



Education & Skills  
Funding Agency

# **College oversight: support and intervention**

**July 2022**

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## Introduction

Our [Skills for Jobs White Paper](#) sets out our vision to transform further education.

We want people to get the advanced technical and higher technical skills they need to get good jobs. Colleges' place at the centre of their local communities and economies means that they are key to unlocking opportunities and to build back better.

The White Paper also sets out proposals to reform adult skills funding and the wider accountability regime for colleges and other grant funded providers.

We have been consulting and working with the sector to determine how those reforms will be implemented. We intend to set out more detail on reforms due to be implemented in the coming academic years in future updates to this document.

## Key changes in this document

This summer 2022 update to the guidance reflects:

- the introduction of the new duty on colleges to review how well their provision meets local needs, and to consider what actions they could take to meet those needs better
- the Secretary of State's enhanced intervention powers under sections 56A and 56E Further and Higher Education Act 1992
- making Curriculum Efficiency and Financial Sustainability Support available to all colleges as part of the offer of active support
- [the revised Ofsted inspection framework](#) which, from September 2022, includes an assessment of a college's contribution to meeting skills needs

We are still finalising the detail of what our full set of funding and accountability reforms will include, but we are continuing to work with the sector to ensure effective implementation. We are currently piloting Accountability Agreements, for example, with a range of stakeholders and subject to the findings of this programme we plan to commission them during 2022 to 2023 to take effect during the 2023 to 2024 academic year.

## What is the purpose of this document and who is this publication for?

This document sets out how we will work with all colleges to identify, at an earlier stage, any financial and quality issues that might get in the way of them succeeding. It sets out the support and advice available to colleges when they need it, including from the Department for Education (DfE), FE Commissioner and Education and Skills Funding Agency (ESFA).

It is primarily aimed at governors, principals, finance directors and/or senior leadership teams of further education (FE) colleges, sixth-form colleges and designated institutions in England.

We would encourage all college leaders, governors, and finance staff to read this document, to take advantage of the increased support now available and to act early if they see problems ahead. By working in partnership, we can ensure that college leaders are equipped to deliver the best possible experience for their students.

This document may also be of interest to provider organisations such as the Association of Colleges (AoC), the Sixth Form Colleges Association (SFCA) as well as Mayoral Combined Authorities (MCAs), Local Enterprise Partnerships (LEPs), the Office for Students, local authorities and Employer Representative Bodies (ERBs).

## **Terminology**

Where this document refers to 'we' or 'the Department for Education' taking action, following processes or making a decision, this should be taken to mean officials in the department or ESFA, the FE Commissioner's team and potentially ministers working together, unless stated otherwise. Where teams are referred to specifically, the expectation is that those teams will be leading on that specific aspect of work.

Use of the term 'college' in this document should be taken to mean FE and sixth-form colleges and designated institutions, unless stated otherwise.

## **Review date**

We will issue a further update in Autumn 2022, following conclusion of the Office for National Statistics (ONS) classification review and further consultation on our funding and accountability reforms.

## **Structure of the document**

Our range of support for colleges to improve is set out in Chapter one.

Guidance on intervention is in Chapter 2.

Guidance on reviewing provision and restructuring is in Chapter 3.

# Chapter One - sources of support available to colleges

Government is committed to ensuring the further education sector is supported to achieve continuous improvement and improved outcomes for learners and that should be available to all colleges and designated institutions, regardless of where they are on their improvement journey. It can mean helping good providers to become great providers, encouraging our strongest providers to share their expertise with others through peer leadership, and sometimes offering more intensive and targeted support where that is needed. More information can be found on our [help and support for colleges webpage](#).

## Annual strategic conversations

The [Mary Ney Review](#) recommended that ESFA and the FE Commissioner develop a new relationship with colleges, and that this relationship would provide a stronger line of sight with all colleges.

Annual strategic conversations have now taken place with all colleges and have been broader and more strategic than is possible in our business-as-usual interactions and have provided us with greater clarity on the issues faced by colleges, both individually and collectively.

The next cycle of conversations commence in the autumn term and will be amended to build on what we have learnt already. Future conversations are likely to be more focused on the reform agenda and how the sector is responding, reflecting on the opportunities and challenges this presents. The conversations will also emphasise that support is available to all colleges and can focus on building success and outstanding practice. These conversations will take place in addition to any other support.

## Active support

Active support is a collective term for a range of improvement, prevention, and support tools (from the FE Commissioner, DfE and ESFA) that is available to all colleges, that are not in intervention. It includes, but is not limited to:

- FE Commissioner-led Diagnostic Assessments
- Curriculum Efficiency and Financial Sustainability Support
- Support from National Leaders of Further Education; (NLFEs) and National Leaders of Governance (NLGs)
- Tailored support from the FE Commissioner
- FE Commissioner support for college senior leadership recruitment
- Effective practice and 'how to...' guides
- Financial [benchmarking tool for colleges](#)
- College Governor Financial Dashboards
- FE Commissioner-produced sector benchmarks

- Local Provision Reviews
- Independent Business Reviews
- FE Commissioner-led structure and prospects appraisals

Further details on some of these are below and in later sections on structural change. Later in the year the department will publish further information on active support . Information can be found on our [help and support for colleges webpage](#).

We encourage colleges to talk to their DfE contact, either during their annual strategic conversation, or outside of this, if timelier, about what support and help they require. For example, colleges might identify the need for improvement following use of the [college financial benchmarking tool](#). This is not about the department deciding what is best but reaching a common understanding and agreement of what will make the college better.

Active support is also not just about risk and issues but supporting a college to improve. We encourage requests from colleges who are rated as 'good' and want to be 'outstanding'.

Active support is fully-funded and provided by the FE Commissioner, DfE and ESFA at no cost to colleges, although it is acknowledged that the college will need to commit time and resources.

## Diagnostic assessments

A diagnostic assessment is a visit to a college, undertaken by practitioners from the FE Commissioner's team, to use their expertise to examine the college's governance, financial, curriculum and quality plans and provide suggestions and recommendations, where appropriate, that would lead to improvement. It enables the FE Commissioner to support the college's senior leadership team and the board in considering how further improvements might be achieved.

