



Department  
for Education

# **College Oversight: Support and Intervention**

**Policy Document**

**April 2019**

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## Foreword

Colleges transform the lives of people at all ages and from all backgrounds. Working at their best, colleges help students progress into work and further study. Colleges also support employers to develop the skills their workforce will need now and in the future.

So we need further education and sixth form colleges to be successful. This document sets out how we will work with them to identify, at an earlier stage, any financial and quality issues that might get in the way of them succeeding. It sets out the support and advice available to colleges when they need it from the FE Commissioner and the Education and Skills Funding Agency.

To be successful colleges need to be well managed and financially resilient. Over the last few years, the area review programme and the investment we made in restructuring has helped make many colleges more sustainable. However, we know there is a risk that colleges will still get into financial difficulty, so we will continue to monitor them, offer support and intervene when necessary. Where colleges get into very serious difficulty and run out of money, we can use administration as a last resort to prioritise the protection of current learners.

We would encourage all college leaders, governors and finance staff to read this document and to act early if they see problems ahead. We can then do our best to help.

## Summary

The purpose of the college oversight regime is to improve financial resilience and quality by incentivising and supporting college leaders to recognise issues and take early action, well before colleges get into serious difficulty. In cases where intervention is needed, this document aims to set out clear and proportionate intervention arrangements, which protect provision and current learners in the event of college failure

The college oversight regime comprises support and intervention, from prevention through to early and formal intervention and, if necessary, restructure or the exit of a provider from the market.

<p style="text-align: center;"><b>Prevention</b></p> <p style="text-align: center;">(see pages 8-12)</p>	<p style="text-align: center;"><b>Early Intervention</b></p> <p style="text-align: center;">(see pages 13-14)</p>	<p style="text-align: center;"><b>Formal Intervention</b></p> <p style="text-align: center;">(see pages 15-18)</p>	<p style="text-align: center;"><b>Restructure or Exit</b></p> <p style="text-align: center;">(see pages 19-30)</p>
<p>Support to help colleges identify risks and issues before they become problems and to take appropriate action to ensure that they do not become problems in the future.</p>	<p>Stronger actions where prevention efforts are not proving effective enough.</p> <p>Triggers for escalation to Early Intervention and associated tools/actions that might be deployed are set out at <b>Annex A, page 35.</b></p>	<p>Stronger intervention action for colleges that fail to improve or to demonstrate sufficient progress in resolving problems.</p> <p>Triggers for escalation to Formal Intervention and associated tools/actions that might be deployed are set out at <b>Annex B, page 37.</b></p>	<p>Tools designed to help identify an appropriate structural solution in cases where support and intervention are not able to deliver the necessary improvement.</p>

The tools, support and interventions that will be deployed in respect of a college that finds itself in any of these categories will be tailored to the individual circumstances, risks and issues faced by the college in question. However, to give colleges a sense of the sort of action they might expect to see within each category, this document describes:

- How the different levels of oversight will operate in practice and how they interact with one another
- The distinct roles and responsibilities of the Education and Skills Funding Agency (ESFA), an agency of DfE, the Further Education Commissioner (FEC) and Ofsted

This strengthened regime builds on current arrangements whilst taking into account

- The end of Exceptional Financial Support from March 2019
- The end of the Restructuring Facility, which closed to new applications in September 2018
- The new college insolvency regime, which came into force in January 2019

This policy was introduced in April 2019 and will be reflected in the annual funding agreement and associated variations.

## Expiry or review date

This document will be updated to reflect any changes and will be reviewed before October 2020. If you have this document in a saved, offline or hard copy format, you are advised to check on gov.uk to ensure that you are using the most up to date version of the publication.

## Who is this publication for?

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

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

## Key points

The main features of this strengthened college oversight regime are:

- Greater clarity and consistency for colleges by:
  - Simplifying the regime, for example, detailing a set of tools and support that can be deployed according to the needs of each individual case through prevention, early intervention, formal intervention, restructure or exit
  - Collating multiple pieces of guidance into one place and being clear about which guidance this document replaces
  - An end-to-end ESFA case manager as a single point of contact from entering intervention through to exiting intervention
- Continuation of key sources of support aimed at helping colleges achieve good and outstanding quality and financial health, including FEC diagnostic assessments, National Leaders of Further Education (NLFE), and National Leaders of Governance (NLG)
- A preventative function to identify problems sooner through financial dashboards for colleges and with additional indicators to alert the ESFA to investigate the college's position in more detail and take follow up action if required
- Renaming the 'Satisfactory' financial health category to 'Requires Improvement'
- Extending the triggers for early and formal intervention
- Strengthening the oversight of subcontracting and data

- A strengthened role for the FEC to review provision in a local area with the aim of ensuring long term high quality provision for learners which meets an area's educational and economic needs
- Introduction of the statutory college insolvency regime
- Use of Independent Business Reviews (IBRs) to support effective decision making, including use of DfE commissioned IBRs
- Renaming 'Administered College Status' (which involves enhanced monitoring, such as ESFA observers attending college board meetings) to 'Supervised College Status'

## 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 the ESFA, the FEC team and potentially ministers working together, unless stated otherwise. Where particular sections of DfE are referred to specifically, the expectation is that those sections 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.

## Prevention

The purpose of prevention is to try and identify risks and issues early, before they become problems, and support colleges to take appropriate action to reduce risks and resolve issues. Prevention activity will also help to identify fraud and funding errors early, reducing the risks to learners. We will do this by continuously improving our engagement with all colleges using a range of data, indicators and intelligence, so that actions are taken earlier, are more supportive and more successful. This means a constant review of our risk identification systems and learning from experience about the best action to take in any given situation.

We are improving the data and information we collect from colleges, especially around financial forecasting, and integrating information systems together where we can to avoid duplication. We are working with colleges to schedule this so we ask for the right information at the right time, while ensuring the burden is proportionate. We will make better use of the financial information that is collected and other data we have on colleges' performance to monitor and predict changes in financial health.

