



Department
for Education

College oversight: support and intervention

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Introduction

Our [Skills for Jobs White Paper](#) sets out our vision to transform further education (FE). There were 2 particular themes relevant to this guidance on college oversight.

First, the White Paper set out our ambition to align further education provision with local skill needs. This was followed by the [Skills and Post-16 Education Act 2022](#), which provided a framework for the development and review of Local Skills Improvement Plans (LSIPs), to be led by designated Employer Representative Bodies (ERBs) working with employers, providers and local stakeholders. Duties were placed on the Secretary of State and relevant providers. The duties on the latter include co-operating with the ERB in the development of the LSIP and having regard to the LSIP when making decisions on post-16 technical education or training provision.

To help assess how well colleges are meeting skill needs, from September 2022 [Ofsted inspectors](#) have been asked to specifically evaluate the extent to which all further education colleges contribute effectively towards meeting the skills needs of employers and other relevant stakeholders, and the local, regional and national economy. This evaluation includes a sub-judgement on the college's contribution to meeting skills needs.

The White Paper was supplemented by our 2 consultations on proposals to reform adult skills funding and the wider accountability regime for colleges and other grant-funded providers. This included proposals for a more effective and fairer funding system supported by an accountability system that is focused on outcomes.

In addition to our consultations, we have been working with the sector to determine how those reforms will be implemented. We gained valuable experience through our pilots, for example, on the introduction of Accountability Agreements and Single Improvement Plans (SIPs) and will continue working with the sector to ensure our reforms achieve our policy intent and support college frontline delivery.

This December 2022 version of the guidance reflects the latest position on the implementation of our Skills for Jobs White Paper reforms. It also explains how we will support colleges through the changes arising from the decision of the Office for National Statistics (ONS) to reclassify colleges as part of the central government sector.

Key changes in this document

In this December 2022 update, we have:

- set out the principles of how we will use active support with colleges after reclassification and how reclassification affects our intervention policy

- streamlined the active support section of the document, as more detailed information about active support is now held on our companion ‘help and support for colleges’ page on GOV.UK
- confirmed roll out of Accountability Agreements, following the conclusion of our second consultation: Implementing a new further education funding and accountability system

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 early stage, any financial and quality issues that might hinder their success. 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 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 foresee challenges 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) and the Sixth Form Colleges Association (SFCA), as well as Mayoral Combined Authorities (MCAs), Local Enterprise Partnerships (LEPs), the Office for Students (OfS), 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 and/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 keep this guidance under regular review and advise the sector of any updates.

Following ONS' decision to reclassify colleges to the central government public sector, the framework for financial management, set out in HMT's [Managing Public Money](#) applies. To support colleges to apply this, we will be developing a College Financial Handbook, which we intend to progress in partnership with stakeholders from the sector.

This guidance – and the associated [Help and support for colleges](#)' page – both explain how we will use active support and our intervention policy to reflect the ONS decision. We will advise colleges if further changes are needed, following publication of the College Financial Handbook.

Structure of the document

Chapter one summarises our range of support for colleges, and points to further detail in ['Help and support for colleges'](#).

Chapter 2 sets out guidance on intervention.

Chapter 3 sets out guidance on reviewing provision and restructuring.

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 these 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](#) web page.

Annual strategic conversations

Annual strategic conversations have taken place with all colleges. They 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 has commenced and will 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, a collective term for support and help from the FE Commissioner and others, is available to all colleges that are not in intervention. The support available is flexible and has been designed to meet the needs of the FE college sector based on feedback. We continue to develop new types of support where there is an identified need.

All support and help from the FE Commissioner, the DfE and partner organisations is fully funded by the DfE and free of charge to colleges, although it is acknowledged that a college would need to commit time and resources.

Further information on the full range of help and support for colleges, and, in particular, active support, can be found on our [Help and support for colleges](#) web page. This includes detailed information of what is offered and how a college can request it.

