



4
Department
for Business
Innovation & Skills

**INCORPORATION OF PROSPECTS
COLLEGE OF ADVANCED
TECHNOLOGY**

Project report

FEBRUARY 2015

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Foreword

Further Education colleges have a vital role to play in delivering workforce skills and supporting people from all walks of life into learning. Since 2010 government has worked hard to free colleges from bureaucracy and enable them to be more responsive to the needs of learners, employers and communities.

Our initial review, *New Challenges, New Chances* (December 2011) set out how these new freedoms and flexibilities would enable providers to be more responsive to their communities' needs and to develop new types of delivery model and partnerships. A second review, *Rigour and Responsiveness in Skills* (April 2013) further emphasised the need for a system that is highly responsive, providing high quality provision to deliver the skills that learners and employers need.

Our vision is to promote a flexible FE sector that is open to different providers with diverse business models, focusing on providing high quality learning opportunities with increased diversity and choice. New providers should be able to enter the market and existing providers able to respond quickly to changing demands. Achieving high standards, continuous improvement, innovation, effective engagement with, and responsiveness to, learners and employers should be at the forefront of providers' long term strategic thinking.

The Department expected possible contenders to bring forward proposals which would demonstrably deliver the above benefits, together with a robust assessment of need, how this would be met, and the capacity of the organisation to deliver.

We worked with the Prospects Learning Foundation (PLF) and funding agencies over the course of 2014 to set up the first new incorporation in the FE sector for over twenty years. This culminated in September 2014 with the opening of the new college, Prospects College of Advanced Technology (PROCAT) in Basildon.

Since incorporation PROCAT has already seen a significant increase in demand from students and from employers with 400 new apprenticeship starts in their first year, showing that the establishment of a specialist college focusing on careers and skills in key sectors is meeting a clear demand.

This document sets out the lessons learned in the course of that process which can be applied across the sector.



Nick Boles

Minister of State for Skills and Equalities

Introduction

This document captures the lessons learned from a project to support the application of Prospects Learning Foundation (PLF) to establish an incorporated further education (FE) college, in line with the government's commitment to support new entrants to the FE college sector and the subsequent process of incorporation. This was the first new incorporated entrant to the sector since the incorporation in 1993 of 492 local authority maintained institutions under the Further and Higher Education Act, 1992. The project therefore had the further aim of identifying, addressing and recording the issues and lessons arising, including whether the 1992 Act and subsequent secondary legislation provided the most appropriate statutory framework.

PLF was a major education and training charity based in South Essex with a strong focus on meeting the skills needs of employers and the economy and developing provision that was responsive to employers' needs. Internal development and operational matters of PLF were out of scope to the project, however because of their scale and complexity and the degree to which issues such as governance and staffing were affected by legislation and regulations, a number of these lessons learnt have been included within this project report.

Background to Prospects Learning Foundation

PLF was a large education and skills charity based in South Essex, with a national reputation for its work promoting and delivering technical vocational education. It has three specialist apprentice skills training centres for Engineering (including rail), Building Services and Aviation; a 14-19 vocational training centre; and a post-16 campus. It also co-sponsors a UTC alongside world-class sponsors Ford and University College London. The three skills training centres operate as Group Training Associations with governance provided by local employers.

1. Project Details

Project Outputs and Outcomes

In November 2013, the project proposal identified that the key outcomes were:

- 1) An incorporated college (Sept 2014)
- 2) Final project report and lessons learned (Feb 2015)

The only mechanism for incorporation into the further education sector is using the 1992 Further and Higher Education Act, therefore, from the outset this project needed to follow the process set out in the Act and subsequent regulations, as well as the non-statutory process for Structure and Prospects Appraisals set out in the BIS policy document '*New Challenges, New Chances*' and subsequent guidance

[\[https://www.gov.uk/government/publications/further-education-funding-structure-and-prospects-appraisals-guidance\]](https://www.gov.uk/government/publications/further-education-funding-structure-and-prospects-appraisals-guidance) This meant that it was important that all aspects of the project process were open/consultative, and it also made certain requirements on the timing of the project. Therefore in order to deliver the desired outcomes the following key milestones had to be delivered (Timeline set out in Appendix A):

- a) Business case presented to the Minister
- b) A robust and transparent consultation on the proposed incorporation
- c) Application to the Secretary of State to become a statutory incorporation
- d) Publication of draft order
- e) Final order to be laid in the house
- f) Appropriate governance arrangements for PROCAT

How did we go about achieving our outputs/outcomes?

(a) Programme and Project Management arrangements

In December 2013 a Project Board was established comprising officials from BIS, the Skills Funding Agency, the Education Funding Agency and PLF with scheduled, monthly meetings through to September 2014, the intended date for the incorporation of the new FEC. A Project Manager for PLF and a Project Lead for BIS were identified with responsibility for project management and servicing/supporting the project and the Project Board. The CEO of PLF, Neil Bates, was appointed chair of the Project Board. The members of the project board all committed time and effort to identifying and resolving issues and problems to ensure the project's successful conclusion.