A diagnostic assessment is about the performance, leadership, governance, and oversight within the college and whether there are suggestions for improvement that can be made. The FE Commissioner is there to use its expertise, skills, knowledge, and experience to give a college an open and honest view, capturing good practice and recommending where improvements could be considered. To fully understand how and where the college is, the FE Commissioner will use a range of qualitative and quantitative techniques to reach a conclusion and make any recommendations. In essence, a DA is a supportive collaborative assessment of the systems, practices and procedures that drive the performance of a college, rather than something that is 'done to' it.

The FE Commissioner's team, generally led by a FE Commissioner Deputy, take 2 days to complete their visit. A verbal feedback meeting at the end of the visit will explain what the FE Commissioner's team have found and what outcome and recommendations they

will be reporting. A written report on the visit, including confirming the outcome and any recommendations will be ordinarily shared with the college within 2 weeks.

The 2 possible outcomes from a diagnostic assessment are:

- **endorsement of the college's approach:** the college has robust plans in place to address the issues and senior management has the capacity to secure improvement. There may be minor recommendations in the report from the FE Commissioner that the college should consider
- **suggested actions to strengthen or supplement existing improvement plans:** while the college's leadership has the capacity to lead improvement in financial health and/or quality, the existing improvement plans need further strengthening to ensure that improvement is rapidly secured. The FE Commissioner will set out in the report a detailed range of recommendations for the college to consider. The FE Commissioner will revisit the college again, usually specified within the recommendations in the diagnostic assessment report, to review progress

## Who can participate in a diagnostic assessment?

Any college, not in intervention, is eligible for a diagnostic assessment. They may be requested by the college or may be recommended by the FE Commissioner or the department as part of discussions on active support. Where this happens, this will be based on the evidence and intelligence we have and the risk of the college moving towards intervention. They will look at a wide range of information and risk factors, for example:

- financial data, including statements, plans and cash flow forecasts
- Ofsted reports, including monitoring visits
- where a college has recently completed or is judged to be on track to complete a structural change
- where evidence, intelligence or data indicate a college may benefit from targeted support, for example, around the quality of governance or financial management
- sudden or unexpected changes to the leadership of the college
- requests by the college for advancement of funding to help with short-term cash flow issues (where this has not already triggered intervention)

DfE with the FE Commissioner will regularly review the information we have on each college and whether a diagnostic assessment would be useful, is the best method of support or whether better alternative approaches could be put in place.

Where a college requests a diagnostic assessment, we will ask that they set out briefly why they believe this would help and what support they are looking for. A college can request this by emailing [FEC.OPERATIONS@education.gov.uk](mailto:FEC.OPERATIONS@education.gov.uk) or their DfE territorial team contact. A college can also the email address above to contact the FE



Commissioner to find out more information and to discuss whether a diagnostic assessment would be useful, prior to making a formal request.

## **Further support and help**

We will also continue to offer support to any college that has participated in a diagnostic assessment. For example, where the outcome of a diagnostic assessment is that the college plans are endorsed by the FE Commissioner or that the college needs support between formal revisits by the FE Commissioner, we will make available further support and help from the FE Commissioner's team. Colleges can request this from the FE Commissioner's team at any time during the diagnostic assessment process.

## **Curriculum efficiency and financial sustainability support (CEFSS)**

During the 2021 to 2022 academic year, we piloted FE Commissioner- led activity with 7 volunteer colleges to establish how the FE Commissioner (FEC) might better support colleges to understand and apply effective practice when planning their curriculum to support financial sustainability and meet local need. The feedback from the pilot has been resoundingly positive and therefore we will now be offering this support to all colleges, as part of active support, starting from September 2022.

The aim of CEFSS, as part of active support, is to make a positive difference to colleges that may require help with costed curriculum and financial planning, and to raise awareness of effective practice which they can use and could be shared within the sector.

Curriculum planning is part of a college's core business cycle, during which an organisation will work through in 'detail' how it will deliver its business and what resources will be required and deployed in the forthcoming year/s. A comprehensive curriculum planning and design process lays the foundation for all subsequent decisions relating to teaching, learning, assessment, management, and support, and should do so in a way that builds credibility with internal and external stakeholders. This process should involve every aspect of delivery, using precise key data to inform accurate decision making.

CEFSS is a tailored support package that can be accessed by a direct request from a college to a member of the FE Commissioner team or the DfE Territorial Team. It is designed to flexibly meet the requirements of all types of colleges, rather than a 'one-size-fits-all'.

Any suggested actions given through the help and support are advisory and it is up to the individual college to decide whether to implement any of the advice through actions of their senior leadership team and board of governors. CEFSS is available throughout the

year and can be delivered in 3 incremental stages to meet the needs of individual colleges.

**Stage One** is an initial informal discussion to explore options with the college leadership and, if agreed, a visit to the college (either onsite or online) would be arranged for a single FE Commissioner deputy or adviser to have a more detailed discussion on the college's plans and processes. No formal output would be given from the FEC, other than a proposal of what support could be offered to the college who could then consider their options for further support if they wish. This stage is designed to be flexible, offered quickly, and with the minimum of delay. It is not expected that every college taking up stage one will move to the next stage.

**Stage 2**, where the college decides to take the work further, the FE Commissioner deputy/adviser would begin by looking with the relevant senior leadership team at the range of data provided by the college and compare the activity to other similar colleges and sector benchmarks. The FE Commissioner deputy/adviser would work through an iterative process with the college leadership to develop the agreed suggested actions from the FE Commissioner relating to curriculum planning and efficiency improvements. This might include working with an NLFE, if that is thought beneficial and acceptable to the college. A possible outcome at the end of this stage could be that the college decides to move to stage 3 or that they do not need or want any further help.

**Stage 3** would be that following Stage 2, the FE Commissioner could offer to provide further resources to work with the college to improve its curriculum planning and financial efficiency. In addition to the FE Commissioner deputies/advisers, an NLFE could work with the college. A report, which would be confidential to the college, would be provided, containing suggested actions for improvement. The FE Commissioner team would continue to be available to the college and contactable for help and support where possible with the implementation of the suggested actions and improvements.

