



Department
for Education

Regulation of further education colleges

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Introduction

The Government wants Further Education (FE) colleges to continue to make a real difference to the lives of learners. We want to see well-managed, financially resilient FE colleges that provide high quality education for their learners and local communities.

To support this aim the Government is:

- Introducing a new statutory insolvency regime for FE colleges: this will ensure there is legal clarity about what will happen in the exceptional event of a college entering insolvency, and provide protection for current students.
- Reviewing and strengthening our FE college intervention regime: this will ensure we have the right processes in place to identify quality and financial issues within FE colleges earlier, deliver appropriate support and intervention and focus on preventing colleges getting into a position of insolvency.

In March we will publish full details setting out what is changing within the FE college intervention regime, ahead of the new insolvency regime coming into operational effect on 1 April 2019. In the meantime, we are today publishing some Q&A to help build awareness of the changes amongst FE colleges.

Q&A

The FE college intervention regime

What is the FE college intervention regime?

- It is a suite of tools and interventions available to the Education and Skills Funding Agency (ESFA), which is part of the Department for Education. The regime enables the early detection of financial and quality issues within FE colleges and provides appropriate actions to help resolve.
- The tools support actions to avoid further deterioration, help the college to improve and includes a strong role for the FE Commissioner.

What is the purpose of the FE college intervention regime?

- Its purpose is to improve financial resilience and quality within colleges and to protect current learners and public funds. It aims to:
 - Encourage early action: incentivising and providing support to college leaders to recognise issues and take early action well before they reach crisis point.
 - Protect provision and current learners: ensuring continuity of programmes for current learners in the event of failure.
 - Provide clear intervention processes: with clear roles and responsibilities for all parties (including ESFA and the FE Commissioner), underpinned by a proportionate approach.

Who does the FE college intervention regime apply to?

- The FE college intervention regime applies to all FE colleges and sixth-form colleges funded by the Secretary of State through ESFA.
- The wider intervention regime, which applies to all providers funded by the Secretary of State through ESFA, will be set out in more detail in April. Generally, this will reflect a more robust, risk based, contract management regime.

Why are you strengthening the FE college intervention regime?

- We have been clear that new requests for Exceptional Financial Support (EFS) will not be possible after March 2019 and the Restructuring Facility closed to new applications in September 2018. We are also introducing a new insolvency regime for FE colleges.

- Against this context, it is increasingly important that we strengthen our intervention regime in respect of FE colleges so we can respond effectively to early signals of poor financial health and quality – this will help us to work with colleges to improve the quality of provision and focus on preventing colleges getting into a position of insolvency.
- We are also taking the opportunity to see whether we can improve how the ESFA and FE Commissioner processes fit together.

What is the role of the Education and Skills Funding Agency (ESFA) in the intervention regime?

- ESFA regulates FE colleges, intervening where there is risk of failure or where there is evidence of mismanagement of public funds.
- It takes action through the vehicle of its funding Agreements and Contracts. It can use the provisions in its funding requirements to request information and/or provide challenge and support to providers who are not meeting the Department for Education's expectations for financial health and/or control or where education performance is below standards.

Will there still be a role for the FE Commissioner in the FE college intervention regime?

- Yes. The FE Commissioner and his team will have an ongoing role to make recommendations to ensure that learners are able to access good quality FE provision.

Will the strengthened FE college intervention regime place more burdens on FE colleges?

- We are mindful of the need to keep the burdens we place on the sector to a minimum. In designing the strengthened intervention regime we are thinking carefully about how to avoid imposing any unnecessary burdens on FE colleges, for example, by avoiding duplication of requests and seeking to use a single source of centralised data where possible.

What changes are you making to the FE college intervention regime?

- Our intention is to build upon the existing intervention regime by enhancing our ability to spot problems earlier, make greater use of Independent Business Reviews to inform decision making where appropriate, and to accommodate the new statutory insolvency regime.

- In March we will publish full details setting out what is changing within the FE college intervention regime, ahead of the new insolvency regime coming into operational effect on 1 April 2019.

What is an Independent Business Review (IBR)?

- An IBR is an independent review of the options available to an organisation that is in or may be heading for financial difficulty.
- IBRs can also help colleges to assess their current position and potential options to help them and their stakeholders reach the best decision on their future. IBRs can be commissioned by the college, Department for Education, bank or other creditor and will sit alongside other tools, such as diagnostic assessments.

What will an IBR look at? When will they be commissioned?

- The exact scope of an IBR will be tailored to the particular circumstances of the case in question. However, we would expect an IBR to look at the financial and strategic position of the college within the context of the local or regional market and economic conditions.
- The timing of the commission will be considered alongside the range of other intervention tools available. Generally, the earlier an IBR is commissioned, the greater the number of options and potential solutions likely to be available.

Will an IBR result in insolvency?

- An IBR does not automatically result in a college going into insolvency. An IBR in itself is not a decision – it is a tool to inform decision-making.

Will any extra funding be available for colleges in financial trouble?