Our aim is to lower the risk for all colleges from entering, or returning, into the scope of early or formal intervention measures. We therefore ask college leaders (including governors) to seek external help if they think the college may be heading towards difficulties, whether around finance or quality, including contacting the ESFA as early as possible (see Annex E for contact details) to ensure they receive the support they need. We will discuss options to prevent significant further deterioration of the college's finances or quality.

However, if colleges do not come forward we will go to them if we think there are reasons for concern. We will ask for more information where necessary, to understand the situation fully and decide what, if any, further support is required to protect learners, public funds and bring about change and improvement. In many cases we expect colleges will already have plans in place to address the issues, which will prevent them becoming a greater concern. We will provide challenge on plans where necessary and work with colleges to support them, to assess options and to implement mitigating actions that will focus on ensuring sound financial resilience and/or an improvement in quality.

If there is evidence showing or predicting an ongoing and/or sharp decline in finance or quality, we may in those circumstances – in discussion with the college – refer the college to the FEC for a diagnostic assessment (see section on FEC diagnostic assessments at page 10 for further detail).

To help us understand the position of a college and what, if any, additional support may be helpful, the ESFA may request (this list is not exhaustive):

- A meeting with the chair and/or the full board where we will raise the risks that we believe the college may be facing and explain the supporting evidence
- Management accounts, including commentary, staff costs, staff costs as a percentage in year of turnover and standard forecast cash flow template

- An assessment of the impact of any funding claw back or reduction in planned income
- Banking terms, including routine renewal dates of arrangements, overdrafts, loans and any requirements to seek additional financial support
- Copies of reports to the college's senior management team and governors
- A copy of the college's risk plan, including triggers for mitigating actions and the college's approach to timely identification and management of risk
- Information about partnerships and subcontracting arrangements
- Information on planned strategic developments, which may include:
  - Federation or merger arrangements with other colleges or training organisations, including proposed shared service arrangements
  - Corporate reorganisation
  - Capital investments
  - Estates plans and asset disposals
- Reports from college auditors on the management of the colleges, including financial compliance and health

The monthly cash flow position of a college is as important as the year end position. The college executive should undertake robust and comprehensive monthly cash flow forecasting and, where appropriate, ensure this is reviewed externally/independently. The board should undertake regular monitoring and review of both cash flow and loan covenant compliance and ensure that there is adequate risk assessment and sensitising of key cash variables, in particular capital receipts and Adult Education Budget claw back. Good risk assessment of financial plans and delivery, along with actions to mitigate risk, and monitoring and reporting regularly is essential.

The ESFA will continue to produce and supply to governors financial dashboards that give an overview of the college's financial health with an explanation of its position against key financial indicators, trends and benchmarks. The ESFA will continue to improve these dashboards as we make better use of the data we collect and will use them in meetings with chairs and/or boards to help to illustrate why we believe a college is at risk. We recognise the need to ensure the reporting burden on colleges is minimised and proportionate and will only ask for information that is necessary in the circumstances of the individual case.

We further recognise that college groups pose distinct risks and issues, therefore we will consider whether we need to put in place tailored support and oversight as well as further guidance. Large college groups can be defined as a single corporation with a number of large campuses, which may be over a wide geographical area and may be distinctly branded.

## Sources of support available to colleges

### Diagnostic assessments

Diagnostic assessments are undertaken by the FEC, and are aimed at colleges that are at risk from a quality and/or financial perspective but have not triggered formal intervention. This early engagement enables the FEC to support leadership teams and governing bodies with recommendations to accelerate improvement, reducing the risk to learners and the likelihood of the college requiring formal intervention.

In exceptional cases, where a diagnostic assessment finds evidence of a high risk of failure in quality and/or financial performance, or serious gaps in the capability of a college to address the issues identified, colleges can be escalated to formal intervention, resulting in further attention from the FEC and ESFA. The circumstances in which this will occur and the associated process is set out in the formal intervention section of this document.

### Determining which colleges will have a diagnostic assessment

A college will be in scope for a diagnostic assessment if:

- It has an Ofsted 'Requires Improvement' rating and/or Ofsted 'Requires Improvement' or Inadequate rating for apprenticeships
- It is in early intervention (see Annex A for early intervention criteria/triggers)
- It has requested a diagnostic assessment because of a change of principal at the college
- There is evidence showing or predicting an ongoing and/or sharp decline in finance or quality

The FEC and ESFA will work together, and where appropriate discuss with the college, to determine which of the colleges in scope for a diagnostic assessment should be prioritised, looking at a range of information and risk factors such as:

- Ofsted trend and financial data
- Whether a college has recently completed or is judged to be on track to complete a structural change
- Whether other intelligence or data indicate a college may benefit from targeted support, for example, around the quality of governance or financial management
- Sudden or unexpected changes to the leadership of the college

### Process

Where a college is referred for a diagnostic assessment, the college principal and chair of governors will receive a letter from the FEC setting out the reasons for the assessment and confirming the agenda. A diagnostic assessment can be conducted by the FEC or a member of the FEC team. It will ordinarily comprise of a two day visit and will be an opportunity to:

- Review the college's financial and educational performance, self assessment and improvement plans
- Meet with the leadership team, governing body, learner and union representatives and other key personnel
- Assess the capacity and capability of leadership and governance to deliver timely improvement

The FEC will fact check findings and recommendations with the college, before feeding back to the chair and principal, outlining the outcome and recommendations from the assessment.

## Outcomes

There are three possible outcomes from a diagnostic assessment:

- An endorsement of the college's approach: even if there have been significant failings, the college now has robust plans in place to address the issues and senior management has the capacity to secure improvement
- Suggested actions to strengthen or supplement existing improvement plans: while the college's leadership has the capacity to lead improvement in financial health and/or quality, the existing improvement plans need further strengthening to ensure that improvement is rapidly secured
- Recommendation for escalation to formal intervention: this would be where the FEC considers that stronger action is required quickly

## National Leaders of Further Education

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

NLFEs work to support any colleges that hit triggers in the early intervention category and/or have been judged as 'Requires Improvement' or 'Inadequate' at their most recent Ofsted inspection. NLFEs have significant autonomy in determining how they deliver support and tailor their work to fit the particular needs of the college(s) they are supporting. An NLFE might, for example:

- Work with the principal and leadership team to identify improvement needs, and potential sources of support
- Provide strategic mentoring to the college leadership
- Work alongside key members of the leadership team on the delivery of specific improvement programmes

Further information on the NLFEs is available online<sup>1</sup>. Colleges seeking an improvement partnership should contact the Office of the FEC (see Annex E for contact details).