(b) Initial development of business case

In November 2013, following discussions between PLF and officials from BIS, a Business Case in support of the proposed project (see Appendix B) was submitted to the then Minister of State for Skills and Enterprise, the Rt Hon Matthew Hancock, MP. He gave his approval for the project to go ahead, for PLF to develop an application for a new statutory FE Corporation. He also gave his approval for the BIS to fund a portion of the development costs in order to learn and disseminate lessons to the wider sector. At the same time the Board of PLF gave their approval to the funding by PLF of the remaining portion of project costs as set out in the business case. (see Appendix B)

A project plan was produced to identify the critical path and milestones to achieve incorporation by September 2014 and a Risk Register was produced. Both of these were regularly reviewed by the Project Board and by the PLF and BIS project managers/leads.

(c) Consultation

Given the importance of taking on board the views of learners, the local community and key stakeholders, an early priority was to undertake a robust and effective consultation on the proposed incorporation commencing in January 2014. The Project Board agreed a comprehensive consultation document; along with a consultation plan and methodology. A consultation website was created and individual communications by email, letter or face-to-face meetings were arranged with key stakeholders. Notices were placed in local and national newspapers and education sector media. Meetings were held by PLF with staff and students.

The consultation took place between 16 January 2014 and 17 February 2014 and the response was strongly supportive of the proposed incorporation. A Consultation Report was produced which summarised the consultation process and the outcome (See Appendix C).

(d) Formal application

In March 2014 the consultation document and report accompanied a formal application to the Secretary of State for Business, Innovation and Skills for his approval of the incorporation of the new college (see Appendix C); this application was approved.

(e) Publication of draft order

A draft of the order and supporting statement were published in accordance with the Further Education Corporations (Publication of Proposals) (England) Regulations 2012 on 1 May, four months before the proposed incorporation date. BIS legal worked with PLF to ensure the initial Instrument and Articles of Government were in line with all the requirements in Schedule 4 of the 1992 Further and Higher Education Act.

(f) Laying of final order

Using the powers conferred by sections 16(1)(b) and (5) and 17(2)(b) of the 1992 Act, the Order establishing a new further education corporation to be known as 'Prospects College

of Advanced Technology' (PROCAT), and the government regulations setting out its constitution, were laid in both Houses of Parliament on 5 August and came into force on 31 August 2014.

(g) Governance arrangements

To ensure strong internal governance of the process and ensure a smooth transition to the new corporation a shadow board was set up. The composition of the shadow board for the new corporation and the Instrument and Articles of Government were approved by the PLF Board, in line with the requirements of the 1992 Act and regulations, and the Project Board. The Shadow Board held its inaugural meeting in June 2014. The initial quorum of members for the PROCAT board were nominated by PLF and appointed by the Secretary of State with the Board responsible for appointing remaining members after 1 September 2014 when it came into legal existence upon the incorporation of the new college.

During the period from December 2013 to September 2014, PLF devoted much time to developing the vision, mission, purpose, curriculum and branding of the new college, including agreeing its name. This was undertaken against the backdrop of emerging public policy on the need for a new type of institution focusing on higher vocational education, with a clear focus on employer engagement; by spring 2014 this policy had taken full shape in the form of "National Colleges". This process of reflection and development resulted in the new college having a clear focus on high level technical training, apprenticeships and education within engineering and the built environment and, to reflect this, the name "Prospects College of Advanced Technology" was adopted by the shadow board and approved by the Minister of State for Skills and Enterprise.

2. Significant issues that were addressed during the process

Criteria for the 'business case' and application

BIS made available an outline of the criteria against which the application would be judged (available at - <https://www.gov.uk/government/publications/further-education-funding-structure-and-prospects-appraisals-guidance>). These were largely derived from the Structure and Prospects Appraisal policy as set out in *New Challenges, New Chances* and the Project Board considered their suitability for this project.

There were two stages of ministerial approval:

- i. Approval of the project proposal supported by a Business Case
- ii. Approval of the application supported by the Consultation Report.

The degree to which the application criteria applied to each stage had to be clarified and the appropriate format and content of the documentation to support each stage had to be determined by the Project Board in the absence of precedents.

Ofsted Grade and Provider Financial Assurance (PFA) Audit Review

Given the imperative that any new entrant to the sector should be high quality, any prospective new college with an existing contract for public funding, and thus within the scope of Ofsted inspection, would need to be graded Good or better by Ofsted and satisfactory by a PFA Audit Review prior to incorporation.

