Department
for Education

Developing an Insolvency Regime for the FE and Sixth Form College Sector

Government consultation response

October 2016

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Introduction

The further education (FE) and sixth form (SF) college[1] sector is in a period of transition. Following changes in the Education Act 2011, colleges have become more autonomous, with greater freedoms and flexibility to take decisions and respond to the needs of learners and employers, and more independent in financial decision making.

In 2015 a programme of Area Reviews was launched across England with the aim of ensuring high quality, sustainable provision capable of meeting the future needs of learners and employers. A key objective of the reviews is to facilitate any structural changes required to deliver institutions which are financially viable, sustainable, resilient and efficient, and provide maximum value for public investment. The Government is supporting colleges through this transition, making funding available to support them in implementing the recommendations of Area Reviews where that is required.[2]

Once this process is complete, there is an expectation that colleges will continue to operate autonomously, both financially and operationally. However, although the Area Review process should significantly reduce the possibility of a financial failure in future, it does not remove it altogether. Currently, there is no clarity over how any future insolvency would be dealt with.

The Government set out its proposals to address this situation in a consultation published on 6 July 2016. The consultation ran until 5 August, and sought views on the introduction of an insolvency framework that would provide the opportunity for an insolvent college to be rescued or, where that is not possible, set out a clear process for its dissolution. The proposals also included the introduction of a Special Administration Regime (SAR) to protect the interests of learners in the event a college became insolvent.

The consultation took place online, with the opportunity to also respond by email or letter. A series of pre-consultation meetings were also held with key stakeholders in the weeks leading up to the publication of the consultation.

[1] For the purposes of this document, the terms “college(s)” and “corporation(s)” are used interchangeably and include both further education and sixth form colleges. Under the legislation, corporations are the legal entities which run the educational institutions i.e. the colleges. The existing legislation provides for a special position in relation to disposal of assets for certain sixth form colleges designated under section 33J of the Further and Higher Education Act 1992.

[2] https://www.gov.uk/government/publications/post-16-education-and-training-institutions-area-based-reviews

Summary of responses

We received 63 responses in total.

Respondent Type	**Number of responses**
Representative/Trade Body	11
Pension Funds	11
College	15
Local Government	10
Trade Union or staff association	4
Large Business (over 250 staff)	8
Legal Representative	2
Individual	2
Total	**63**

These included responses from the main college representative bodies, the Association of Colleges (AoC), 157 Group (a membership organisation of 32 leading UK colleges), and the Sixth Form Colleges Association. As well as responses from individual colleges, we also received responses from the main lenders to the sector, Local Government Pension Scheme managers, and Local Authorities as well as responses from the main education staff and student unions. A full list of respondents is included at annex A.

The Government received a number of responses which did not follow the questions asked, but rather summarised respondents' overall opinions on the issue of an insolvency regime for the FE sector. Where respondents made comments that aligned to specific questions, we have sought to include these in the quantitative and qualitative analysis of responses. Otherwise, the responses have been reflected as far as possible in the qualitative analysis of responses.

Overall, most of the responses received were broadly supportive of the main proposals. Most recognised that there is a case for introducing a clear legal framework so that an insolvent college can be dealt with in an ordered way, in line with existing company insolvency practice, as well as a Special Administration Regime (SAR) which is designed to protect the interests of learners in the event of a college becoming insolvent.

Introduction of an Insolvency Regime for FE Sector

1. Having considered the responses to the consultation, Government intends to proceed with the introduction of a statutory insolvency framework for the further education (FE) and sixth form college sector, including the introduction of a Special Administration Regime (SAR). We will bring forward the necessary legislation as soon as Parliamentary time allows.

   There are clear benefits to the sector of clarifying the legal position in relation to a college becoming insolvent, and the introduction of a SAR will ensure that the interests of learners are appropriately protected.

Main findings

Question 1

Do you agree that only the SAR element of this regime should be applied only to Designated Institutions that are companies? Please give reasons for your answer.