There will be a range of supporting documents, case studies of effective practice and more detailed information available from September 2022.

A college can contact the FE Commissioner team to request more information on CEFSS by emailing [FEC.OPERATIONS@education.gov.uk](mailto:FEC.OPERATIONS@education.gov.uk).

## National leaders of further education

National leaders of further education (NLFE) provide strategic mentoring and peer to peer support to other colleges to improve. They are serving college leaders who have a strong track record of delivering improvement both at their own colleges and in working with others.

NLFES have autonomy in determining how they deliver support and tailor their work to fit the needs of the college(s) they are supporting. This could include involving other members of the NLFE's college staff to provide support. An NLFE might, for example:

- work with the principal and leadership team to identify improvement needs, and potential sources of support
- provide strategic mentoring to the college leadership
- work alongside key members of the leadership team on the delivery of specific improvement programmes, including Curriculum Efficiency and Financial Sustainability Support (CEFSS)

Further information on NLFES is [available on GOV.UK](#). Colleges seeking an improvement partnership should contact the Office of the FE Commissioner: [FEC.OPERATIONS@education.gov.uk](mailto:FEC.OPERATIONS@education.gov.uk).

## National leaders of governance

National leaders of governance (NLG) provide strategic mentoring and support to governance boards at colleges that need to improve. NLGs are experienced college governors and clerks with a strong record of supporting college improvement.

The role of an NLG includes:

- diagnosing and reviewing governance improvement needs
- assisting the board of governors to draw up an improvement plan
- developing the capacity and expertise of the board of governors
- providing support and advice
- coaching and mentoring
- identifying additional and ongoing sources of support

Further information on NLGs is [available on GOV.UK](#). Colleges that have enquiries about NLGs should email the Office of the FE Commissioner [FEC.OPERATIONS@education.gov.uk](mailto:FEC.OPERATIONS@education.gov.uk).

## Resources and learning to support quality improvement

The college collaboration fund (CCF) ran from 2020 to 2022 and supported groups of FE colleges to deliver a [range of quality improvement projects](#). FE providers can continue to access and benefit from the CCF legacy of [free to use resources](#) and [learning](#) which can be adapted to support quality improvement in their own institutions.

## Chapter 2 – Intervention

### Intervention action

Colleges are subject to regular reviews of risk by DfE. We will, as part of our continued core function, ensure that there is an effective use of public funding and that learners receive a quality learning experience. Therefore, we will continue to monitor and analyse the intelligence and data that we collect, and if necessary, intervene to address areas of concern.

The circumstances in which intervention action may be triggered under the administrative intervention regime are detailed below. DfE territorial teams will consider the context and circumstances of the case and all available evidence, including college representations, before making a decision. They will always be clear with the college, in writing, about any action they decide to take and the reasons for it. Where other intervention actions do not resolve the position of the college, a structural solution may be considered, which may be effected through use of the Secretary of State's statutory powers, or a managed insolvency.

### Notices to improve (Ntl)

DfE will normally issue a college with a notice to improve (Ntl) where it meets financial health, or financial management and control triggers for intervention (circumstances as specified below), and where DfE judges that it should be put into intervention. Where an Ntl is issued, it will normally be published.

Where we judge it appropriate, after a merger we may allow a period of time for the merged college to stabilise before issuing and/or publishing a Ntl. This is set out in the financial planning handbook. For published NtIs, publication takes place after the Ntl has been received by the college and gov.uk is updated (ordinarily on a monthly basis) to add or remove NtIs.

Compliance with the Ntl and arrangements for lifting this status will be specified in the Ntl. It will also set out clear requirements that the college is expected to meet within a timeline. These requirements form additional conditions of funding. NtIs will be reviewed, between the college and DfE, on at least an annual basis to ensure they remain appropriate, and reflect progress made by the college in addressing the reasons for intervention.

DfE does not issue NtIs to colleges in respect of Ofsted overall 'Inadequate' assessments. DfE will write to the college when an overall 'Inadequate' Ofsted report is published (this letter will not be published) regarding implementation of the published recommendations made by Ofsted and/or the FE Commissioner.

## Intervention triggers

Intervention criteria/trigger	Intervention considerations	Additional actions we may take
<b>Financial Health</b>		
'Inadequate' assessment of financial health assessed by DfE on financial plans or accounts	A post moderated grade of 'Inadequate' will always put a college in intervention and we will always issue a Ntl.	<ul style="list-style-type: none"> <li>The FE Commissioner will undertake an assessment of the capacity and capability of the college's leadership and management when it is placed in intervention and issued a Ntl</li> </ul>
<p>Cash-related concerns:</p> <ol style="list-style-type: none"> <li>Any requests for new emergency funding at any time</li> <li>Serious cash flow pressures identified at any time</li> <li>Debt recovery including slippage on re-profiling, government loan repayments and potentially a breach of bank covenant where the bank takes action</li> </ol>	<ol style="list-style-type: none"> <li>Where there is a request for emergency funding to continue the running of the college we may decide to place the college into intervention (and if we do we will always issue a Ntl)</li> <li>Where serious cash flow pressures are identified we may decide to place the college in intervention (and if we do we will always issue a Ntl)</li> <li>Where debt recovery is an issue, we may decide to place the college in intervention (and if we do, we will always issue a Ntl)</li> </ol>	<ul style="list-style-type: none"> <li>Commission an IBR/costed options appraisal</li> <li>The FE Commissioner will undertake a local provision review</li> <li>Commission a FE Commissioner-led SPA</li> <li>Consider cash flow support</li> <li>Consider any case for Emergency funding</li> </ul>
<b>Financial Management and Control</b>		
One or more qualified audit opinion on a funding audit, qualified accounts, a modified regularity report.	A qualified audit for a substantive matter will normally put a college in intervention. Where a college is placed in intervention, we will always issue a Ntl.	<ul style="list-style-type: none"> <li>Undertake a financial impact assessment of Register of Apprenticeship Training Providers removal on the basis of an Ofsted assessment of 'Inadequate' apprenticeship provision</li> </ul>
Upheld investigations related to college financial management and governance and/or funding audits and/or significant fraud or fraud practice. This will include, but is not limited to, related party transactions and evidence of action taken by an	Funding agreements stipulate that the final recommendations of completed investigations (whether published or not) will become additional conditions of	