PLF underwent both inspections during the process for incorporation. In December 2013 they were inspected by Ofsted which resulted in a judgement of Good (Grade 2) with Outstanding leadership. The Audit Review commenced on 28 May 2014 with a satisfactory outcome. These therefore met the BIS requirements for the process of incorporation to continue.

Funding basis for the new college

PLF received direct funding from SFA and EFA for its apprenticeship and learner responsive provision. PLF also received funding for 300 learners under a sub-contract with an FE college which, in turn, had a contract with EFA for those learners. The question of whether the new corporation would have its own EFA contract for those 300 learners soon arose. PLF regarded the principle of the new corporation being fully funded by its contracts with SFA/EFA as a prerequisite for its establishment to enable it have more control over growing this provision to meet the needs of local learners and employers

and to avoid the unnecessary financial risks of sub-contracting. In this instance, this issue was resolved by the Minister of State for Skills and Enterprise agreeing to the funding of 300 new places for the new college in order to enable PLF to gain this control

Structure of the new college and transfer of assets

PLF existed as a registered charity providing vocational skills training and education through its skills centres in south Essex under the name of Prospects College. The Board of PLF, with responsibility for the charity and its resources, had to decide whether and how the charity would continue after the new corporation was created or whether PLF itself would be incorporated. It also needed to establish, if PLF were to continue, whether it would retain its existing assets (including the college buildings) and make them available to the new college; its role and purpose post-incorporation; and its relationship to the new corporation.

A further consideration was the effect on the financial strength of the new corporation if it did not own any of the buildings from which it operated.

Various options were explored with legal advisers; these included:

- the possibility of PLF becoming a designated institution under the Further and Higher Education Act, 1992;
- the dissolution of PLF and transfer of assets to the new corporation; and
- the continuation of PLF either with or without a transfer of its assets to the new corporation

After much debate, the PLF Board resolved (and the Project Board endorsed) that:

- i. The new entity would be an incorporated FEC under the terms of the 1992 Act and not a Designated Institution
- ii. PLF would continue and its assets would be transferred to the new corporation
- iii. PLF would become a subsidiary of the new corporation
- iv. PLF would continue to employ the staff meaning that staff would not need to transfer and would retain their existing terms and conditions.

In order to ensure efficient handling of staffing matters, in the event, PROCAT decided to create PLF as a wholly owned subsidiary. The Instrument and Articles of the new corporation were drafted to reflect these arrangements by PLF with its legal advisers and these were confirmed by BIS's legal team.

Financial due diligence undertaken by the SFA

The SFA undertook financial due diligence to provide assurance that the new college was likely to be financially stable. The EFA also relied upon the SFA due diligence work. The process included an in-depth review of the underlying assumptions, a five year financial projection and sensitivity analysis. The initial exercise was carried out prior to the submission of the application. The exercise was repeated before the publication of the final order in July.

The requirements of the due diligence process presented some difficulty for a new entrant to the market. For example, to complete the due diligence PLF had to make assumptions for a five year period with regard to such matters as student numbers and the funding regime, despite the absence of certainty from the funding agencies regarding (a) funding for this period and (b) funding for the first year in respect of some revenue lines. Never the less the long-term financial health of PLF prior to the application was judged to be Outstanding.

Pension arrangements applicable to the new corporation

The financial health of PLF (rated as 'Outstanding') was built upon its existing cost base and the financial health of the new incorporated college would be dependent upon having similar levels of costs.

Pension legislation and regulations require that all employees of FE Corporations as defined by the 1992 Further and Higher Education Act are automatically enrolled into either the Teachers' Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS) for non-teaching staff. These schemes are aimed at a long service employment model and are high cost high benefit schemes; although the high cost element has largely been driven by increased life expectancy and in the case of the LGPS, falling investment returns.

The PLF employment model, where all instructors have spent an extended period in industry, is for a much shorter service period. PROCAT expects to extend the range of employment models including secondments to and from industry and other shorter term options to secure up to date and relevant experience. Defined benefit pension schemes also have a much higher level of financial risk to the organisation than defined contribution pension schemes. The recent reforms to these pension schemes have reduced these risks however small or medium sized enterprise should avoid such financial risks unless there were compelling reasons not to do so. Adopting TPS and LGPS would have very significantly increased the costs of operation and financial risk without commensurate benefits.

Following consideration by the PLF Board, project board and legal advice it was decided that the staff would continue to be employed by PLF which would have a Service Level Agreement with the new corporation under which those staff would provide the services

required for the new college to operate. With PLF as the employer, the relevant pension legislation does not apply and PLF's existing pension arrangements can continue, avoiding the additional pension costs that would have 'derailed' the proposed incorporation.

3. What did we learn?

An important element of the project was to identify, address and learn lessons from the processes, recognising that the legislation and regulations under which they were being conducted were from a different time and were not designed to support the establishment of a new, specialist technical college within the FE sector.

