



Skills Funding
Agency

Skills Funding Agency: Approach to Intervention

November 2015

Of interest to colleges and other training organisations

Background

In April 2013, the Department for Business, Innovation and Skills (BIS) and the Department for Education (DfE) jointly published the document [Rigour and Responsiveness in Skills](#). This set out the policy for intervention with the colleges and training organisations that the Skills Funding Agency (SFA) funds.

In November 2013, we published our [Approach to Intervention](#). However, since then the framework and context for intervention have changed. For example:

- In April 2014 BIS published the document [Intervention in Further Education: The Strengthened Intervention Process](#).
- In July 2015 the National Audit Office (NAO) published its report [Overseeing Financial Sustainability in the Further Education Sector](#).
- In July 2015 BIS published the document [Reviewing post-16 Education and Training Institutions](#). This confirmed a programme of area reviews of 16+ provision focused on general further education (FE) and sixth-form colleges.

This document replaces the Approach to Intervention published in November 2013.

We will work closely with the Education Funding Agency (EFA) on all aspects of intervention. They are taking a similar approach to intervention with sixth-form colleges. Where a sixth-form college receives funding from the SFA, the EFA will lead any early intervention activity.

Early intervention and prevention

For several years formal intervention triggers have provided a framework for our formal intervention process.

Additionally, we have always reviewed the performance of colleges and other training organisations regularly to assess their risk of falling into scope of formal

intervention. The impact of this is often considerable, both to learners and to public funds.

Evidence such as the NAO's financial sustainability report confirm the need to take preventive action when a college or other training organisation is close to triggering formal intervention.

We therefore continue to strengthen our approach to, and capacity for, early intervention and prevention with all colleges and other training organisations. For example, we use the large amount of data available to us to provide early indicators of risk through analysis and/or modelling. We have also established a new Provider Management and Intervention Team to strengthen our ability to work with colleges and other training organisations on the risks and issues we identify.

Our work may cover, but is not limited to, operational, financial, quality and strategic risks and issues, and identifying and implementing the actions needed to remedy them.

Early intervention and prevention with further education colleges

We have published information separately on the detail of our early intervention strategy with FE colleges.

We have access to considerable information relating to their financial position. Along with other sources of information we can use this to identify trends in a college's financial performance. If we consider that there is a significant risk that a college may become financially inadequate over a three-year period, we will invite the college to review the position with us.

Following the review, or if the college's response does not provide us with sufficient assurance, we may take action under the [Financial Memorandum Further Education Colleges 2015 to 2016](#). This may include agreeing additional conditions of funding. If we later assess that the college has not complied with them, we may take further action leading to, for example, a Notice of Concern.

Formal intervention

We use formal intervention to ensure colleges and other training organisations take rapid and robust action to rectify the failures below. We will align our actions closely with those of the EFA and consider whether the failure changes the priorities for area reviews.

Triggers

The triggers for formal intervention remain the same as set out in 'Rigour and Responsiveness in Skills' and as indicated in our previous 'Approach to Intervention' document dated November 2013. However, if our early intervention monitoring identifies a provider at risk of failure and the provider is unable or unwilling to take corrective actions we will take this into account in determining our intervention actions. The formal triggers are:

- Failure to meet the SFA's criteria for financial health or control.
- An inadequate grade at inspection from Ofsted.
- Failure to meet Minimum Standards for post-19 or apprenticeship provision.

Where training organisations funded under a Contract for Services Education and Training (Contract) fail to meet our criteria for financial health or control we have changed our approach. Failing to meet the criteria will trigger formal intervention as set out below.

Types of formal intervention

A training organisation funded under a contract can expect us to terminate the contract if they trigger formal intervention.

Only in very exceptional circumstances, and where we consider it better serves the needs of learners, will we permit an attempt at recovery under a Notice of Serious Breach.

If we issue a Notice of Serious Breach, it will set out the conditions necessary to continue to receive public funds. Failure to meet the conditions in the Notice will lead to contract termination.

If a college or other training organisation funded under a Financial Memorandum or grant-in-aid triggers formal intervention, we will issue a Notice of Concern. This will set out the matters that need rectifying, the timescale to remedy them and the conditions under which we would lift the Notice. It will also set out any additional conditions of funding during the period of the Notice. Failure to comply with the terms of the Notice may lead to further intervention, including additional conditions of funding or withdrawal of funding.

Referral to the Further Education Commissioner

If an FE college, local authority maintained institution or specialist designated institution triggers formal intervention, referral to the FE Commissioner may follow.

Referral is automatic if there is a failure at inspection.

Referral to the FE Commissioner may also follow where an FE college seeks [exceptional financial support](#) (EFS) under the guidance published by BIS. Depending on the type of EFS, the request may lead to a financial health assessment of 'inadequate', the issue of a Notice of Concern and the undertaking of a Financial Prospects Assessment (FPA) by the FE Commissioner. The FE Commissioner may also carry out an FPA if a college states that it cannot repay the EFS within the required timescale, or if we determine that it may not be able to do so.

We reserve the right to refer any FE college, specialist designated institution or local authority maintained institution under a Notice of Concern to the FE Commissioner for review and advice at any point in the intervention process. This may include cases where we are concerned about the pace of progress.

Outcomes of referral

The FE Commissioner will advise the Skills Minister and the Chief Executives of the funding agencies on the ability of the college's or institution's governance and leadership to deliver improvement. The FE Commissioner will also advise on any necessary funding conditions or restrictions.