<p>accounting officer and/or governors outside of the college, departmental controls/policies</p>	<p>funding and failure to comply will lead to a breach.</p> <p>Funding agreements stipulate that if we reasonably believe in the course of the investigation (at any point) that we have sufficient evidence of non-compliance that we will take immediate action including terminating contract/withholding funds.</p> <p>Where investigations are complete and upheld, we may decide to place a college in intervention. If a college investigation report is published (currently 16 to 18) and the college is placed in intervention, then we will always issue a Ntl.</p>	<ul style="list-style-type: none"> <li>• Consider a referral to the Charity Commission in line with the published Memorandum of Understanding <a href="#">here</a></li> <li>• Put the college into Supervised College Status, including appointing a DfE observer to the governing body</li> <li>• Consider grounds for investigation</li> <li>• Request specific/regular financial information, for example, cash flow templates, financial recovery plans</li> </ul>
<p>Evidence of financial practice/action taken by an accounting officer and/or governors that is not in the best interests of:</p> <ul style="list-style-type: none"> <li>• value for money, the protection of public funds</li> <li>• the effective delivery of service for learners</li> <li>• does not meet the public benefit test</li> </ul>	<p>Where we rely on this trigger, we will always place a college in intervention and issue a Ntl.</p>	
<p>Subcontracting where in DfE's assessment there has been a significant/material non-compliance with subcontracting rules.</p>	<p>We may decide to place the lead provider in intervention and if we do, we will always issue a Ntl.</p>	
<p>Failure to submit financial accounts within 30 days of the published deadline or 30 days of any agreed deadline beyond the published date.</p>	<p>We have the discretion to set a new deadline for the submission of accounts beyond the published date. Where an agreed extension is not met, we will always place the college in intervention and issue a Ntl.</p>	

<b>Quality</b>		
Ofsted overall 'Inadequate' assessment	The FE Commissioner will always be deployed to make an assessment of the capacity and capability of the leadership and management to bring about improvement. If recommendations are accepted the summary report will be published.	We will write to the college to let them know that compliance with Ofsted and FE Commissioner recommendations are conditions of continued funding and failure to comply may lead to a breach of those conditions.
<b>Progress in resolving issues</b>		
Escalation by DfE if a college fails to demonstrate sufficient progress in resolving issues.	Where, having considered all available evidence, including Further Education Commissioner reviews and any representations made by the college, a college fails to demonstrate sufficient progress in resolving the identified issue(s), we may escalate the college to intervention, and we may issue a Ntl. Where a Ntl is issued it will always be published.	

## Post-intervention monitoring and support

We do not want colleges to remain in intervention for longer than is necessary and will exercise discretion in determining when a college has met the additional conditions of funding set out in a letter or Ntl. However, we do not want colleges to be 'left' without support at the end of that period. So, when a college exits intervention, we will normally agree a post-intervention monitoring and support plan – detailing relevant support activities. We will use our resources to put in place a range of activities and support measures, drawing on experts with the department and FE Commissioner, as well as external expert advisers.

In addition, we will also make this support available to those colleges that have undergone structural change, such as a merger.

## FE Commissioner intervention assessments

If a college meets the triggers for intervention, as set out above, the FE Commissioner will be deployed to the college to undertake an intervention assessment. The FE Commissioner's role during an intervention assessment is to assess the capacity and

capability of the existing governance and leadership to deliver rapid and sustainable improvement where serious weaknesses and risk of failure have been identified.

The FE Commissioner will consider all relevant available information about the college and take account of the views of staff, stakeholders, learners, employers, local authorities and MCAs, as well as Ofsted, DfE and ESFA. When making recommendations the FE Commissioner will consider the full range of intervention actions available.

If a college is escalated into intervention and there has already been recent FE Commissioner support activity, the FE Commissioner, together with DfE, will consider what further assessment is required to supplement existing work and inform further FE Commissioner recommendations.

Recommendations are discussed with the college, after which the FE Commissioner will prepare a summary report setting out their findings, conclusions and recommendations. Colleges will be given the opportunity to fact check the report before it is finalised.

Where, in the FE Commissioner's opinion, the actions of individuals no longer at the college are criticised, and those individuals are identifiable from the report and have not previously had an opportunity to respond to the criticisms, they will be given the opportunity to comment and respond to the points made before the report is finalised and published. It will be a matter for the FE Commissioner to decide whether or not to amend the report in light of any comments received.

The minister responsible will consider the final recommendations and will write to the college chair with a summary report. The minister will task the college's chair with developing a robust action plan for how the college will implement the recommendations. The college is asked to write to the minister within 10 working days setting out how it will implement the recommendations. The minister's letter and the FE Commissioner's summary report will be published on GOV.UK.

## Recommendations

Where there are concerns about the capability of the college to address the issues that lead to Intervention the FE Commissioner will consider recommendations such as:

- changes to governance and/or leadership
- conditions or restrictions on funding
- new or revisions to existing recovery plans, curriculum reviews and quality improvement plans
- further activity to determine the most appropriate way forward that is in the best interest of local learners and employers. This could include consideration of restructuring or exit
- placing the college into supervised college status



If the FE Commissioner or DfE has concerns about the compliance by a college's governing body with charity law obligations, DfE will consider whether to refer the case to the Charity Commission in line with the published [Memorandum of Understanding](#) between DfE and the Charity Commission.