This project was a first in the sector for over 20 years and so as the project developed we were clarifying legislation, regulations, policy and processes internally with PLF and in relation to obtaining ministerial approval. The project was also completed within a very short timescale (from the first Project Board meeting to incorporation was 10 months). The process has highlighted lessons learnt in two key areas: the process undertaken and the policy and legislation in place.

The following are the headlines emerging from the lessons learnt:

The process currently in place for new incorporations and entrant funding may no longer be appropriate. This is being reviewed as part of a wider project assessing the longer term implications of government policy reform for the FE/skills provider market

We also found the following points required clarification -

- The pre-conditions for an incorporation (e.g. in relation to Ofsted, due diligence, etc) and the criteria for an application
- The processes to support the incorporation of a new college from first Business Case to consultation and formal application
- The requirements of the funding agencies

We have published this report to clarify these points for any future potential incorporations.

4. Immediate Impact

The project was time-limited and had a clear purpose which was to create a new, incorporated specialist, technical college of FE and to learn lessons from this for the benefit of proposed future incorporations. The immediate impact of this project is:

- An incorporated college exists from 1 September 2014, providing advanced, specialist, technical education and training with and for employers in the engineering and built environment sectors.
- Awareness in the sector has been raised regarding this incorporation and the potential for future ones.
- PLF as a legal entity has a different role. Prior to the incorporation it was the body funded to make education and training provision. Post-incorporation, this function rests with the incorporated college and PLF has the role of employer of staff who are contracted to make the college's education and training provision
- BIS are now aware of many of the issues arising, which can be fed into other projects such as the proposed High-Speed Rail college and other National Colleges
- There are now a further 300 places funded by EFA for the local FEC and PROCAT to ensure that PROCAT is fully funded while the FEC has not had its contract reduced
- The mission of PROCAT includes a significant commitment to advanced and higher level, technical provision that meets sector needs
- The SFA have approved a capital grant of £1.6m to support the purchase of advanced engineering equipment and an investment in digital learning
- Governance arrangements within PROCAT are different from those of PLF, with enhanced staff and student roles in governance
- PROCAT has secured high level engagement in governance e.g. senior HR executive from a major employer, CEO of Basildon Council, David Sherlock (former Chief Inspector of the Adult Learning Inspectorate)
- ETF Fellowships: The ETF (Education and Training Foundation) agreed to fund two research fellowships, which would not have been available without incorporation. These two year fellowships will support PROCAT in moving from 'Good' to 'Outstanding' and will focus on the use of digital technologies.

5. Future Impact

The longer term impact of the project is dependent upon the response to the lessons learnt and future policy development, however, the following points could be made now:

1. A review of the longer term implications of government policy reform for the FE/skills provider market
2. The incorporation process, and PROCAT's focus on meeting employer needs and aspiring to excellent engagement with employers, including through its own governance and an ambition of securing a greater level of funding direct from employer sources, some 50% over time, is likely to have an impact on emerging National Colleges and other possible new incorporations
3. There will be further development of PROCAT and its curriculum to meet higher level, technical skills within its specialist sectors PROCAT is also likely to develop into new areas in response to employer demand and economic need
4. There is likely to be a significant impact on Basildon, its economy and community arising from the presence of a provider with a national reputation for high level, technical skills training and education

6. Conclusions

This project succeeded because there was a shared commitment to achieving the project outcomes and overcoming obstacles. As this was the first time the process for a new incorporation had been followed in over 20 years there were significant resource implications for PLF, SFA, EFA and BIS and the project would not have succeeded without these resources of time and funding. However, with the benefit of the lessons learned from this project future incorporations will have a clearer, more straightforward process to follow.

If PLF had not existed and the application for incorporation was being made for a wholly new organisation with no predecessor then the factors that led to the success of this project would be unlikely to exist. If starting from scratch, the policy and processes are now clearer and more accessible to potential proposers.

Becoming a specialist college for advanced technology was not a conversion process – it was a transformational change. PROCAT is a very different place to PLF with significant changes to Mission, Governance, structures, curriculum, and culture. A significant outcome from the project was the development of a new model for FE and Skills. Its features include an emphasis on co-investment and collaborative leadership with employers, development of a curriculum responsive to current and future demand in key sectors, and the establishment of clear pathways from Foundation level through to HE.

The lessons learnt and recommendations from this project related to two levels of (a) policy and legislation and (b) procedure for achieving incorporation including, developing mechanisms for funding new provision; reviewing current regulations; setting out minimum timescales for new incorporations and clarifying what a case for making a change should be.

7. Appendices

- Appendix A: Project milestone timeline
- Appendix B: Business case
- Appendix C: Application, consultation document and consultation report



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Appendix A: Project milestone timeline