Some educational institutions have been designated as part of the statutory further education sector under section 28 of the Further & Higher Education Act 1992 as institutions on the basis that they are grant-aided or eligible to receive grants.[3] They are registered as charities with the Charity Commission, and subject to the provisions of the Charity Acts. These bodies have different legal form to further education and sixth form colleges, and the majority of them are companies, so already subject to ordinary insolvency procedures. As such, if one of these Designated Institutions (DIs) were to become insolvent, there would be no additional mechanism in place to protect the learners. The consultation therefore sought views on proposals to allow the SAR to be applied to the DIs that are companies, should such an event occur.

The situation with regard to the three DIs that are not companies, however, is more complex and the consultation proposed that these bodies should not be subject to the SAR.

28 respondents expressed an opinion on this question. Other respondents either did not reply, responded 'don't know', or responded that they were not in a position to offer an opinion on the topic raised.

The technical nature of the question resulted in some confusion and it was interpreted differently by some respondents to the question asked. However, from the comments provided by respondents it was possible to conclude that there was a nearly even split. There were 13 respondents who considered that the three DIs that are not companies should not be covered by any element of the proposed insolvency regime. There were 15 respondents who disagreed and who supported applying the SAR to DIs that are not companies. Only one respondent was of the specific view that the SAR should not be applied to DIs that are companies on the basis that provisions of the Insolvency Act 1986 that already apply to these institutions as companies should suffice and that there was no requirement for a SAR for any type of FE body. Otherwise respondents did not disagree with the position in the consultation document that DIs that are companies are already

[3] http://www.legislation.gov.uk/ukpga/1992/13/section/28

covered by the Insolvency Act and therefore that, additionally, only the SAR element of the proposed insolvency regime should apply to them.

About half of the 15 respondents who supported applying the SAR to all DIs, regardless of their legal form, stated that it would not be good practice to single out colleges to be excluded from the insolvency regime on the basis of their specialisation, no matter how very specialist and exclusive these three institutions are.

Of the 13 who agreed with the question as put, five of these respondents, including industry experts, stated that they specifically agreed with our reasoning that the 3 DIs that are not run by companies are unlikely to become insolvent, and that the complications of applying the regime to these entities, due to their legal form, justified not extending the insolvency regime to them because it would simply be impractical to do so.

Government response

Based on the responses received, we have concluded that it is right to apply the SAR regime only to those designated institutions which are run by companies.

The three charitable trusts which are running educational institutions designated under section 28 of the Further and Higher Education Act 1992 will not be subject to the SAR. While we agree that no college should be excluded from the insolvency regime simply because of their specialist nature, in the case of the three SDIs in question, it is because they cannot technically become insolvent as they have no legal identity separate to their trustees. This means that any liability of the charity is the liability of its trustees. It is not therefore possible to apply insolvency law or the special administration regime to a charitable trust. If a trust became unable to pay its debts, we would anticipate that the Department would want to address the case on its own merits.

Question 2

Do you think any of the insolvency measures summarised in our proposals (Company Voluntary Arrangement, ordinary administration, compulsory liquidation and creditors' voluntary liquidation) should be available in the event of college insolvency as well as a Special Administration Regime? Please explain your answers.

The consultation proposed that the insolvency arrangements for colleges should closely mirror those available to companies under the Insolvency Act 1986, including:

- Company Voluntary Arrangement[4]
- Administration
- Compulsory Liquidation
- Creditors' Voluntary Liquidation

In addition, we proposed to establish a Special Administration Regime (SAR) for colleges that would sit alongside the above options, and would enable the Secretary of State to apply to the court for the appointment of an education administrator in order to protect learner provision.

There were 36 responses to this question, with the majority of respondents, including most of the associations who responded, agreeing that the insolvency measures set out in the consultation document should be available in the event of college insolvency. One respondent summed up their reasoning as: "The proposals set out in the consultation document provide a comprehensive set of options that have the advantage of mirroring established corporate insolvency practices that are widely understood."

