/councillor to be elected as a chair could create a **conflict of interest**, particularly if more than one council boundary is covered by the new regional college. Furthermore, often councils compete as training providers with colleges and this too could create a conflict of interest.
3. The creation of a new **FE Strategic Forum**, alongside the Scottish Funding Council (SFC), Skills Committees, Joint Skills Councils and Skills Development Scotland (SDS) has the potential for requiring **additional costs**, at a time when finances which fund frontline services are being challenged.
4. We welcome the ambitions set out in the report to achieve a more consistent national approach in further education college activity. It is important an appropriate balance be struck between local delivery and what is best for all learners across Scotland. Careful development of the policy framework will be required as the system moves to the implementation of a regional approach. The creation of a new FE Strategic Forum will be one way of addressing that, and the report rightly considered that it should focus on strategy not delivery. At the delivery level an important mechanism to ensure coherence and a **national approach in governance, management and curriculum support** for the sector has been the organisation **Scotland’s Colleges**. The sector considers that the need for **Scotland’s Colleges** to fulfil that role will be greater than ever in the new system. Particularly important will be ensuring coherent national support is maintained to regions which will vary enormously in scale – the proposed Glasgow region accounts for 20.8% of weighted SUMs, compared to 1.5% in Borders and 1.8% in Dumfries and Galloway.

Ministerial Guidance and the Status of Colleges

Planning

1. The Scottish Government should progress with the **appointment of chairs** using the ‘*principles and procedures*’ of the public appointments system rather than the process itself. The interview panel would make a recommendation for endorsement by the Minister. All board members should be appointed by this process in order to ensure equality and to avoid creating a ‘special’ board member.
2. The Chairs’ Congress and Principals’ Convention support the development of **outline skills sets and profiles** for chairs. Consideration should be given to the time and financial commitment required.

3. The college sector would welcome involvement in determining the constitution of the **interview panel for the selection of chairs**. College representation should be included on the interview panel to select the first chairs.
4. Furthermore, **board member appointments** should be selected not only by the new chair but along with other board advisors.

Clarification

1. Clarification is required on the **checks and balances on the chair** by other board members and consideration should be given to using the principles and procedures of the public appointments system for the full board.

National Structure – Regionalisation of Colleges

Planning

1. In order to progress an outcome based approach to funding and planning, college boards within a region should work together with SFC to outline strategic targets and outcomes. Furthermore, *Scotland's Colleges* would be happy to develop an **effective audit framework**. We would also request an overarching review of current audit requirements to minimise duplication and ensure **proportional audit**.
2. Colleges will continue to operate within their **Community Planning Partnerships (CPPs)** as members; however, some consideration should be given as to how best to support colleges as statutory members with multiple CPP commitments.
3. The **June 2012 deadline** is a very tight timescale. It is important that there be **contingency plans** should this deadline not be met.
4. Planning is required during this significant period of change, to ensure **business continuity** and to provide a confident environment for all learners and staff.

Clarification

1. There is ambiguity regarding the status of a regional college. Clarification is required to clearly determine if only full **merger** is an option or whether colleges may work within a **collaboration** or **federation arrangement**. Furthermore, some discussion is required if full merger is not the only option as many of the governance recommendations would be difficult to implement without merger. For example:
 - a. In a federated structure how would a single fundable body work in practice?
 - b. How could a regional board work alongside federated autonomous college boards?
 - c. Can there be more than one fundable body in a region?
 - d. Will the regional board be the only employer?
 - e. How would a federated model operate in region with multiple local authorities?
2. If merger is the preferred model of a regional college, the Scottish Government must recognise the timeframes, costs and process required of **due diligence**.
3. More clarity is required on the legal status of the new regional colleges (arm's length bodies) and federation/collaboration colleges with regard to retaining **charitable status**. Will regional board members be charitable trustees? We consider the objective should be **responsible autonomy**.

4. The membership proposal of the **Change Team** invites nominations of up to three principals to work with each project lead on the five workstreams. A proposal is presented to include a **principal on each workstream**. Also, the **governance workstream** should include both the reviews on university and college governance. Furthermore, the Chairs' Congress requests that **chairs** should be included as members of the Change Team.

Governance and Leadership

Planning

1. For some issues 'modernising' governance arrangements and **legislative change**, particularly in terms of the *1992 Further and Higher Education Act (Scotland)*, will be required. This action is in the main covered by recommendations 11 through 17:

Recommendation 11: Repeal of the requirement which remains in the 1992 Act that the Board of management must contain a nominee of the **local enterprise company**.