## National Leaders of Governance

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

- Hit any of the triggers in the early intervention category
- Been recommended for governance support following a diagnostic assessment or formal intervention visit from the FEC team
- Received an Ofsted rating of 'Requires Improvement' or 'Inadequate'. This could be for overall effectiveness or leadership and management

The role of a NLG includes:

- Diagnosing and reviewing governance improvement needs
- Assisting the board of governors to draw up an improvement plan
- Developing the capacity and expertise of the board of governors
- Providing support and advice
- Coaching and mentoring
- Identifying additional and ongoing sources of support

Further information on the NLGs is available online<sup>2</sup>. Colleges which have enquiries about NLGs should email the Office of the FEC (see Annex E for contact details).

## Where stronger action is required

Ideally earlier and more targeted support activity should prevent financial and quality issues from becoming significant problems. However, not all cases can be predicted and in some instances stronger action will be required. Therefore, where prevention efforts are not proving effective, we will escalate cases to the next stage of intervention.

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<sup>1</sup> <https://www.gov.uk/guidance/national-leaders-of-further-education-guidance-for-potential-applicants>

<sup>2</sup> <https://www.gov.uk/government/publications/national-leaders-of-governance-for-further-education-national-leaders/national-leaders-of-governance-for-further-education-current-national-leaders>

## Early intervention

The approach set out in this document replaces our previously published approach to early intervention and prevention and adds additional criteria and actions (Annex A). All colleges are subject to regular risk reviews by the ESFA. Action taken will be proportionate to the risk and the circumstances and will be at the discretion of the territorial ESFA deputy director. We will consider each college's position on a case by case basis. However, some clear triggers (below) will prompt us to consider whether to move a college into early intervention. When a college is in early intervention the action we take will be in line with the early intervention clauses in the college funding agreement.

- Financial health and/or financial management/control concerns (such as significant decline, 'Requires Improvement' financial health, forecast risk of inadequate financial health/not being able to meet liabilities within one or two years)
- Two consecutive 'Requires Improvement' for overall effectiveness grades from Ofsted
- Escalation by an ESFA case manager
- The removal from RoATP, due to an Ofsted Apprenticeship Grade 4 ('Inadequate') assessment, that could have an impact of the financial plans and resilience of the college
- Poor/declining education performance data

The 'Satisfactory' financial health category has been renamed 'Requires Improvement', acknowledging that being in this category demonstrates a level of risk to financial health that governing bodies need to address. This will apply from the 2019-20 budget-setting and financial planning round, which will take place in July 2019.

We reserve the right to use levers within the grant funding agreement with colleges to ask for any further information that could help us understand why a college in early intervention is at risk of failure and what the college is doing to reduce that risk. We expect a college to put in place a plan to identify actions that will lead to the reduction of risk and return the college to stability and financial resilience. Each action must be:

- Specific: target a clear area for improvement
- Measurable: quantify an indicator of progress and achievement
- Attributable: specify who will do it
- Realistic: what results can realistically be achieved, given available resources
- Time bound: specify when the result(s) will be achieved

The ESFA will discuss the actions and their impact with the college and could, based on the assessment, make some of these actions additional conditions of funding. If we do so, the ESFA will write to the college to confirm what action is being taken. This letter will not be published.

We want to work closely with colleges to help overcome the issues that have triggered intervention, and to prevent further issues and risks developing. However, where early intervention dialogue suggests that a college is not taking timely, appropriate or sufficient action to reduce the risk of failure, we will request that the college take some or all of the following steps and may make these additional conditions of funding:

- Consider further actions, in addition to those already in place
- Increase financial or quality expertise on the board of governors
- Link with other colleges that have proven strengths in the relevant areas
- Demonstrate how the college is planning to tackle financial health decline. This may include undertaking a cost scrutiny exercise to identify how to reduce costs and/or bring them within sector standards
- Provide additional key data on a regular basis to us, such as monthly management accounts and cash flow information
- Review its position in the market by commissioning an IBR and take account of the findings of such a review

The tools available for consideration and deployment by the ESFA case manager (see the ESFA FE directorate territorial teams section for the role of the ESFA case manager) are dependent on the relevance to the individual circumstances of the case and action taken. If the college position has not improved following early intervention actions, or the college is not making best endeavours to implement change and improvement, formal intervention will be instigated.

## Exiting early intervention

A college will exit early intervention as soon as we have evidence that it no longer meets the triggers. Although we will do this as soon as possible, this may mean that we wait until financial statements are available to confirm the college's position, rather than relying solely on financial plans. In the case of intervention due only to quality reasons, exit will be triggered by the publication of an improved Ofsted grade.

## Escalation

Colleges in early intervention that do not improve or resolve the issues identified may be escalated to formal intervention. Information on how the financial health of colleges is calculated is detailed in the Financial Planning Handbook<sup>3</sup>.

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<sup>3</sup> <https://www.gov.uk/government/publications/financial-planning-handbook>

## Formal intervention

### Triggers and action

We have strengthened the formal intervention category by the addition of new criteria/triggers as detailed in Annex B. If a college meets the triggers for formal intervention on financial grounds, the ESFA will consider placing a college into formal intervention and will issue a Notice to Improve (Ntl). ESFA case managers will consider the context and circumstances of the case in exercising discretion where it is available to them. They will, however, be clear with the college, in writing, about the action they decide to take and the reasons for it. Where formal intervention actions do not resolve the position of the college it is likely to lead to a structural solution or a managed insolvency.