Chapter 2 – Intervention

Administrative 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. Where relevant, 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 voluntarily by the college or through use of the Secretary of State's statutory powers, or a managed insolvency.

We are introducing a Single Improvement Plan (SIP) to minimise the time colleges in intervention spend responding to requests from interested bodies rather than getting on with the job of improving. The FE Commissioner will have the lead role for supporting colleges who are in intervention to improve, and will work with the college to plan a path to improvement while coordinating the interests of other interested parties, such as Ofsted and MCAs.

Where a college triggers intervention, the FE Commissioner will lead an intervention assessment culminating in a report with recommendations. The college's leadership team and Governors will subsequently agree priorities, actions, and milestones to be included within the SIP. We believe that buy-in is critical to success and therefore the college will both own and write the plan. The SIP will not be published.

Where appropriate, the recommendations identified in the FE Commissioner's intervention assessment will be included in a published [Notice to Improve on GOV.UK](#). Completing these recommendations will be a condition of funding attached to the college's Accountability Agreement. This provides public accountability for the college and transparency relating to the work of the FE Commissioner and their recommendations for improvement.

The FE Commissioner will provide guidance and support throughout this process and will meet regularly to review progress jointly with the college.

The college will move into a short period of Post-Intervention Monitoring and Support (PIMS) at the end of intervention. Further information about PIMS is provided later in this guidance.

Impact of reclassification by the Office for National Statistics

On 29 November 2022, the ONS [decided](#) to reclassify statutory FE providers into the central government sector with immediate effect. This has a number of implications for the way that colleges manage their finances, and therefore for the monitoring and oversight undertaken by DfE. [More information](#) has been published on GOV.UK.

The most significant impact in respect of this guidance is the requirement for colleges to comply with the principles and practice set out in the HMT guidance document [Managing Public Money](#) (MPM). We recognise that colleges will need to adapt to new requirements. Therefore in the short term we will consider intervention due to non-compliance with MPM only where this is significant or recurring. We will keep this under review.

We have reviewed our active support and intervention policies to take account of these changes. We will make active support available for colleges through tailored support. Changes to our intervention triggers and actions are included in the updated table below.

Notices to improve (Ntl)

DfE will normally issue a college with a notice to improve (Ntl) where it meets any of the 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. Details are set out in the table below.

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 our website 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 specified 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

N.B. Triggers may be subject to further review/change, following the publication of more detailed guidance on requirements following ONS reclassification.

Intervention criteria/trigger	Intervention considerations	Additional actions we may take
Financial Health		<ul style="list-style-type: none"> 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 Commission an IBR/costed options appraisal The FE Commissioner will undertake a local provision review Commission a FE Commissioner-led SPA Consider cash flow support Consider any case for Emergency funding Undertake a financial impact assessment of the termination of an Apprenticeship Contractual Agreement Consider a referral to the Charity Commission in line with the published Memorandum of Understanding Put the college into Supervised College Status, including appointing a DfE observer to the governing body Consider grounds for investigation Request specific/regular financial information, for example, cash flow templates, financial recovery plans
'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.	
Cash-related concerns: <ol style="list-style-type: none"> Any new provision of emergency funding at any time Serious cash flow pressures identified at any time Debt recovery including slippage on re-profiling, government loan repayments and potentially a breach of bank covenant where the bank takes action 	<ol style="list-style-type: none"> Where new emergency funding is provided, we may decide to place the college into intervention (and if we do we will always issue a Ntl) 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) 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) 	
Financial Management and Control		
One or more qualified audit opinion on a funding audit, qualified accounts, a modified regularity report (scope of which will now include MPM requirements).	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.	
Any significant or recurring breach of MPM or other HMT requirements.	Where, without authorisation, a college enters into a transaction for which consent is required (as per AO letter of 29 November 2022), we will immediately review and may place the college into intervention (and issue an Ntl if we do).	
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 accounting officer and/or governors outside of the college, departmental controls/policies	<p>Funding agreements stipulate that the final recommendations of completed investigations (whether published or not) will become additional conditions of 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, potentially including terminating the agreement/withholding payment.</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.	
Evidence of financial practice/action taken by an accounting officer and/or governors that is not in the best interests of: <ul style="list-style-type: none"> • value for money, the protection of public funds • the effective delivery of service for learners • does not meet the public benefit test 	Where we rely on this trigger, we will always place a college in intervention and issue a Ntl.	
Subcontracting where in DfE's assessment there has been a significant/material non-compliance with subcontracting rules.	We may decide to place the lead provider in intervention and if we do, we will always issue a Ntl. In cases where a provider is required to meet the subcontracting standard and they do not meet it, DfE may require you to cease subcontracting activities until we are satisfied the standard has been reached. If there are significant concerns, it may result in permanent cessation of subcontracting.	
Failure to submit financial accounts within 30 days of the published deadline or 30 days of any agreed deadline beyond the published date.	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.	
Quality		
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 amount to a breach of those conditions.
Progress in resolving issues		
Escalation by DfE if a college fails to demonstrate sufficient progress in resolving issues.	Where, having considered all available evidence, including FE 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 short-term 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 within 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.