Of the 27 respondents in favour, over a third felt that this would offer colleges the most flexibility in their specific financial circumstances and four thought that it would be more straightforward and more cost effective to apply company and charity rules to college corporations that were insolvent, where this was practical. Two respondents suggested that members' voluntary liquidation (MVL) should also be made available to FE bodies, arguing that it offered a more orderly process of dissolution than that currently available. One of the associations raised a specific concern about the inclusion of compulsory liquidation as an insolvency measure for colleges, on the basis that employee contracts would be immediately terminated and therefore learner protection would not be an option under compulsory liquidation.

Most of the seven respondents who did not agree that the proposed measures should apply to colleges highlighted the importance of continuity of protection of learner provision as their reason. A trade union also added that they felt "having other (insolvency) measures would (cause) confusion and uncertainty, and that these measures would not achieve the objective of protecting learners".

[4] The official name for this process is Company Voluntary Arrangement. We continue to use this title as it is well understood, but have considered how it could apply to colleges.

Government response

It is important to make clear that ordinary administration, compulsory liquidation and creditors' voluntary liquidation would only be available if the Secretary of State did not apply for a SAR in the case of an insolvent college (e.g. because the college and its advisers had been able to achieve a rescue through using general administration provisions, perhaps combined with a CVA). In such cases, it makes sense to keep the insolvency procedure used as straightforward as possible, and having a wide range of options available for dealing with insolvent colleges will offer flexibility for a rescue to be achieved where possible, and orderly, well understood and cost effective procedures to be followed where it is not. It is, however, more likely than not that should any college become insolvent, there would be learners involved whose education needed to be managed. We would therefore expect that the SAR would apply in most cases. The Government has been clear that its priority in the event of insolvency would be learner protection.

A couple of respondents appeared to believe that company voluntary arrangement (CVA) and receivership were not offered as part of the Government's proposals. For the sake of clarity, the proposals will introduce the ability for colleges to enter CVAs. Those creditors with fixed charges will continue to be able to appoint a receiver, but any such appointment will be subject to the Secretary of State's power to apply for a SAR; in the event that the court were to make an education administration order, any receiver would be required to vacate office. However receivership would only apply in terms of fixed charge receivership as FE bodies are unable to create floating charges.

The Government does not agree that members' voluntary liquidation (MVL) should be made available to FE bodies as there is already adequate provision for the dissolution of solvent colleges within the Further and Higher Education Act 1992. The Government's proposals are limited to dealing with the dissolution of insolvent colleges, and it is neither proposed to remove the provision available for dealing with solvent colleges, nor to revise it beyond what is necessary to allow the SAR or another insolvency procedure to apply.

Having considered the responses to the consultation, the Government will proceed with its plan to clarify the law in relation to the application of company insolvency procedures to colleges that become insolvent to ensure that there is a full suite of tools available to deal with a college that becomes insolvent.

In addition the Government will introduce a Special Administration Regime (SAR) to prioritise the protection of the needs of learners (see question 3).

Question 3

Does the proposed special objective sufficiently reflect the needs of learners and creditors? Please explain your answer.

The consultation proposed introducing a Special Administration Regime (SAR) for the FE and sixth form college sector to provide specific protection for continuity of learner provision and, so far as is consistent with this "special objective", the education administrator would be required to carry out his functions in a way that achieves the best result for the colleges' creditors as a whole. It was proposed that the 'special objective' would require the education administrator to "*avoid or minimise disruption to the studies of the existing students of the further education body as a whole, and… ensure that it becomes unnecessary for the body to remain in education administration for that purpose".*[5]

In general, most of the 39 respondents who addressed this question were supportive of the need and 'ambition' for the special objective.