### Escalation to formal intervention from a diagnostic assessment

Escalation to formal intervention can, in exceptional circumstances, also take place following a diagnostic assessment. This means that strong action is required quickly, which is likely to include leadership and governance change, or potentially a structural solution. Exceptional circumstances might include:

- The college is not taking action, or has no realistic plan to improve areas which have been flagged for concern by Ofsted or the ESFA
- Existing leadership and/or governance at the college is an impediment to securing necessary improvement

In these cases, the FEC will write to the college to indicate that they are 'minded' to recommend that the college is escalated to formal intervention. In doing so the FEC will set out their reasons for that view and give the college a short period in which to respond, after which the ESFA will confirm the position. The reasons may include:

- Significant failures in governance, which may be evidenced by substantial non-compliance with the relevant code or other widely applicable standard
- Lack of appropriate financial and/or quality skills on the board
- Financial plans are based on weak or inaccurate assumptions of future income and expenditure

### Minimum Standards

The policy and related formal intervention trigger for Minimum Standards has been in place for over a decade and is ripe for review. We will cease formal intervention action on the basis of the 16-19 and 19+ education measures under the current policy after the application this year to 2017/18 data. Instead we will use all education performance data

available to us earlier in our overall risk assessments. Reformed apprenticeship measures, however, require a more fundamental review as we move from frameworks to standards. We will apply the current Minimum Standards policy to apprenticeship provision (all ages) in 2020 (academic year 2019/20), based on 2018/19 data, for one final year. Further information on the apprenticeship threshold for 2020 and how provider performance in apprenticeship delivery beyond 2020 will be considered will be published later in the year.

## **Notices to Improve (Ntl)**

The ESFA will issue a college with a Notice to Improve (Ntl) where it meets the financial triggers for formal intervention (specified in the financial table detailed in Annex B) and where the ESFA judges that it should be put into formal intervention. Where an Ntl is issued, it will normally be published. Where we judge it appropriate, after a merger we may allow a period of time for the merged college to stabilise before issuing and/or publishing a Ntl. This is set out in the Financial Planning Handbook. For published NtIs, publication takes place after the Ntl has been received by the college; these lists are reviewed and updated (ordinarily on a monthly basis) to add or remove NtIs. Compliance with the Ntl and arrangements for lifting will be specified in the Ntl. It will also set out clear requirements that the college is expected to meet within a timeline. These requirements form additional conditions of funding.

From 2020, the consideration of education performance data for 16-19 and 19+ will form part of risk reviews at the prevention and early intervention stages.

A college's education performance is evidenced by the published Performance Tables, education performance data in Qualification Achievement Rates and Statistical Releases and a published Ofsted inspection report. Shortcomings in a college's educational performance are therefore transparent to governors, students and employers. To streamline arrangements, the ESFA will no longer issue NtIs to colleges in respect of Minimum Standards underperformance or Ofsted overall 'Inadequate' assessments. Instead, implementing the published recommendations made by Ofsted and subsequently the FEC in their respective reports will become a requirement of the college funding agreement. The ESFA will write to the college when an overall 'Inadequate' Ofsted report is published (this letter will not be published). We will publish the transition arrangements for those colleges currently under Notice for Ofsted overall 'Inadequate' assessments and/or Notices for Minimum Standards in more detail before September 2019. We will also consider how we can continue to improve the publication of data for users.

## **Key formal intervention tools**

### **Supervised college status**

Supervised college status involves enhanced monitoring and review by the FEC and ESFA. It may include ESFA observers attending college board meetings and colleges

consulting/informing the FEC and ESFA on decisions that affect the long term future of the college. These would include, although are not limited to:

- The appointment of senior post holders
- Significant financial commitments in excess of a specified threshold
- Significant asset disposals and/or developments
- Any plans for structural change

A college in formal intervention can be put into supervised college status where ESFA and the FEC 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 ESFA considers recovery to be too slow. ESFA and the FEC will agree to place a college into supervised college status, or the FEC can make a recommendation for a college to be placed into supervised college status following an assessment.

## **FE Commissioner intervention assessments**

If a college meets the triggers for formal intervention, as set out at Annex B, the FEC will be deployed to the college to undertake an intervention assessment. The FEC'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 FEC will consider all relevant available information on the college and take account of the views of stakeholders, learners, employers, local authorities and MCAs, staff, as well as Ofsted, DfE and the ESFA. When making recommendations the FEC will consider the full range of intervention actions available.

If a college is escalated into formal intervention as a result of a diagnostic assessment, the FEC together with ESFA will consider what further assessment is required to supplement the original diagnostic and inform further FEC recommendations.

Recommendations are discussed with the college, after which the FEC 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.

In some circumstances the reports may highlight that decisions by accounting officers and the college board were relevant. Where, in the FEC's opinion, the actions of individuals no longer at the college are criticised, and those individuals are identifiable from the report and have not previously had an opportunity to respond to the criticisms, they will be given the opportunity to comment and respond to the points made before the report is finalised and published. It will be a matter for the FEC to decide whether or not to amend the report in light of any comments received.

The Minister responsible will consider the final recommendations and will write to the college 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 FEC'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 FEC 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 take the form of escalation into consideration of restructure or exit
- Placing the college into supervised college status

If the FEC or ESFA has concerns about non-compliance with charity law, the DfE will consider whether to refer the case to the Charity Commission.

## **Monitoring and review**

The ESFA will retain overall responsibility for day to day case management. However, the FEC and the ESFA 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 FEC, ESFA, the college and other strategic partners to monitor progress against the action plan
- A formal 'stocktake' assessment conducted by the FEC, which could lead to advice on any further action needed to secure continued improvement

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

The FEC will retain a role in overseeing cases that have had an FEC intervention assessment until a college is removed from formal intervention. FEC stocktakes will be scheduled according to the risk of the institution. The ESFA will continue to coordinate and monitor the implementation of recommendations, and compliance with additional conditions of funding, throughout the intervention process.

## Restructure or exit

In some cases it may become clear that support and intervention are not enough to deliver improvement and that a structural solution is required, which could involve looking at the structure of a college and the way in which FE provision is delivered in a local area.