## **Monitoring and review**

DfE territorial teams retain overall responsibility for day-to-day case management. However, the FE Commissioner and DfE will work together to ensure there are coherent monitoring arrangements in each case. These arrangements will depend on the individual case but could involve:

- periodic progress meetings between the FE Commissioner, DfE, ESFA the college and other strategic partners to monitor progress against the action plan
- formal 'stocktake' assessments conducted by the FE Commissioner, which could lead to advice on any further action needed to secure continued improvement

## **Supervised college status**

Supervised college status involves enhanced monitoring and review by the FE Commissioner and DfE. It usually entails DfE observers attending college board meetings and colleges consulting/informing the FE Commissioner and DfE on decisions that affect the long-term future of the college. These would include, although are not limited to:

- the appointment of senior post holders
- significant financial commitments in excess of a specified threshold
- significant asset disposals and/or developments
- any plans for structural change

A college in intervention can be put into supervised college status where DfE and the FE Commissioner consider it appropriate, including where the level of risk escalates, for example, where an additional intervention threshold is breached, where significant milestones are not achieved (such as at re-inspection) or where DfE considers recovery to be too slow.

## **FE Commissioner involvement after an intervention assessment**

As outlined above, when a college exits intervention, we will agree a post-intervention monitoring and support plan – detailing relevant support activities (see “Post-intervention monitoring and support”).

## Secretary of State statutory intervention powers

The Secretary of State for Education's intervention powers are set out in sections 56A and 56E of the Further and Higher Education Act 1992. These powers have recently been amended by the Skills and Post-16 Education Act 2022.

The legislation sets out the circumstances in which the powers can be exercised, and the actions that the Secretary of State can take. These circumstances include:

- mismanagement by the governing body
- failure by the governing body to discharge a statutory duty
- the governing body acting unreasonably with respect to their statutory functions
- significant underperformance or failure to provide an acceptable standard of education and training
- where the education or training provided by an institution is failing, or has failed, to adequately meet local needs

In these circumstances, the Secretary of State can remove and appoint members of the governing body. The Secretary of State can also give directions to the governing body as he or she considers necessary, relating to the exercise of its powers and performance of its duties. Such directions may include requiring the governing body to make collaboration arrangements (as defined in section 166 of the Education and Inspections Act 2006) or to make a resolution to dissolve itself. The Secretary of State may also direct the transfer of property, rights, and liabilities (structural change such as a merger) where this is necessary to secure improvement.

If improvement has not been possible through other means, consideration may be given to whether it is appropriate to use Secretary of State powers to secure change. Use of statutory intervention may be considered for example where the governing body has failed to address/take action recommended by the FE Commissioner following an intervention assessment or following a recommendation from a regulatory body, and where the relevant statutory triggers are met.

If the Secretary of State were minded to use the powers, this would be communicated to the governing body, and any representations would be considered before a final decision is made.

The Further and Higher Education Act 1992 can be found here: [Further and Higher Education Act 1992 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1992/29)

## Chapter 3 – Review of provision and restructuring

### Duty to review provision

Section 52B of the Further and Higher Education Act 1992 (as inserted by the Skills and Post-16 Act 2022) places a duty on governing bodies of sixth-form colleges, further education colleges and designated institutions to regularly review how well the education or training that they provide meets local needs, and to consider what actions they could take to meet those needs better (in light of the review).

Statutory guidance, setting out the key principles for carrying these reviews, can be found here: [Review how well the education or training provided meets local need](#)

### Options available to colleges considering structural changes

Before making a decision on structural options it is vital that there is a robust and independent assessment. This should be discussed with the college's DfE territorial team contact, who will be able to provide advice and guidance on how to approach the options assessment and provide access to FE Commissioner support where appropriate.

Where a college identifies the need for structural change there are a number of potential options for the college to pursue. It is essential that any structural change is driven by a sound costed curriculum plan and estates strategy that meets the needs of the area. The type of change will depend on individual circumstances, but in most cases the need for change will be driven by issues of viability and therefore the structural change will need to realise greater efficiency and cost reductions, which could be achieved through estates, curriculum, staffing and operations rationalisation. This could be achieved through a number of routes including:

- a restructure of the existing institution
- a merger with another institution (which may necessitate dissolution of the corporation conducting the existing institution)
- disaggregation of the existing institution, which could result in a smaller core institution; or
- the dissolution of the corporation conducting the existing institution and closure of the institution

### When to seek advice

Colleges should seek advice at the earliest opportunity and consult with their DfE territorial team contact on potential options. The earlier that potential issues are identified, the more scope there is for structural change to deliver long term sustainability. The longer it takes to identify issues of underperformance and viability, the fewer options

there will be and the more likely it is that the college will lose control of determining its own future.

The issues that colleges experience are varied, and therefore the type of options and support required will also vary. Regardless of whether the issue is temporary or an underlying concern about long term viability, it is important that the issues are identified and there is a robust assessment of options before agreeing on the approach.

Colleges should also ensure that suitable professional advice is received on all major decisions. This could include financial due diligence, turnaround advice (including strategic or operational), business change support (such as HR or systems), estates advice (including in respect of ongoing maintenance, efficiency and suitability of existing space, development and sale potential and on large capital projects) and legal advice. DfE can support colleges in identifying relevant advisers, as well as advise on scope and lessons learned by other colleges in similar positions.

## **Independent business reviews (IBRs)**

IBRs are intended to establish clarity on a college's position and to provide a robust and independent assessment of the options for its future. They are a tool for colleges and their lenders and funders to help make informed decisions, including whether structural change is necessary.

There are different ways for an IBR to be commissioned. Sometimes colleges will commission their own IBRs, and we would encourage them to consider doing so as early as possible if they have concerns. Lenders may commission an IBR where they have concerns about future viability, and where there may be a risk that the college will become insolvent, though an IBR does not necessarily lead to insolvency. In the same way, where DfE has concerns about future viability, we may commission an IBR, which we may choose to fund.

In cases of serious financial failure, where a college is unable to continue to finance its operations, we would expect an IBR to be commissioned, except where the circumstances mean that another approach would be more appropriate. DfE would consider commissioning and funding the IBR if required.