Individuals identified in the FE Commissioner's intervention assessment, including those no longer at the college, will have the opportunity to comment and respond before the report is finalised and published.

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 led 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 market 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 relationships with the college. 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 single improvement plan
- formal 'stock-take' assessments conducted by the FE Commissioner, which could lead to advice on any further action needed to secure continued improvement or an agreement to consider the college for movement to PIMS

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 could 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 normally agree a PIMS plan detailing relevant support activities (see “post-intervention monitoring and support” section above).

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 were amended by the Skills and Post-16 Education Act 2022.

The Secretary of State may exercise statutory intervention powers if satisfied that any of the following circumstances are met:

- that the institution’s affairs have been or are being mismanaged by the governing body
- that the governing body have failed to discharge any duty imposed on them by or for the purposes of any Act
- that the governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act
- that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training
- where the education or training provided by the institution did not, or does not, adequately meet local needs

Where one or more of the above circumstances apply, the Secretary of State can remove and appoint members of the governing body (if there are vacancies). The Secretary of State can also give directions to the governing body as he or she considers expedient, 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 powers 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 circumstances, as set out in the legislation, are met.

[Further guidance](#) on the powers, including the circumstances in which statutory intervention powers may be exercised, and the processes that would be followed if their use was being considered, can be on GOV.UK.

The Further and Higher Education Act 1992 can be found via [Further and Higher Education Act 1992 \(legislation.gov.uk\)](#)

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 Education 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 out these reviews, can be found on GOV.UK: [Review how well the education or training provided meets local need](#).

This duty to review is in addition to the duties set out in the Skills and Post-16 Education Act 2022 to co-operate with the designated employer representative body in the development and review of a LSIP, have regard to the LSIP when making decisions on post-16 technical education or training provision, and have regard to the [guidance](#) issued by the Secretary of State in connection with LSIPs.

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
- 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 and/or the Further Education Commissioner 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 an approach.

Colleges should also ensure that suitable independent 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 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 the 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 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 undertaken, 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 LEPs, ERBs, MCAs, local authorities, the relevant Regional Director, 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 is 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's 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

Colleges that would like to request a SPA or discuss whether it would be helpful should contact 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 faced by a college. 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.

Further information about [how FE Commissioner led SPAs work](#) is available 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 the current situation, including the 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, ERBs, local authorities or MCAs, the relevant Regional Director, 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 of time 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 may 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
- 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.

If a college or creditor initiates insolvency proceedings, notice of those proceedings should be sent by email to Restructuring.FACILITY@education.gov.uk or by post to:

Secretary of State for Education
Department for Education
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

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 Greater London Authority (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 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 colleges, 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.



Department
for Education

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