## Options available to the college

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 ESFA case manager, who will be able to provide advice and guidance on how to approach the options assessment and provide access to FEC 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
- Disaggregation of the existing institution, which could result in a smaller core institution or
- The complete dissolution of the board conducting that institution or closure of the institution

## When to seek advice

Colleges should seek advice at the earliest opportunity and consult with their ESFA case manager on potential options. The earlier 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 colleges experience are varied and therefore the type of options and support required will also vary. Regardless of whether the issue is temporary or an underlying concern about long term viability, it is important that the issues are identified and there is a robust assessment of options before agreeing on the approach.

Colleges should also ensure suitable professional advice is received on all major decisions. This could include financial due diligence, turnaround advice (including strategic or operational), business change support (such as HR or systems), estates

advice (including in respect of ongoing maintenance, efficiency and suitability of existing space, development and sale potential and on large capital projects) and legal advice. The ESFA can support colleges to identify potential providers for advice, 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, as now, 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 be commissioned, except where the particular 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<sup>4</sup>)
- A college is identified by the ESFA forecast model as likely to be financially inadequate in the next academic year
- The ESFA intervention team or specialist restructuring team commission an IBR in line with the terms of the college funding agreement
- The FEC recommends an IBR following a diagnostic assessment, formal intervention visit or an FEC local provision review

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<sup>4</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/774096/FE\\_Insolvency\\_Governor\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774096/FE_Insolvency_Governor_Guidance.pdf)

Where colleges fund the costs of an IBR themselves, they should discuss and agree the scope of the IBR with the ESFA (intervention case manager and specialist restructuring team) 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 the ESFA about potential support to meet those costs.

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

The scope of an IBR is determined on a case by case basis by those commissioning the review. Typically, IBRs require an agreed baseline of information (financial, sector and commercial) to facilitate effective decision making. Where the ESFA is engaged in the IBR process we will pull together a data pack to support this process, to ensure that the appropriate information can be made available to make the process as effective as possible.

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

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

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

## **Post IBR decisions**

An IBR would usually contain an assessment of options and recommendations. In considering and implementing the recommendations of an IBR the college are expected to take into account value for money. The college or other stakeholders may also have identified options through other routes, including any support or intervention activity that may have already been undertaken with the particular college including from the FEC. 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, taking account of the position of any funders and creditors.

## **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 two 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. However, colleges are strongly encouraged to undertake a SPA if they are considering such a change. This will help to ensure a college takes an objective and evidence based approach that delivers the best outcomes for the institution, learners and the local community. In April 2014 the government published guidance<sup>5</sup> to support colleges undertaking their own SPAs. Colleges should follow this guidance.

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

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

Further information about how FEC led SPAs work is available online<sup>6</sup>. DfE plans to review its guidance on FEC led SPAs before November 2019. Colleges that would like to request an FEC led SPA should contact the Office of the FEC (see Annex E for contact details).

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

There are several interventions that a college may be subject to that could potentially identify a structural change as a solution to the challenges and issues a college faces. If such a solution is to be pursued, colleges will continue to be subject to an FEC led SPA.

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<sup>5</sup><https://www.gov.uk/government/publications/further-education-funding-structure-and-prospects-appraisals-guidance>

<sup>6</sup> <https://www.gov.uk/government/publications/fe-commissioner-led-structure-and-prospects-appraisals-spa>

## FE Commissioner local provision reviews

Whilst SPAs are focussed on a single institution and finding the best solution for the continuity of its provision, FEC 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

FEC 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 FEC 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 that will be focussed on during the review
- 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 FEC local provision review will be bespoke to address the circumstances of the case, it is likely to involve the FEC examining options for delivering quality provision in that area. The review will draw on the analysis of current situation and likely future sustainability of the colleges in the area, and is highly 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, local authorities or MCAs, the Regional Schools Commissioner, schools, local MPs and learners

This review will result in a report that:

- Identifies and educationally appraises what the alternative solutions are 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 FEC 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 FEC will consider questions such as:
  - How will the area's educational needs be met?
  - How will the area's economic and business skills needs be met?
  - How will the quality of provision for current and future learners be sustained and improved?

## Process

FEC local provision reviews are expected to follow three broad stages.

### Analysis phase

- Collate and analyse the required data
- Confirm the issues that the review is aiming to address

### Options phase

- Explore the range of options available and assess the feasibility, likely success and relative merit of the options
- Provide an outline financial assessment of the options

### Recommendations phase

- Provide a recommendation on the FEC's preferred option, highlighting the key benefits in comparison to other options and the current situation
- Set out a structured proposal as to how the preferred option could be taken forward and an outline of next steps needed to deliver the preferred option.

All FEC local provision review reports will be shared in draft with the affected college(s) and other providers for fact checking before being finalised.

## **Emergency funding**

We may decide to provide emergency funding where a college is otherwise likely to run out of money. The maximum time that this funding would be provided would be the period it takes to make a decision on the future of the college, and the funding provided would be the minimum to keep the college solvent during that period. However, this decision would be 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 securing future provision in the area.

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 always include external, independent financial advice.

Any request for emergency funding to continue the running of the college will always result in a college being put into formal intervention and we will always issue a Notice to Improve.

## **Funding to support long-term changes**

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 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.

## Secretary of State powers

The Secretary of State continues to have powers under sections 56A<sup>7</sup> and 56E<sup>8</sup> of the Further and Higher Education Act 1992. This means that the Secretary of State would continue to have the power, providing certain criteria have been met, to:

- Remove all or any of the members of the governing body
- Appoint new members if there are vacancies (however arising)
- Give directions to the college related to the exercise of its powers and performance of its duties. These may include a direction requiring the governing body to make collaboration arrangements<sup>9</sup> and/or a direction requiring the governing body to dissolve itself

The decision to use these powers will be in the context of any interventions that may have already been taken. It will therefore take into account evidence from the ESFA of responses to intervention and the views of the FEC. It is also possible that an IBR will have been commissioned and therefore evidence from that may also be factored into the process.