Other circumstances in which we would expect an IBR to be commissioned include where:

- the college identifies risk to its financial viability or sustainability
- a lender requests or requires a college to undertake an IBR. This is at the discretion of the lender but may be required in the case of a covenant breach
- a college is unable to continue to finance its day-to-day operations
- a college creditor has made an application through the courts for a college to be put into administration (which would trigger the 14-day decision period)

- a college is identified by ESFA forecast model as likely to be financially inadequate in the next academic year
- DfE intervention team or ESFA specialist restructuring team commission an IBR in line with the terms of the college funding agreement
- the FE Commissioner recommends an IBR following a diagnostic assessment, intervention visit or an FE Commissioner local provision review

Where colleges fund the costs of an IBR themselves, they should discuss and agree the scope of the IBR with DfE and ESFA and must ensure that any IBR provider has a duty of care to DfE. If a college identifies the need for an IBR but is unable to meet the costs, they should contact their DfE territorial team contact about potential support to meet those costs.

Using an IBR to provide an independent assessment of the college position and their options has significant benefits for college governing bodies and leadership teams, as well as for DfE and lenders: it provides an objective assessment of options which can be used as a common basis for decision making. The earlier an IBR is done, the more options are likely to be available to the college to resolve any issues identified.

The scope of an IBR is determined on a case-by-case basis by those commissioning the review. Typically, IBRs require an agreed baseline of information (financial, sector and commercial) to facilitate effective decision making.

IBRs are usually conducted by an accountant specialising in financial reviews and restructuring who may be a licensed insolvency practitioner (IP). The IP or accountant will spend time in the college, assessing the financial and strategic future of the college and addressing the matters set out in the IBR engagement contract. This will typically involve discussions with wider stakeholders, potentially including Local Enterprise Partnerships (LEPs), Employer Representative Bodies, MCAs, local authorities, the Regional Schools Commissioner, higher education institutions and neighbouring colleges that could be considered for merger or might otherwise be affected by changes, such as receiving transferred students in the event of an insolvent college closing.

The length of time to complete an IBR will depend on the scope and complexity of the individual case and the quality of the information available in the college. Generally, it is expected that a full IBR will take between one and 3 months. Where a college is well managed and has high quality management information about its performance (for example, contribution analysis by curriculum area, funding type and site) it will be much easier to pull together the information needed for an IBR.

IBR reports are private documents which will not be published as they are commercially sensitive and are undertaken confidentially.

## Post IBR decisions

An IBR would usually contain an assessment of options and recommendations. In considering and implementing the recommendations of an IBR the college are expected to take into account value for money. The college or other stakeholders may also have identified options through other routes, including any support or intervention activity that may have already been undertaken with the particular college including from the FE Commissioner. The decision as to which option(s) to pursue sits with the governing body of the college (unless the college is insolvent, in which case these decisions would be taken by the administrator) and is likely to require the support of any funders and creditors to deliver.

## Structure and prospects appraisal (SPA)

A SPA is a structured way of assessing options to change a college's structure and/or provision in a clear, objective and evidence-based way. There are broadly 2 scenarios that would give rise to the need to undertake a SPA:

### A college is considering or pursuing a structural change

Colleges are independent and it is the responsibility of their corporations to consider the case for structural change. If colleges are considering structural change or a review concludes that this is needed, undertaking a SPA is strongly encouraged. This will help to ensure a college takes an objective and evidence-based approach that will enable the institution to best meet the needs of learners and employers in the local area.

Colleges considering a structural change can undertake their own SPA but are also able to request an FE Commissioner led SPA. As former highly experienced FE leaders who understand the way colleges operate, the FE Commissioner team can help colleges assess their restructuring options. If necessary, the team can also provide valuable support to help the college find appropriate partners. Through an FE Commissioner led SPA, colleges can expect:

- a set of FE Commissioner backed, objective and impartial recommendations for the future structure and provision in the organisation, based on thorough analysis of available information
- advice, support and leadership to run a productive SPA process, including running a fair and transparent process to find a partner, if a merger option is decided upon
- expert support to assess potential options, including mergers

Further information about how FE Commissioner led SPAs work is available online.

Colleges that would like to request a SPA should contact: [FEC.OPERATIONS@education.gov.uk](mailto:FEC.OPERATIONS@education.gov.uk).

## **A structural change has emerged as a potential solution as part of the intervention process**

There are several interventions that a college may be subject to that could potentially identify a structural change as a solution to the challenges and issues a college faces. If such a solution is to be pursued, the FE Commissioner will lead a SPA to ensure all options are explored objectively and impartially. In the case of an FE Commissioner led SPA resulting from an intervention, a summary report will be published on GOV.UK.

## **FE Commissioner local provision reviews**

Whilst SPAs are focused on a single institution and finding the best solution for the continuity of its provision, FE Commissioner local provision reviews can assess options for changing the provision or structure of multiple institutions. (We will review the scope and use of local provision reviews in light of the new duty to review provision under new s.52B Further and Higher Education Act 1992, and the new statutory intervention powers under s.56A/56E FHEA 1992, as provided for under the Skills and Post-16 Education Act 2022.)

FE Commissioner local provision reviews:

- consider the overall provision for learners in the area
- can include multiple relevant institutions
- can consider whether government needs to create new capacity
- are developed in response to gaps in provision or potential insolvency

FE Commissioner local provision reviews are a flexible intervention that can make recommendations on the best way of achieving long term sustainable provision, looking at neighbouring provision to examine structural solutions for securing long term provision. The need to conduct an FE Commissioner local provision review will be determined by DfE. The need for such a review may arise from a number of challenges that affect a college and/or FE provision in a local area, such as:

- weakness or failure of existing providers (including risk of insolvency)
- increased competition
- declining learner recruitment
- inadequate quality
- significant financial challenges
- changes in local demographics and/or local skills needs

DfE will determine the scope and approach of each review on a case-by-case basis – with input from any prospective administrator – and then write to local MPs, stakeholders and the colleges concerned setting out the terms of reference, which is likely to include details such as:

- broad objectives of the review
- particular areas of a college's structure, delivery model and curriculum offer and/or FE provision in the local area in question
- start date and approximate date of completion of the review
- outcomes/potential solutions that will be explored
- relationship of the review to any other support or intervention activity being undertaken in the case/area in question

The terms of reference will be published.

