

FE Insolvency Team
Department for Education
Level 1, Sanctuary Buildings
20 Great Smith Street
London
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By email
12 February 2018

Dear Sir/Madam

Insolvency regime for further education and sixth-form colleges: Government technical consultation

On behalf of ICSA: The Governance Institute I am pleased to provide feedback on the above consultation on specific insolvency regime arrangements for further education (FE) and sixth-form colleges.

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and our Royal Charter purpose is to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With more than 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance.

We are the professional body qualifying and supporting Chartered Secretaries, corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation. We are grateful for the opportunity to contribute to this consultation.

Consultation specific questions

Q1: When considering the normal insolvency procedures outlined above (Company Voluntary Arrangement, administration, creditors' voluntary winding up, winding up by the court and receivership), are there any specific modifications that you believe are required in order to apply them effectively to FE bodies? Please provide explanations for any of these?

For those on governing bodies and advising them, there is considerable merit in the insolvency regime for FE and sixth-form colleges mirroring that of the standard regime for companies. This will help to reduce misunderstanding and complexity, providing clarity for those in the sector and others that work with and supply it.



- Q2. Who do you believe should be specified to receive:**
- a) Notice of an education administration application;**
 - b) Notice of an education administrator's appointment;**
 - c) A copy of the education administrator's proposals?**
- Please provide justification for your answers.**

All three facets of the insolvency regime detailed will be of interest to all of the college's stakeholders to varying degrees. Each stakeholder will have some form of investment in the college, emotional, educational or financial, and will be interested in its ability to continue as a viable concern. In general, the notices should be of interest, and made available to all relevant parties with an interest in the financial matters of the FE or sixth-form college, as it is likely they will be adversely impacted by the organisation going into education administration. A copy of the administrator's proposals should be made available to those third parties with a significant interest in the college's financial progress. Others should be able to access those proposals via a public platform, such as the college's website.

The definition of relevant parties is likely to be different for different organisations. However, the most common interests will include: staff, students, partner organisations (commercial, statutory and educational), statutory bodies, funders, suppliers and creditors. Some of these could be advised of developments via a dedicated page on the college's website rather than receiving individual notifications. For the purpose of disseminating a copy of the education administrator's proposals, it is usual for significant creditors to have ongoing conversations with the administrator. Therefore, the usual approach and mechanisms used for company insolvency should be deployed in the FE and sixth-form college sector.

- Q3. Is there any specific information that you would expect the education administrator's proposals to contain? Please provide an explanation for your answer.**

Information relating to the current and potential future funding of the college, by way of projected student numbers and statutory funding, would be useful in assessing the likely long-term success of the college, should the administrator's efforts be successful in ensuring the short-term sustainability of the organisation.

- Q4. Do you have any other comments or views on the process of education administration?**

As mentioned previously, for the process to be accessible and understandable by a range of stakeholders, with a varied knowledge and experience of insolvency regimes, the closer the process for FE and sixth-form colleges is to company insolvency arrangements the better. A similar process will reduce confusion and misunderstanding and will provide a wider pool of insolvency practitioners available to perform such functions.

Q5. Do you have any comments about how the filing process could work for FE bodies?

The proposals outlined in the consultation document – to keep them roughly similar to that required of companies – is appropriate for the reasons detailed above.

Q6. What particular aspects or issues would you find it useful for the guidance for governors to cover?

As volunteer board members, the guidance on the insolvency regime should be a mix of 'essential' and 'greater detail' information, similar to that contained in the Charity Commission's CC3 document: the essential trustee. This will provide information for those governors who are already familiar with insolvency regimes with greater detail available for those with no experience.

Information should include details about: company law duties; trustee duties under charity law; the insolvency regime; potential liabilities of directors and trustees and the impact of insolvency on their other interests (such as other board responsibilities, company and personal loans); fraudulent trading and insolvency; and key questions for the governing body on financial sustainability.

Q7. Do you have any views on how monitoring and intervention can be further improved to identify cases of financial distress and work with those colleges to improve their financial position and avoid insolvency? (Please be clear whether you are responding in relation to colleges in England or colleges in Wales).

To avoid confusion, misunderstanding and complexity it would be useful for there to be clear lines of separation between the work of the FE Commissioner (FEC) and the Education and Skills Funding Agency (ESFA) and other regulatory oversight bodies. The roles of each should be clearly defined and the areas of overlap should be kept to a minimum. Blurred boundaries and overlapping oversight and intervention will cause unnecessary bureaucracy, duplication and wasted resources. Information requests from the various regulatory and oversight parties should be designed with a view to using data that is readily available and in a single format that can be used by all parties.

Q8. How could ESFA and FEC work with and support colleges in England to help them self-identify financial difficulties at an early stage?

Regular reporting and inspections will provide the basis for the fundamental questions on which the governing body should be monitoring and reporting. Specific guidance on key financial questions, similar to that available for charities (<https://www.gov.uk/government/publications/charity-trustee-meetings-15-questions-you-should-ask/charity-trustee-meetings-15-questions-you-should-ask>) would also be helpful in flagging up concerns to governors. From that the FEC and/or ESFA could design a diagnostic tool that will generate a level of reporting depending on the particular responses and circumstances of individual colleges.

Q9. Do you have views on how the Independent Business Review process for an FE college should work, and who should be consulted?

As detailed previously, keeping the process similar to that already used for businesses would be of benefit to a number of stakeholders.

Q10. Do you have any further comments on any aspects of our proposals (including our impact or equalities assessments)?

There are no further comments.

I trust the above comments are helpful. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours faithfully,

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