If, following a FEC intervention assessment, the FEC or ESFA has concerns over a college's response, for example, if the college fails to respond appropriately to the FEC's recommendations, they may advise on the appropriateness of using the Secretary of State's intervention powers as set out in sections 56A<sup>10</sup> and 56E<sup>11</sup> of the Further and Higher Education Act 1992 to implement the recommendations.

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<sup>7</sup> <https://www.legislation.gov.uk/ukpga/1992/13/section/56A>

<sup>8</sup> <https://www.legislation.gov.uk/ukpga/1992/13/section/56E>

<sup>9</sup> Within the meaning of section 166 of the Education and Inspections Act 2006.

# Insolvency

## The FE insolvency regime

The FE insolvency regime has been introduced through the Technical and Further Education Act 2017 (TFEA 2017)<sup>12</sup>, the Further Education Bodies (Insolvency) Regulations 2019<sup>13</sup> and the Education Administration Rules 2018<sup>14</sup>. The relevant legislation came into force on 31 January 2019.

Existing insolvency law already applies to companies conducting designated institutions. The new legislation applies aspects of insolvency law to FE and sixth form college corporations, and introduces a new special administration regime (called education administration) for both companies conducting designated institutions and FE and sixth form college corporations (together defined in the TFEA 2017 as ‘further education bodies’).

DfE has published specific guidance that provides more information on the new insolvency regime for FE bodies, which is aimed particularly at governors<sup>15</sup>. 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 colleges that are conducted by statutory corporations in England and 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.

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<sup>12</sup> <https://www.legislation.gov.uk/ukpga/2017/19/contents>

<sup>13</sup> <http://www.legislation.gov.uk/uksi/2019/138/contents/made>

<sup>14</sup> <https://www.legislation.gov.uk/uksi/2018/1135/contents/made>

<sup>15</sup> <https://www.gov.uk/government/publications/further-education-bodies-insolvency-guidance>

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 a new insolvency procedure called education administration, which is a special administration regime that applies to FE and sixth form college corporations and also to companies that conduct designated institutions. Education administration does not apply to private providers that deliver FE, or 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 conducted by statutory corporations meaning that in some circumstances governors can be disqualified (both as governors and as company directors) if their conduct in managing the college prior to the insolvency has been unfit. This can apply to any type of governor found responsible for wrongdoing and can also apply to other individuals including those who acted as a governor although not formally appointed as one. This could include members of the executive management team of an FE body. Further information about disqualification is provided in the published insolvency guidance document aimed at governors.

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

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

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

An education administration commences as a result of a court order on an application by the Secretary of State. The court may make an education administration order only if it is satisfied that the FE body is unable to pay its debts or is likely to become unable to pay its debts, for example, is insolvent or likely to become so.

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 who is already in attendance on a course at the college in question, or who has accepted a place on a course at the college, when the education administration order is made.

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

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

The general functions of the education administrator are detailed in section 24 of the TFEA 2017<sup>16</sup>. Primarily their function is to achieve the special objective of an education administration and to protect provision for existing learners as a whole and seek the best outcome for creditors as a whole. 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 FEC 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 the ESFA as appropriate. This will assist in identifying appropriate support and intervention available from the ESFA and FEC team now that Restructuring Facility and Exceptional Financial Support are no longer available.

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'<sup>17</sup>.

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<sup>16</sup> <http://www.legislation.gov.uk/ukpga/2017/19/contents/enacted>

<sup>17</sup> <https://www.gov.uk/guidance/fe-governance>

Colleges should not rely solely on the ESFA 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.

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## The role of the Education and Skills Funding Agency

The ESFA allocates, and is accountable for, significant annual funding to providers of education and skills training for young people and adults. The ESFA plays a part in the regulatory system through the exercise of its grant and contractual conditions.

The ESFA will intervene when it has evidence of risk or underperformance or non-compliance with funding requirements. It will intervene in proportion to the seriousness of the issues and the college's context and circumstances. This may include the recommendation of the FEC.

### ESFA FE directorate territorial teams

All providers have a lead contact in one of ESFA FE territorial teams. That team will take an active case management role for all colleges which meet the triggers for:

- Early intervention or
- Formal intervention

Exceptionally, we may implement a wider case management approach because there is evidence of financial or quality concerns that do not meet these triggers, or evidence that one or more of these triggers will be met in the near future.

The ESFA case manager will:

- Act as the primary contact point and relationship manager for the college
- Act as the co-ordinating point for all engagement with the college by the ESFA and DfE (including funding teams, PMO teams and the FEC)
- Assess the evidence and level of risk to determine how we will support and challenge the college to achieve recovery
- Monitor progress and keep DfE, ESFA and FEC 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 ESFA case manager will engage with other stakeholders where appropriate, including local authorities, LEPs and any banks providing services to the college.

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

ESFA case managers 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 Provider Market Oversight directorate**

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

In respect of college financial distress, the PMO may become involved in particular high risk cases to provide specialist financial advice, initially through support to the ESFA case manager internally. Where we commission and meet the costs of an IBR, PMO 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. The PMO has an ongoing role in monitoring of colleges that have previously received Restructuring Facility or Exceptional Financial Support funding.

## The role of the FE Commissioner

The FEC is an independent adviser who has responsibility for assessing the capacity of leadership and governance in colleges that have, or are at risk of, serious weakness in terms of quality or financial health. The FEC is appointed by the Secretary of State for Education. The current post holder is Richard Atkins CBE, who was previously Chief Executive at Exeter College and Yeovil College, and is a former President of the Association of Colleges.

The FEC leads a team of deputies and advisers who, in close conjunction with the ESFA, work with colleges to help improve the quality and sustainability of their provision, and reduce the risk of failure. This work ranges from providing support to colleges to reduce the risk of them requiring intervention, to taking stronger action in respect of colleges that find themselves subject to early and formal intervention.