- The deadline for Restructuring Facility applications closed in September 2018 and new requests for Exceptional Financial Support will not be possible after March 2019.
- Colleges facing financial difficulty should talk to their ESFA territorial team contact as soon as possible to ensure that a robust assessment of the college's position is made and the best solution to ensure sustainable provision for learners is found.
- The Department plans to continue to deal with minor and short-term financial issues by colleges making a business case to ESFA for in-year budget re-profiling, on an exceptional basis.

- If a college needs financial support so it can continue to operate whilst an IBR is undertaken or it is in administration, we may be able to consider providing support for a limited period of time.

What should colleges do if they are in financial distress now?

- Colleges facing financial difficulty should talk to their ESFA territorial team contact as soon as possible to ensure that a robust assessment of the college's position is made and the best solution to ensure sustainable provision for their learners is found.
- Colleges considering structural change through mergers should ensure that they do it in an objective and evidenced way. We recommend that they contact their ESFA territorial team who will be able to advise, including arranging support from the FE Commissioner where appropriate.

Why are you withdrawing Exceptional Financial Support and the Restructuring Facility?

- Exceptional Financial Support (EFS) was only intended to provide support to safeguard learner provision on an exceptional basis. It was never intended to be an ongoing source of financial support and as such new requests for EFS will not be possible after March 2019.
- Restructuring Facility supported the implementation of Area Reviews, which were intended to establish the best institutional structures in delivering high quality provision within a local area. The Restructuring Facility closed to new applications in September 2018 to coincide with the end of the Area Review programme.
- Against this context, it is now even more important for colleges to take active steps to address deteriorating or unsustainable financial health, which our strengthened FE college intervention regime is designed to support and incentivise.

The statutory insolvency regime

Why are you introducing an insolvency regime?

- The insolvency regime ensures that there is legal clarity about what will happen in the exceptional event of an FE or sixth-form college becoming insolvent.
- It will also ensure that in the event of insolvency current students are protected – it includes a special administration regime for the sector called education administration, with the objective of avoiding or minimising disruption to the studies of the existing students of the FE body as a whole.

Who does the new insolvency regime apply to?

- The new insolvency regime applies to “further education bodies” as defined in the Technical and Further Education Act 2017 – namely FE and sixth-form college corporations and companies conducting designated FE institutions.
- FE providers that do not fall within the definition of “further education bodies” and which are companies continue to be subject to existing corporate insolvency law.

Are you expecting many colleges to become insolvent?

- We expect instances of insolvency to be rare.
- Our message to college leaders and governors is that if you are not already doing so, make sure you are learning from the best in how you manage your resources, and if you do find that you are running into difficulties, talk to the ESFA as early as possible. The earlier we know about a problem, the more likely we can help.

Won't insolvency lead to a college closing and loss of provision?

- It should not be assumed that insolvency will lead to the closure of a college. It may lead to a merger or to a continuation of provision by a new legal entity.

How will you protect learners if their FE provider becomes insolvent?

- In the event of an insolvency, if the Secretary of State chooses to apply to court for an education administration, then the education administrator appointed by the court will be required to act to avoid or minimise disruption to the studies of the existing students of the FE body as a whole.
- In practice, this means protection for students studying at the college, or those students with accepted places to study. There are a number of ways that the education administrator may achieve the objective – for example, in some cases this may mean some or all students transferring to another provider, or the college may be kept going until existing students have completed their course.
- While we cannot guarantee that students will be able to transfer to an identical course, or that every single student will be either transferred or taught out, education administration should ensure significantly more learners can be protected than if there had been no special administration regime in place.

What if none of the support or interventions work?

- We will continue to consider all options – including insolvency – taking account of the long-term need for provision in the area.

Governors

What will these changes mean for college governors?

- It is important for governors to work with college leaders to carefully and regularly monitor financial plans – paying particular attention to cashflow – to identify potential financial issues early on.
- In November 2018 we published [governance guidance](#) for governors of FE and sixth-form colleges, summarising relevant legal and regulatory requirements and recommended practice.
- We supplemented this by publishing [insolvency guidance](#) for governors in January 2019, which highlights the importance of good financial management by governors of FE bodies, whilst providing further information on governors' duties, obligations and liabilities under insolvency law as applied to FE bodies.

What are you doing to support governors?

- In addition to the guidance documents for governors mentioned above, we run the National Leaders of Governance (NLG) programme. NLGs are experienced college governors or clerks with a strong record of supporting college improvement. They provide mentoring and peer-to-peer support to FE and sixth-form colleges where governance needs to be improved.

Implementation

When will the changes to the FE college intervention regime be implemented?

- In March we will publish full details setting out what is changing and when. The Department for Education will begin to operate the revised intervention regime from 1 April 2019.
- Ahead of this, existing processes will continue to apply. However, in implementing existing processes and policies we will need to take account of the fact that the Restructuring Facility closed to new applications in September 2018, which may have implications for the structural options available.
- The whole policy will be reflected in ESFA Grant agreements and contracts that start in August for the 2019/20 academic year. The ESFA will not be issuing in-year variations to current 2018/19 agreements and contracts.

But isn't the insolvency legislation already in force?

- The insolvency legislation is legally in force from 31 January 2019, which means that protection for current students in the event of an insolvency being triggered by another creditor is available from 31 January. However, the Department will not make any changes to the intervention regime until April.



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