Recommendation 12: **Chairs** of the Regional Boards should **serve one term** (four years), with the option for a further term at the decision of the Minister concerned.

Recommendation 13: Members of a Board of Management should **serve for one term, with the option of reappointment for a further term** at the decision of the Board. A subsequent term or terms of appointment should thereafter be permissible, but only following open recruitment procedures

Recommendation 14: Repeal of the provision which requires, where a Board member leaves before the completion of her/his term, that the successor's first term of appointment should cover only the '**unexpired**' term of the departed Board member.

Recommendations 15: Boards should have the flexibility to make **appointments for periods of up to four years**, rather than for a fixed period of four years as at present.

Recommendation 16: Boards should be free to make an appointment regardless of the age of the candidate. A **minimum age of 16** should be applied, with no upper age limit.

Recommendation 17: The current inability of a Board to elect a **Chair who is a councillor or a council employee** should be removed. This **recommendation was not upheld by the Chairs' Congress and the Principals' Convention** due to a potential conflict of interest.

Colleges will work with the Scottish Government to consider and successfully amend legislation enabling effective change.

Clarification

1. The Griggs review outlines a **hierarchy of leadership**. We consider that this model is flawed. Board members have a shared and equal responsibility and accountability. The chair has equal responsibility with all other board members, although with an extended role. This is required by company law, charity law and is the norm for all public bodies in Scotland.

2. In an environment where local community partners (including local authority) learners and staff are members of college boards, clarification by the Scottish Government is required to confirm that **board members are not representatives** but are there as full members.
3. Colleges would welcome a wider dialogue to determine the pros and cons and, therefore, the best way forward in terms of **remuneration of chairs**. The Griggs review did not present a compelling case for change.
4. Further details are required about the **role and accountability of committee members**.
5. How will the new regional boards take account of **demographic accountability**? There is significant variation in the proposed size and complexity of the 12 regions.
6. Clarification is needed on how to handle **more than one student association** within a region. Which student president would be the regional board member?

Negotiation

1. In good governance, board members should not and would not manage colleges but would **direct and govern** and be held **accountable**.
2. The Chairs' Congress proposed a **maximum of 15 board members**, rather than 12 members proposed in the Griggs report, as this was considered too few to ensure quorate meetings for a large regional college, particularly of committees. The Chairs' Congress further proposed an **odd number of board members** e.g. 15 to ensure a split vote decision would not arise.
3. The Chairs' Congress would welcome dialogue on **increasing the executive board membership** beyond the inclusion of the principal.

Staff

Negotiation

1. The report outlined a plan and timeframe to implement **national collective bargaining**. The college sector would welcome dialogue with the Scottish Government to consider the financial implications and practicalities of achieving this target. Furthermore, regionally negotiated pay and conditions may be a first step to aim for as regional colleges harmonise pay and conditions.
2. How do you choose **one staff and one student board member** to be effective across a diverse range of interest groups e.g. a support staff member may not have sufficient knowledge of academic staff issues. The Chairs' Congress **proposed two staff board members**: an academic staff board member and a non-academic staff board member.

Learners

Planning

1. The Chairs' Congress supports the recommendation that student associations should be appropriately funded, autonomous, sustainable but also **accountable**.

Finance

Clarification

1. Clarification is sought on the recommendation to **limit reserves initially to 10% of annual revenue**, if this limit is on the SFC funding element only or includes commercial income.
2. **Tax and pension** arrangements require to be considered in a merger or federal structure.
3. **Commercial income** is derived by colleges from international, national and regional activities. The new regional model should not inhibit future commercial activities.
4. Clarification is required, should capital allocation be centrally managed, as to the **ownership of the capital asset**.

Negotiation

1. The recommendation to **limit reserves initially to 10% of annual revenue** for its own college use is not supported. Removal of reserves acts as a disincentive for colleges to be financially efficient and effective. Financial sustainability is proposed as an acceptable basis of college financial health going forward, rather than profitability. Reserves must, therefore, be considered in this context over the full planning period.
2. The Griggs review does not explain the Scottish Government and SFC powers necessary to deliver on the recommendation to **'freeze' all liquid reserves in excess of 10% of annual revenue** (unless already specifically allocated to projects already underway physically). We are very concerned and would not support such retrospective action.
3. Reserves are complex. There is a **difference between cash and reserves**. The Griggs report quotes a sector reserve level which includes the asset revaluation reserve. This would only be realised on the sale of the assets.