The FEC's work to improve the quality and sustainability of colleges comprises the following key activities:

- Diagnostic assessments: support colleges that are at risk from a quality and/or financial perspective (but have not reached a trigger for formal intervention) by looking at their approach to managing the risks they face
- Intervention assessments: assess the capacity of the existing governance and leadership of a college to deliver rapid and sustainable improvements where serious weaknesses and risk of failure have been identified. These may be followed up with stocktake visits to review the progress of the college against the recommendations made in the intervention report
- FEC local provision reviews: examine options for achieving long term sustainable provision in a local area where the issues in a local area cannot be solved by looking at individual institutions in isolation
- FEC led SPAs: a structured way of assessing options to change a college's structure and/or provision in a clear, objective and evidence based way
- Feeding expert practitioner advice into policy making: ensuring that effective implementation and the impact of the provider base is effectively tested

Whilst the role of the FEC 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.

## 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 and sixth form colleges, including how well safeguarding and prevent obligations are met. The new framework will be implemented from September 2019 and the new principal areas assessed will be:

- Quality of Education
- Personal development
- Behaviour and attitudes
- Leadership and management

Ofsted uses a four 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 three years of the merger). Ofsted inspection reports are published.

# Annex A: Early Intervention triggers and tools

Criteria/triggers and tools/actions highlighted in bold below are new.

**Table 1: Early intervention (financial)**

Early intervention criteria/trigger	Tools/actions we will consider
<p>Weak 'Satisfactory'/'Requires Improvement' financial health</p> <p>Significantly declining financial health</p> <p>Score of nought financial ratios</p> <p><b>Risk of becoming insolvent within two years</b></p> <p><b>Significant cash flow pressures</b></p> <p>Escalation via ESFA case manager</p>	<p>Letter to the principal and chair of governors informing them that they meet the triggers for early intervention</p> <p>Meeting with the chair and/or corporation to discuss issues and the regime</p> <p>Referral for an FEC diagnostic assessment</p> <p>Request a plan to reduce risk/strengthen college plans</p> <p>Request for further information to understand position/evaluate the plan, for example but not exclusively:</p> <ul style="list-style-type: none"> <li>• Management accounts/updated financial plans/returns</li> <li>• <b>Regular cash flow information (standard templates)</b></li> <li>• Impact of clawback</li> <li>• Banking terms</li> <li>• Reports to the college senior management team and/or corporation</li> <li>• College's own risk plan</li> <li>• Partnership/subcontracting arrangements including forecasts and costs</li> <li>• Reports from auditors</li> <li>• Planned strategic developments/reorganisation restructuring/asset disposal/use</li> </ul> <p>Apply additional conditions of funding</p> <p><b>Commission an IBR to review sustainability and identify options (encourage early identification and consideration of options)</b></p> <p><b>Commission an FEC local provision review</b></p> <p>FEC led SPA</p>

**Table 2: Early intervention (quality)**

<b>Early intervention criteria/trigger</b>	<b>Tools/actions we will consider</b>
<p>Ofsted 'Requires Improvement' where a college has or acquires a second overall assessment of 'Requires Improvement'</p> <p>The removal from RoATP, due to an Ofsted Apprenticeship Grade 4 ('Inadequate') assessment, that could have an impact of the financial plans and resilience of the college</p> <p>Poor/declining education performance data</p>	<p>FEC diagnostic assessment</p> <p>NLFE</p> <p>NLG</p> <p>Ofsted 'Requires Improvement' monitoring visit reports</p>

## Annex B: Formal Intervention triggers and tools

Criteria/triggers and tools/actions shaded below are new.

**Table 1: Formal intervention (financial)**

Formal intervention criteria/trigger	Notice to Improve (Ntl)
1. 'Inadequate' assessment of financial health assessed by the ESFA on financial plans or accounts	A post moderated grade of 'Inadequate' will always put a college in formal intervention and we will always issue a Ntl
2. Cash related concerns:  a) Any requests for new emergency funding at any time  b) Serious cash flow pressures identified at any time  c) Debt recovery including slippage on re-profiling, government loan repayments and potentially a breach of bank covenant where the bank takes action	a) Any request for emergency funding to continue the running of the college will always put a college in formal intervention and we will always issue a Ntl  b) Where serious cash flow pressures are identified we reserve the right/have discretion to place the college in formal intervention or not but if we do we will always issue a Ntl  c) Where debt recovery is an issue we reserve the right/ have the discretion to place the college in formal intervention or not but if we do we will always issue a Ntl
3. One or more qualified audit opinion on a funding audit, qualified accounts, a modified regularity report	A qualified audit for a substantive matter will normally put a college in formal intervention. Where a college is placed in formal intervention we will always issue a Ntl
4. 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	Funding agreements will 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  Funding agreements will stipulate that if we reasonably believe in the course of the investigation (at any point) that we have sufficient evidence of non-compliance that

<b>Formal intervention criteria/trigger</b>	<b>Notice to Improve (Ntl)</b>
governors outside of the college, departmental controls/policies	we will take immediate action including terminating contract/withholding funds Where investigations are complete and upheld we reserve the right to place a college in formal intervention. If a college investigation report is published (currently 16-18) and the college is placed in formal intervention then we will always issue a Ntl
<p>5. Evidence of financial practice/action taken by an accounting officer and/or governors that is not in the best interests of:</p> <ul style="list-style-type: none"> <li>• Value for money, the protection of public funds</li> <li>• The effective delivery of service for learners</li> <li>• Does not meet the public benefit test</li> </ul>	<p>Where we rely on this trigger we will always place a college in formal intervention and issue a Ntl</p> <p>A public benefit test is where the organisation has ceased existing for its charitable objectives or a purpose which is beneficial to the community, for example, the relief of poverty or to promote education</p>
6. Subcontracting where in the ESFAs assessment there has been a significant/material non-compliance with subcontracting rules	We reserve the right/have the discretion to place the lead provider in formal intervention and if we do, we will always issue a Ntl
7. 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 formal intervention and issue a Ntl
8. Escalation by the FEC from a diagnostic assessment	If the assessment is reasonable, related to financial/quality issues and agreed by DfE's Case Management Group we will always place the college in formal intervention and issue a Ntl
9. Escalation by the ESFA if a college fails to demonstrate sufficient progress in resolving issues that have triggered early intervention	Where a college fails to demonstrate sufficient progress in resolving the issue and demonstrating progress, we may escalate the college to formal intervention and we may issue a Ntl. Where a Ntl is issued it will always be published

In exceptional cases, under a recent merger we may allow a period of time for a merger to stabilise before issuing and/or publishing a Notice. This is set out in the Financial Planning Handbook.