However, almost two thirds of respondents did not see the proposal as drafted as sufficient for the intended purpose, identifying a number of issues that would benefit from further consideration, including effect on creditors, alternative provision, and the need to ensure SEND students are adequately protected.

The main concern expressed by respondents related to the negative effect that a special objective biased towards learners would have on creditors; this was seen as likely to cause considerable adverse effects on creditors' ability to recover amounts they have advanced, with the consequent result that banks may choose to reduce their lending to the sector. One lender suggested that colleges, creditors and learners as a whole could be better served if a SAR was not introduced and ordinary corporate regimes were supplemented, if necessary, by a duty on administrators to seek to protect existing learners.

One respondent suggested amending the proposal to impose a duty on the special administrator not to act, when furthering the special objective, "in such a way as to make the position of creditors worse than if the institution had not entered special administration", or limiting the special objective in terms of time and/or scope (i.e. protecting only those learners who are already at the college, rather than those who have accepted a place). Alternatively, one respondent suggested that the interests of creditors

[5] In effect, the administration will continue until the objective has been achieved. By existing students we mean any person who is a student at the college when the administration begins, or has accepted a place on a course at the college when the administration begins.

should assume priority over learners after the conclusion of the academic year (in which the college entered education administration). Respondents noted that, in order to mitigate against the impact of giving learners priority, it may be necessary for Government funding to be made available to assist in funding the special administration process.

With regard to the scope of the special objective, a number of respondents argued that, as currently drafted, the proposals did not fully address all classes of students, particularly 14-16 years olds in FE colleges, and those students undertaking learning sub-contracted to other providers. In direct contrast with the suggestion that the special objective should be limited to learners already at the college, some respondents argued that protection should be extended to prospective (i.e. those who have received an offer which they have not yet accepted) and future learners. It was argued that the latter category was particularly relevant to learners in rural areas.

A small number of respondents commented on circumstances where the provision of learning was geographically dispersed, and there was no alternative college within a reasonable travel distance for learners, noting that students in rural areas would be less likely to face disruption to their education under the proposals than students in urban areas because “it would be difficult to find a ‘rescuer’ of a rural college, should it be placed in administration and almost impossible to find alternative provision for existing learners where it is the only further education college in the county”. In such circumstances, it was argued that Government would have no option but to keep the college open in order to fulfil their statutory obligations for learners up to the age of 18.

The quality of provision was raised by some respondents, whether in terms of rescue of the college, or transfer of learners to alternative providers. One respondent commented that “it is vital that the education administrator ensures that good quality is prioritised when securing continuity of provision”, while another said that it would be important for the education administrator to consider independent providers when looking to transfer learners.

The need to ensure the protection of SEND learners was raised by a number of respondents, one of whom commented that “many learners in further education and sixth form colleges have diverse and often complex needs, and such students are often over-represented in further education colleges”. Respondents noted that, in addition to the statutory duty with regard to 16-18 learners, local authorities have a duty to learners with Education Healthcare plans up to the age of 25 but the proposals for a special administration regime “only protect learners between the ages of 16-18 years”.

Respondents also drew attention to a number of other issues, not directly related to the framing of the special objective, including staff retention where the college was in an education administration, and the accessibility and additional cost to students of alternative provision (both in terms of extra distance, and routes and modes of travel).

Government response

The Government recognises that, in introducing a special objective that puts the protection of learners ahead of the rights of creditors, there is a risk that creditors may be less willing to lend to the sector, or may change the basis on which they do so. However, in our view the priority given to the proposed special objective in a SAR is critical to enabling learners to be protected. The interests of creditors are recognised in the SAR proposal. An education administrator would have a duty to carry out their functions so as to achieve the best result for the college's creditors as a whole, so far as consistent with the special objective. But if the duty to creditors were not qualified as in the Government's proposed special objective, there is a high chance that this would be at the expense of learners' studies and training. Whilst an administrator acting on normal insolvency principles might well pursue a rescue of the college's operations, there is no assurance that the option pursued would be the best for learners; and if a rescue were not possible, there could well be an obligation on the administrator rapidly to reduce or end the college's operations in a way which would disrupt learners.