The FE Commissioner may recommend the following:

- The college or institution is allowed to attempt recovery by developing and implementing its own recovery plan.
- The existing governance or leadership cannot deliver improvement and that the college or institution is placed into 'Administered College/Administered Institution' status. This may result in an area review being brought forward.

In both cases we will issue a Notice of Concern, or add to an existing Notice if one is already in place. This will set out the actions and additional conditions of funding needed to support the implementation of the FE Commissioner's recommendations.

BIS publishes the FE Commissioner's [intervention summary assessments](#) on its website on GOV.UK; it does not publish FPA summaries.

An area review might indicate that the college or institution and its training provision are not needed. Alternatively, it may indicate that some or all of its training provision should be put out to open tender. In such circumstances we will issue a Notice of Withdrawal of Funding, setting out the conditions of funding that will apply while the market testing process is applied.

Minimum Standards

Our approach to intervention applies to colleges and other training organisations that fail to meet Minimum Standards for post-19 and apprenticeship provision. Minimum Standards is an annual exercise using the official Qualification Achievement Rate (QAR) data.

Each year we publish a document confirming our methodology, such as this document for [Minimum Standards 2014 to 2015](#). Currently we are reviewing this approach, with a view to simplifying it for 2015 to 2016.

We expect all colleges and other training organisations to review the results of their Minimum Standards assessments each year and use them to improve achievement rates continually.

We will identify the colleges and other training organisations that have failed to meet Minimum Standards in apprenticeships or classroom and workplace provision. We will then decide whether to intervene formally, taking into account the following:

- Formal intervention status.
- Track record in Minimum Standards.
- Track record in quality, particularly inspection by Ofsted.
- Any circumstances beyond the college's or other training organisation's control that led to a temporary fall in achievement rates.
- Whether there is strong improvement plan based on a clear understanding of the reasons for failure, with actions to remedy them and involvement by senior managers in reviewing progress.
- Whether changes have already been made that deal with the cause/s of failure and will improve achievement rates significantly and sustainably.
- Whether there is assurance that the college or other training organisation is using data to set targets, monitor progress and intervene to ensure success rates are above Minimum Standards in future.

- The proportion of leavers in the provision that failed.

We would not usually refer a college or institution to the FE Commissioner for review if the only trigger it fails is Minimum Standards, but we reserve the right to do so.

Outcome-based success measures

As the new outcome-based success measures for adult further education are introduced, our approach to intervention will change to reflect them.

Area reviews

In September 2015 BIS published more guidance on area reviews in [Reviewing post-16 education and training institutions: guidance on area reviews](#).

We will align our approach to intervention with FE colleges with area reviews, to help facilitate their delivery as set out in the guidance above. For example:

- When an FE college triggers formal intervention and referral to the FE Commissioner before an area review, we will support the Commissioner's team to conduct an initial assessment. We will then recommend the appropriate next steps to ministers, taking into account the future review of the area.
- Where an FE college is already in formal intervention, we may make participating in an area review and proper consideration of the outcomes a condition in the Notice of Concern.
- We will support the current flexibility in scheduling area reviews. For example, rescheduling them to an earlier date where the future options for an FE college in intervention should not be looked at in isolation.

Offenders' Learning and Skills Service

We will issue a Notice of Concern or Serious Breach if a college or training organisation with a funding agreement to deliver Offenders' Learning and Skills

Service (OLASS) provision is judged inadequate by Ofsted. This would happen as part of a prison inspection by HM Inspectorate of Prisons and Ofsted.

Formal intervention may also apply if there is a failure to meet Minimum Standards in OLASS provision from January 2016.

The Notice of Concern or Serious Breach will set out the matters that need rectifying and the timescale to remedy them. They will also identify the conditions under which we would lift the Notice and any additional conditions of funding during the period of the Notice. We will tailor our approach to the needs of OLASS provision.

Failure to comply with the terms of the Notice of Concern or Serious Breach may lead to further intervention.

Publication of Notices

On a date to be confirmed we will begin to publish the following on our website on GOV.UK

- The Notices of Concern or Serious Breach we issue from that date including the associated conditions of funding.
- A list of the Notices of Concern or Serious Breach currently in place, including any issued before that date if they are still in place. This list will be updated regularly.
- The letters we issue to lift Notices from that date.

We may receive a specific request for information under the Freedom of Information Act 2000 relating to a Notice of Concern or Serious Breach. If so, we may be required to disclose it.

Consequences of formal intervention

The Notice of Concern or Serious Breach will confirm the consequences of formal intervention, which may include the following:

- Colleges and other training organisations in formal intervention are not eligible for allocations of growth or additional funding, except in agreed circumstances.
- A Notice is likely to affect the outcome of participation in relevant procurement opportunities.
- If you have a 24+ Advanced Learning Loan Agreement, the Chief Executive may remove the Loan Facility and terminate the Agreement.
- A Notice may also include specific conditions, such as no recruitment of new learners.
- Other SFA policies and processes may confirm the consequences of formal intervention. For example, our Performance Management Rules.

The Notice will confirm specific consequences where a college or other training organisation is placed in Administered College/Institution Status.

Key documents such as your funding agreement and our [SFA Funding Rules](#) and [Performance Management Rules](#) may also confirm some of the consequences of formal intervention.



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