### **Other actions we may take in response to a college falling within any financial intervention criterion**

Criteria/triggers and tools/actions highlighted in bold below are new.

- The FEC will undertake an assessment of the capacity and capability of the college's leadership and management when it is placed in formal intervention and issued a Ntl
- Commission an **IBR**/costed options appraisal
- **FEC will undertake a local provision review**
- Commission a FEC-led SPA
- Consider cash flow support
- Consider any case for **Emergency funding**
- Undertake a financial impact assessment of Register of Apprenticeship Training Providers removal on the basis of an Ofsted assessment of 'Inadequate' apprenticeship provision
- Consider a referral to the Charity Commission
- Put the college into Supervised College Status, including appointing an ESFA observer to the governing body
- Consider grounds for investigation
- Request specific/regular financial information, for example, cash flow templates, financial recovery plans

**Table 2: Formal intervention (quality)**

<b>Formal intervention criteria/trigger</b>	<b>Tools/actions we will take</b>	<b>Other actions we may take</b>
Ofsted overall 'Inadequate'	The FEC will always be deployed to make an assessment of the capacity and capability of the leadership and management to bring about improvement. If his recommendations are accepted his summary report will be published	We will write to the college to let them know that compliance with Ofsted and FEC recommendations are conditions of continued funding and failure to comply may lead to a breach of those conditions
<p>Minimum Standards (apprenticeship provision only)</p> <p>In 2020 we will apply Minimum Standards to apprenticeship provision based on 2018/19 data. This will be the final year of formal intervention based on this policy</p> <p>The transitional arrangements from Minimum Standards to a new accountability regime for reformed apprenticeship delivery will be published</p>	We will add additional conditions of funding requiring the college to improve the underperforming provision	Failure to comply with additional conditions of funding may lead to a breach of those conditions

## **Annex C: Documents this publication has replaced**

In producing this publication, we have replaced existing documents as follows:

- ESFA – Early intervention and prevention strategy
- DfE – Intervention policy in colleges and expansion of the Further Education Commissioner role
- DfE – College financial intervention and exceptional financial support

## Annex D: Further reading and resources

The following is a list of sources of further information and guidance on some of the topics covered in this publication. It is not exhaustive, nor is it a substitute for professional advice relating to the specific circumstances of any particular college corporation or company. FE bodies or individuals should always consider taking their own advice when appropriate. DfE accepts no responsibility for any references or links to, or the content of, information maintained by third parties.

### General and financial planning guidance

#### **DfE – Rigour and responsiveness in skills**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/186830/13-960-rigour-and-responsiveness-in-skills-amended.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/186830/13-960-rigour-and-responsiveness-in-skills-amended.pdf)

#### **ESFA – ESFA Financial planning handbook and financial plan**

<https://www.gov.uk/government/publications/financial-planning-handbook/college-financial-planning-handbook-2019-financial-planning-requirements-for-sixth-form-and-further-education-colleges>

### Further guidance for governors

#### **DfE – Further education bodies: insolvency guidance**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/774096/FE\\_Insolvency\\_Governor\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774096/FE_Insolvency_Governor_Guidance.pdf)

#### **DfE – Further education corporations and sixth-form college corporations: governance guide**

<https://www.gov.uk/guidance/fe-governance>

#### **ESFA – ESFA post-16: intervention and accountability**

<https://www.gov.uk/guidance/16-to-19-education-accountability>

### Support from the FE Commissioner

#### **DfE – Further Education Commissioner-led structure and prospects appraisals**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/715593/FE\\_Commissioner-led\\_structure\\_and\\_prospects\\_appraisals.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715593/FE_Commissioner-led_structure_and_prospects_appraisals.pdf)

#### **ESFA – National leaders of further education: guidance for potential applicants**

<https://www.gov.uk/guidance/national-leaders-of-further-education-guidance-for-potential-applicants>

#### **ESFA – National leaders of further education programme: current national leaders**

<https://www.gov.uk/government/publications/national-leaders-of-further-education-programme-current-national-leaders/national-leaders-of-further-education-programme-current-national-leaders>

**DfE – National leaders of governance for further education: current national leaders**

<https://www.gov.uk/government/publications/national-leaders-of-governance-for-further-education-national-leaders/national-leaders-of-governance-for-further-education-current-national-leaders>

**Ofsted – Education inspection framework**

<https://www.gov.uk/government/publications/education-inspection-framework>

## Annex E: ESFA and FE Commissioner contact details

### ESFA

The ESFA FE group territorial teams combine the work of the former provider management and intervention teams, headed by a deputy director. The teams are responsible for the oversight of the FE provider base to promote high quality sustainable provision in each territory.

Please use the ESFA enquiry form<sup>18</sup> to let us have any information and copy this to your local ESFA territorial contact.

### FE Commissioner

To contact the Office of the FEC please send an email to the following address:  
[FE.Commissioner@education.gov.uk](mailto:FE.Commissioner@education.gov.uk).

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<sup>18</sup> [https://form.education.gov.uk/en/AchieveForms/?form\\_uri=sandbox-publish://AF-Process-f9f4f5a1-936f-448b-bbeb-9dcdd595f468/AF-Stage-8aa41278-3cdd-45a3-ad87-80cbffb8b992/definition.json&redirectlink=%2Fen&cancelRedirectLink=%2Fen&consentMessage=yes](https://form.education.gov.uk/en/AchieveForms/?form_uri=sandbox-publish://AF-Process-f9f4f5a1-936f-448b-bbeb-9dcdd595f468/AF-Stage-8aa41278-3cdd-45a3-ad87-80cbffb8b992/definition.json&redirectlink=%2Fen&cancelRedirectLink=%2Fen&consentMessage=yes)



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email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

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