While some respondents have suggested that the special objective should be amended to limit the length of time a college can be in education administration, we believe that this would also have a negative impact on our overall objective to protect learners; the length of time a college may need to be in special administration will depend on the particular circumstances relating to that college, and to impose an inflexible, universal time limit on the SAR is likely to mean that the administrator will be constrained in the action they can take to protect learners.

While we do not consider that the education administrator needs to safeguard the interests of 100% of the students in order to have met the special objective, we would expect the significant majority of students to have been given the opportunity to complete their learning, whether at another institution or by keeping open the existing college, before the special administration is ended, and the education administrator therefore needs to have sufficient time to either transfer or "teach out" existing students.

The Government recognises that, as the SAR proposal recognises the interests of learners and creditors but prioritises the former, there are circumstances in which realisations for creditors might be lower than in an ordinary administration (perhaps because the costs of the administration are increased by a need to maintain provision for learners for longer than might be the case in an ordinary administration). This is a common feature of special administration regimes, where it is inherent that there is some special interest which needs to be protected over and above normal insolvency principles.

The need for new funding is also a common feature of special administration regimes; and it is recognised that in practice this may come from Government. Having decided to seek a special administration order, the Secretary of State would want to consider the

funding that might be needed in the administration and whether this would be made available by Government and, if so, on what terms. The Secretary of State would of course want any special administration to be successful and will have wide powers to provide funding if necessary to achieve this. Our intention is that these powers will allow funding to be provided by grant or loan as well as guarantee or indemnity; and we intend to provide additional flexibility by removing the requirement included in the draft clauses accompanying the consultation document that loans from Government be made on a basis of priority to other creditors.

However, the Government does not intend to commit, now or through proposed legislation, that funding will be provided on any particular terms or to achieve any particular outcome for creditors. It is to be expected that the Government will want any special administration to be successful, and the extent and terms of any Government funding which are needed to achieve this are matters which will be considered on the facts of the particular case.

In reaching this view we have taken into account that some lenders (and other stakeholders) dealing with colleges might find it helpful to have greater certainty, now, as to how a special administration would be funded. This is understandable, but an advance commitment would be unusual in the context of special administration regimes in other sectors; and any advantage of greater certainty for lenders and others would have to be balanced against the potential future cost to taxpayers which, whilst not expected to be significant in amount, would be uncertain and unlimited in time.

In this context it needs to be kept in mind that a very substantial commitment of public funds and other support is currently being made available by the Government to the sector through its programme of Area Reviews, including the restructuring facility which is accessible to colleges which need it to implement Area Review recommendations. It is a central objective of the Area Reviews that all colleges which are not already financially resilient are able and expected to become so. Whilst colleges have autonomy in their decision taking, the Government has also made clear that it encourages and expects colleges to organise their finances to achieve future annual surpluses of 3 to 5 per cent, which will then be available to add to colleges' financial security, as well as to invest and to improve outcomes for learners.

We therefore expect that, whilst the SAR will provide a necessary safety net for colleges and their learners, its use will be exceptional.

The Government understands that lenders and others dealing regularly with colleges will want to take into account the SAR and other aspects of the proposed insolvency regime in their decisions relating to colleges, but in doing so would encourage them to take into account the above considerations, as well as the relative stability of the sector's income and public support, given the importance of the sector to the UK economy and to the performance of the statutory duties referred to below.

It should also be noted that we are addressing an omission from our clauses as published for consultation and adapting a standard insolvency provision which allows a creditor to challenge the administrator in an ordinary administration, so that it applies in a SAR, allowing interested parties to apply to the court to challenge the education administrator on the basis that they are not carrying out their functions in accordance with the special objective or the subsidiary objective relating to achieving the best outcome for creditors.