Although each FE Commissioner local provision review will be bespoke, to address the circumstances of the case, it is likely to involve the FE Commissioner examining options for delivering quality provision in that area. The review will draw on the analysis of current situation, including the Local Skills Improvement Plan (LSIP) and likely future sustainability of the colleges in the area. It is likely to be accompanied by an IBR. It will also look at evidence beyond the colleges involved, which could include:

- information covering local demography, employment patterns, LEP priorities, local authority priorities and the nature of the current local education market
- engagement with stakeholders such as LEPs, Employer Representative bodies, local authorities or MCAs, the Regional Schools Commissioner, schools, local MPs and learners

This review will result in a report that:

- identifies and educationally appraises the alternative solutions for FE provision in the area. Potential solutions could include:
  - disaggregation: in which part of the college becomes a separate entity
  - merger
  - estate rationalisation: which could include making better use of and/or selling off under-utilised facilities
  - solvent or insolvent closure of a college: with transfer of some or all assets, liabilities and provision to another organisation
- provides an outline financial assessment of the options
- includes a recommendation on which option the FE Commissioner views as being best, taking into account feasibility, impact on quality of provision, cost and the needs of local learners and the local education market. In coming to a recommendation, the FE Commissioner will consider questions such as:
  - how will the area's educational needs be met?
  - how will the areas economic and business skills needs be met?
  - how will the quality of provision for current and future learners be sustained and improved?



## Emergency funding

We may decide to provide emergency funding, where a college is otherwise likely to run out of money. The maximum time for which this funding would be provided would be the period it takes to make a decision on the future of the college, and the funding provided would be the minimum to keep the college solvent during that period. However, this decision would be made on a case-by-case basis. As an alternative, the Secretary of State may immediately, or at any later time, apply for an education administration, if it is judged that this is the most cost-effective way of minimising the disruption to existing learners.

If the department is providing emergency funding, the processes to review the options for that college and local provision will be subject to a highly compressed timeline, with much more limited input from the college leadership as to the option to be taken forward.

The process of an options review would be determined case by case, depending on what intervention actions have already occurred. Where the department provides emergency funding the options review will normally include external, independent financial advice.

A request for emergency funding to continue the running of the college does not automatically result in a college being put into intervention (and the issuing of a notice to improve). However, if emergency funding is then provided, the college will be put into intervention (and a notice to improve will be issued).

## Funding to support long-term changes as a result of intervention

We may provide funding to support the restructuring of a college or changes to a college's provision or operations, either inside or outside an education administration. We will consider on a case-by-case basis what action and investment minimises the disruption to existing learners, secures the provision the area needs and provides best value for the taxpayer. This funding is provided in exceptional circumstances and at the Department's discretion.

## The FE insolvency regime

The FE insolvency regime has been introduced through the Technical and Further Education Act 2017 (TFEA 2017), the Further Education Bodies (Insolvency) Regulations 2019 and the Education Administration Rules 2018. The relevant legislation came into force on 31 January 2019.

Existing insolvency law already applied to companies conducting designated institutions and to private companies that deliver FE. The legislation modified and applied aspects of insolvency law to FE and sixth-form college corporations (statutory corporations) and

introduced a special administration regime (called education administration) for both companies conducting designated institutions and FE and sixth-form college corporations in England, and companies conducting designated institutions and FE corporations in Wales (together defined in the TFEA 2017 as ‘further education bodies’).

DfE has published specific guidance that provides more information on the insolvency regime for FE bodies, which is aimed particularly at governors. Although instances of insolvency may be rare, college corporations and executives should familiarise themselves with this guidance and seek appropriate advice as necessary.

## Insolvency procedures

The FE insolvency regime applies the following existing insolvency procedures to FE and sixth-form college corporations in England and FE corporations in Wales, as set out in section 6 of the TFEA 2017:

- voluntary arrangements (including a Company Voluntary Arrangement (CVA))
- administration
- creditors’ voluntary winding up
- winding up by the court
- fixed charge receivership

The conduct of these existing procedures is governed by the provisions of the Insolvency Act 1986 (IA 1986) as applied by TFEA 2017 and modified by the Further Education Bodies (Insolvency) Regulations 2019 to apply effectively to FE college or sixth-form college corporations. Therefore, they operate broadly in the same way as they do for companies, although there are differences, recognising that college corporations do not have directors, contributories or shareholders. Provisions in existing insolvency law that require actions or decisions by company members, directors, contributories or shareholders, are either not applied or have been modified to apply appropriately to the equivalent members of an FE or sixth-form college corporation.

These insolvency procedures already apply to companies that conduct institutions designated under the Further and Higher Education Act 1992 (‘designated institutions’) and to private companies that deliver FE.

The FE insolvency regime also introduces an insolvency procedure called education administration, which is a special administration regime (see above). Education administration does not apply to academies or other school sixth forms.

Section 39 of the TFEA 2017 also amends the Company Directors Disqualification Act 1986 (CDDA 1986) to apply the Act to FE bodies that are statutory corporations meaning that in some circumstances governors can be disqualified if their conduct in managing the college prior to the insolvency has been unfit. This can apply to any type of governor found responsible for wrongdoing and can also apply to other individuals including those

who acted as a governor although not formally appointed as one. This could include members of the executive management team of an FE body. Further information about disqualification is provided in the published insolvency guidance document aimed at governors.

Special administration regimes are based on the existing insolvency procedure of administration, but with modifications to secure continuity of an essential service if a supplier fails. There are already several of these regimes in operation to protect continuity of supply in cases of insolvency in other sectors, including social housing, postal services and energy. Each special administration regime has a special objective that is appropriate to the supplied service that is to be protected.

The special objective of education administration (detailed in section 16 of the TFEA 2017) is to:

- avoid or minimise disruption to the studies of the existing students of the FE body as a whole and
- ensure that it becomes unnecessary for the body to remain in education administration for that purpose

An education administration commences as a result of a court order on an application by the Secretary of State. The court may make an education administration order only if it is satisfied that the FE body is unable to pay its debts or is likely to become unable to pay its debts. The education administrator (an IP appointed for the purpose of an education administration) may achieve the special objective through means including:

- rescuing the FE body as a going concern
- transferring some or all of its undertaking to another body
- keeping it going until existing students have completed their studies
- making arrangements for existing students to complete their studies at another institution

An existing student is defined in the TFEA 2017 as a student at the institution in question, or who has accepted a place on a course at the institution, when the education administration order is made.