As regards which students are covered by the special objective, the Government is clear that this applies to all students who are either studying, or have accepted a place, at the college when an administration begins, whatever their age; so, 14 year olds would be covered as would those students in the 19+ category; and whatever their course of study, so, for example, HE students studying at FE colleges would be covered. Where a student has accepted an offer of a place from a college, this constitutes a binding arrangement between the parties, and the student should therefore be treated in the same way as those students already studying at the college. It would be unfair to do otherwise. No such arrangement exists in the case of individuals who have not accepted an offer, and we therefore do not intend to extend the special objective to these individuals. Students whose learning has been sub-contracted by the college to another provider will also be covered by the special objective. The agreement that exists between the college and its sub-contractor is a commercial matter; the student will have accepted an offer of a place from the college, and will be enrolled at that institution regardless of who provides the learning.

The issue of prospective and future students, in particular in areas where there may be no other alternative provider in the vicinity, is quite rightly a matter of concern. Although this may be a particular difficulty in rural areas, where there is no other provider of 16-18 education, it is a situation that may arise in other areas. As many respondents have noted, the Government has a statutory duty to provide education to 16-18 year olds and this will be a factor the Secretary of State will need to take into account in deciding how to proceed in the event a college finds itself in financial difficulty, including whether or not to put the college into special administration.

The need to protect students with special educational needs and disabilities (SEND) is one that the Government recognised in our consultation document, and with which respondents clearly agreed. We are considering this question with the aim of ensuring that there is appropriate protection, in a special administration, of the interests of students with special educational needs and this may require express provision in primary legislation.

Question 4

Do you have any comments on our proposals for SAR initiation?

The consultation proposed that in the event of a college insolvency (i.e. the college being unable to pay its debts), the Secretary of State would be able to apply to the court for a SAR order to put the college in education administration. If anyone applies for another type of insolvency order under the Insolvency Act 1986, the Secretary of State would be notified and would have 14 days in which to decide whether to initiate a SAR and apply for a SAR order.

There were 33 responses in total to this question, of which most were broadly in support but with some reservations. A small number (4) wanted greater clarification on the role of the Secretary of State in respect of the process of decision making. The majority supported the 14 day time period although a few large businesses felt this was too short for Government to make the decision effectively; conversely some respondents, including one of the banks, felt 14 days was too long and that the statutory period should be reduced to 5 business days.

Other issues raised included the importance of LEP/Combined Authority involvement where the Adult Skills Budget has been devolved, and the need for notification of a SAR status to key stakeholders such as Pension Funds, as well as providing the same access routes to SAR as would apply to ordinary administration so that a college could apply for a Special Administration Order.

Government response

The 14 day deadline for the Secretary of State to apply for a SAR would be triggered only where there was an application through the courts or outside the courts by a creditor or the college itself for a normal insolvency procedure. This period is the same as that used in the majority of other special administration regimes, and we are not persuaded that it should be different in this case.

However, it is important to distinguish between the 14 day deadline for the Secretary of State to apply for a SAR, and the appointment of an administrator as there was some confusion between these two issues in a couple of responses: the Secretary of State will have up to 14 days to decide whether to apply for a SAR and to apply to the court for an order and in practice, this process may well take less than 14 days. Where the court makes an order, that order would appoint the education administrator.

We have not yet developed the processes for taking a decision on whether a SAR should be initiated and on who should be put forward for appointment as an education administrator. Our expectation is that the education administrator will be a licensed insolvency practitioner and that, in nominating an appointee, the Secretary of State will want that person either to have or to have suitable access to sufficient expertise in the sector. These processes do not need to be included in primary legislation, and we will develop them for secondary legislation, consulting where appropriate.

Officials have started to have discussions on the issue of devolution and the Department for Education (DfE) and Department for Communities and Local Government (DCLG) will continue to work together and with Combined Authorities on the detail of the readiness conditions in relation to the arrangements for financial risk sharing. As part of this we will also consider how Combined Authorities and Local Enterprise Partnerships will be kept informed of a SAR initiation.

We accept the comments around the issue of pension fund notification if a college is put into special administration or any other insolvency procedure, and will address this issue when developing the Rules on notification to creditors.

Any Special Administration Regime would be a tool of last resort; the Government would work alongside colleges in financial difficulty to explore options for recovery and would only expect to initiate a SAR on rare occasions. A SAR could be expensive and is likely to involve some funding from the Government - it is therefore right that it is the Secretary of State who is able to apply to the court for a SAR order.

Question 5

What issues, if any, would you envisage if transfer of provision or assets/liabilities were required?

The consultation set out our proposals for the education administrator to be given the power to make transfer schemes which would transfer the property, rights and liabilities of a college in education administration to another college.

While transfer schemes can override third party rights, such as the right of a landlord to object to the transfer of a lease or the right of a party to a contract to insist that any obligations owed to it are performed only by the other party to the original contract, such schemes could help the education administrator to transfer provision where all or part of the undertaking of a further education body is being transferred to another one.

There were 36 responses to this question, the majority of which identified recurring themes and issues which respondents felt would need to be specifically addressed if there are to be provisions on transfer of assets and liabilities under a SAR.

Over half of those that responded felt that ownership of assets belonging to Trusts needed addressing, particularly that many colleges' assets are either church owned or owned by a charitable Trust which would have an impact on their ability to transfer. A similar number wanted to know how assets funded by government grant or gifted by Local Authorities in 1992 under restrictive covenants on future use would interact with transfer provisions within the SAR.

Some respondents who answered this question were concerned about the impact on existing financial contracts including the banks' relationships with their customers (FE

and SF colleges), and their own internal and external requirements (money laundering, due diligence etc.). These respondents included mostly banks and colleges. A similar number of respondents, the majority of which were pension funds, councils or associations, referenced the impact for pension funds on the transfer of pension liabilities. Other significant issues raised included understanding the impact on the transferee college in terms of its financial health, although the transferee would of course have to consent to the transfer; the transfer of staff and associated pay and conditions including TUPE implications; and clauses in existing suppliers' contracts and the impact on the SAR and transfer provisions.

Government response

The Government regards transfer schemes as an important tool for the education administrator in enabling the efficient transfer of learners to another provider so as to achieve the special objective. They are a feature of a number of special administration regimes when there is an overarching public policy objective for continuity of service provision.

The proposed transfer schemes will enable the education administrator, with the approval of the Secretary of State, to transfer property, rights and liabilities to another provider or another person. Transfer schemes could for example transfer college buildings, equipment, bank loans, pension liabilities and staff contracts amongst other things.

We understand the banks' concerns around transfers of loans without consent, including those around regulatory obligations in relation to money laundering and "know your customer" requirements. It is not our intention that a transfer scheme would put a bank or other counterparty in breach of their wider legal requirements. We anticipate that banks will get sufficient notice of the details of the transfer scheme to be able to carry out regulatory obligations before a transfer takes place and it is very unlikely that the administrator or the Secretary of State would permit a scheme proposal that would breach those regulatory obligations. Creditors will also have the safeguard of being able to apply to the court to challenge the education administrator on the basis that he is not carrying out his functions in accordance with the special objective or the subsidiary objective relating to achieving the best outcome for themselves.

For assets owned by a trust which are used by a college specified under section 33J of the 1992 Higher and Education Act, there is already a provision to ensure that "any property held by the corporation on trust for the purposes of the relevant sixth form college must be transferred to the trustees of the relevant sixth form college", in the event of a solvent dissolution. Our intention is to replicate this provision so that, in the case of insolvency of a corporation to which section 33J applies, any property held on trust by these corporations will be ring-fenced and must be transferred to the trustees of the college, rather than be subject to transfer provisions for the Special Administration regime, or indeed form part of the asset base which will be available to meet the claims of creditors.