The TFEA 2017 also sets out that the education administrator must, in pursuing the objective of the education administration, take into account the needs of existing students who have special educational needs.

## **The role of the education administrator**

The general functions of the education administrator are detailed in section 24 of the TFEA 2017. Primarily their function is to achieve the special objective of an education administration and seek the best outcome for creditors as a whole, so far as consistent

with the special objective. Often, the IBR will have generated a delivery plan, which the education administrator will aim to put in to effect if it is appropriate to the education administration in question.

The education administrator is a licensed IP with expertise in dealing with insolvency proceedings in a variety of sectors. They are appointed by and answerable to the court. They may not have direct experience of the FE sector but will consult sector experts if they need advice. They would not be obliged to consult any one specific person, other than employee representatives if redundancies are expected. However, they are likely to liaise with the FE Commissioner and others who have already been involved in discussions with the board and senior staff at an insolvent college. Decisions concerning timings and subject of consultations will be at the discretion of the education administrator.

## **Reducing the risk of insolvency**

As mentioned throughout this document, our aim is to lower the risk of a college entering insolvency through early identification of issues and taking appropriate action early to enable a turnaround where possible. As soon as signs of financial difficulty emerge, either as an immediate issue or anticipated risk, the college should liaise with their bank and DfE as appropriate. This will assist in identifying appropriate support and intervention available from DfE, ESFA and the FE Commissioner team.

Governors have duties as charity trustees to ensure good financial management of college corporations. Those duties are all the more important in the event that a college corporation encounters financial difficulty that could result in insolvency. There is a detailed list of governors' duties in the ['further education corporations and sixth-form college corporations: governance guide'](#).

Colleges should not rely solely on ESFA's financial health assessment or other review ratings to give an indication of solvency, which may either not fully reflect the college's true financial position or may not be up to date.

## **Annex A - Roles and responsibilities – DfE and ESFA**

ESFA (acting on behalf of the Secretary of State for Education) allocates, and is accountable for, significant annual funding to providers of education and skills training for young people and adults. ESFA issues grant and contractual conditions which allow DfE to take intervention action where there is evidence of risk of failure or non-compliance with funding requirements.

### **DfE Post-16 Regions and FE Provider Oversight directorate territorial teams**

All FE providers have a lead contact in one of DfE's Post-16 Regions and FE Provider Oversight territorial teams. That team will take an active case management role including leading annual conversations and agreeing active support requirements as well as acting in line with funding agreements and contracts if a college meets a trigger for intervention.

The DfE territorial team contact will:

- act as the primary contact point and relationship manager for the college
- lead the annual strategic conversation with the college
- act as the co-ordinating point for all engagement with the college by DfE, ESFA and the FE Commissioner
- work closely with the college to offer active support, where required
- assess the evidence and level of risk to determine how we will support and challenge the college to improve
- where intervention has been triggered, monitor progress and keep DfE, ESFA and FE Commissioner approach to the case under regular review
- escalate or de-escalate the level of intervention as and when appropriate, based on assessment of risk and compliance with additional conditions of funding or the terms of a Ntl

The DfE territorial team contact will engage with other stakeholders where appropriate, including local authorities, LEPs and any banks providing services to the college.

Where appropriate, DfE territorial teams will work closely with other funding bodies for FE colleges, including the MCAs and the GLA where they have devolved or delegated responsibility for the Adult Education Budget, and the Office for Students.

DfE territorial teams will seek to achieve outcomes that:

- are in the interests of learners
- protect public money
- achieve resolution of financial or quality concerns at pace

## **ESFA Finance Provider Market Oversight directorate (FPMO)**

The purpose of the FPMO directorate is to provide expert financial and funding support to ensure ESFA funding is spent effectively and for the purposes intended by Parliament.

This is achieved by:

- providing assurance on the use of funds
- supporting financial intervention in providers and providing financial analysis to target resources towards risk to minimise the financial and disruptive cost of provider failure
- feeding key lessons back into the agency's frameworks and processes to minimise future failures, support improvement and prevention and to strengthen the delivery of the college oversight objectives

In respect of college financial distress, FPMO may become involved in particular high-risk cases to provide specialist financial advice, initially through support to the DfE territorial team contact internally. Where we commission and meet the costs of an IBR, FPMO will take the lead for DfE in commissioning an IBR and will provide a financial sustainability and value for money assessment in any cases where there is a call on public funds. FPMO has an ongoing role in monitoring of colleges that have previously received Restructuring Facility, Exceptional Financial Support, or funding from the insolvency budget (including emergency funding).

## **The FE Commissioner**

The FE Commissioner role was created in 2013 as an independent adviser to ministers. The FE Commissioner is a public appointment by the Secretary of State for Education and reports to the Skills Minister.

The FE Commissioner, working closely with colleagues in DfE, supports improvement in our national network of further education and sixth-form colleges and designated institutions, as well as working with local authorities, and other organisations, to deliver high quality outcomes for learners, and to meet local economic need. The FE Commissioner leads a team of around 18 deputy FE commissioners and FE advisers, made up mainly of former FE college principals or deputy principals and directors of finance.

Whilst the role of the FE Commissioner includes making recommendations for actions that colleges should take to improve, the responsibility for effectively carrying out those actions, and for holding leadership teams to account, remains with the college.

## Annex B - Role of Ofsted

Ofsted is a non-ministerial government department responsible for inspecting and regulating services that:

- provide education and skills training
- care for children and young people

Ofsted inspects and reports on the quality of education and training in FE colleges, sixth-form colleges and designated institutions, including how well safeguarding and Prevent obligations are met. The [education inspection framework](#) sets out the principal areas of assessment:

- quality of education
- personal development
- behaviour and attitudes
- leadership and management

Ofsted uses a 4-point grading scale ranging from 'Outstanding' to 'Inadequate'. Inspections, which include interviews with governors, are carried out at varying intervals depending on a college's past performance (newly merged colleges are inspected within 3 years of the merger). Ofsted inspection reports are published.



Education & Skills  
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