If there are assets in which the Government has an interest, or other rights, or if there are liabilities to Government, these can also in principle be transferred under the terms of a statutory transfer scheme.

For assets transferred to colleges from Local Authorities under the 1992 Further and Higher Education Act, there may be specific conditions imposed around their ongoing use. In addition, where there were formal transfer deeds entered into, then the likelihood is that restrictive covenants would have been imposed on the title that would enable the local authorities to require continued use of the estate as a FE college or otherwise be compensated for their loss – any such requirements will be contained within the relevant title deeds alongside any other restrictive covenants if applicable. Local Authority originated assets are unlikely to pose an issue in terms of transfer schemes if they are transferred for the purpose of achieving the special objective, although any specific covenant restrictions would need to be reviewed and applied carefully. The transfer scheme would allow transfer of such property in any event.

A number of respondents noted that in many contracts with external bodies there are clauses allowing the other party to void them in the event that the college is in administration. However, as with an ordinary administration, section 233A of the 1986 Insolvency Act would apply to protect the supply of essential goods and services in the event that a college was in education administration.

Many respondents raised the issue of whether or not the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would apply to staff which transferred to another provider. The purpose of TUPE is to protect employees if the business in which they are employed changes hands. TUPE would likely apply in the event of college insolvency and associated transfer or the education administrator would have the power to ensure the principles of TUPE would apply under the provisions of the transfer scheme.

With regard to pensions liabilities, if these were in scope for transfer under the transfer scheme provisions, there could be a full novation of all rights and obligations. For further information on Local Government Pension Scheme pension liabilities in the event of FE insolvency, please see the response to Question 9 on page 25.

Question 6

Do you have any views on our proposals in relation to directors' and governors' liabilities?

In introducing an insolvency regime for FECs and SFCs, Government intends to follow, as far as is practical, the principles of company insolvency, and therefore proposes to apply the provisions of the Insolvency Act 1986 that relate to directors' liabilities to college governors, in particular those related to wrongful and fraudulent trading.

Over half (55%) of those who responded to the consultation as a whole responded to this question. Of those who responded, over half supported the inclusion of governors' liabilities within the insolvency regime proposed for FE and sixth form colleges, including both fraudulent and wrongful trading. These respondents were representative of all types of stakeholders, including practitioners, colleges, creditors, combined authorities and the associations. Only three respondents referred to applying the provisions of the Company Directors Disqualification Act 1986 to governors, one of whom raised concerns about the wider impact of this on a governor's other positions and the other two who wholly supported the Government's proposals on this issue. Five of those who responded positively nonetheless raised concerns about the potential impact on the recruitment and retention of governors if the inclusion of governors' liabilities was not handled with sufficient guidance and support.

Despite their concerns, those who supported the inclusion of governors' liabilities commented that the public should be able to have the same trust in governors of educational establishments as they do of company directors, and that sanctions should be applied when people in positions of trust act irresponsibly. They were, however, clear that governors should be protected from being held accountable for actions which were outside their control. Having clarity on the inclusion of governors' liabilities was welcomed, and seen as essential for governors to fully understand the implications of the insolvency process and their wider responsibilities (which are similar to those that already exist by virtue of governors also being charity trustees).

One respondent felt that the consultation could have been clearer on the liability of college staff, and four of those who responded positively stated that these liabilities should specifically extend to the Chief Finance Officer of the college.

Those who responded negatively to this question mainly cited potential difficulties recruiting and retaining governors, particularly with professional expertise, if the perceived risks of being a college governor were felt to have increased. There was a common call for guidance on governors' duties.

Specifically on wrongful trading, four respondents questioned whether it was reasonable for college governors to be limited to the same defence as company directors, under section 214(3) of the Insolvency Act 1986, which permits a defence against a claim of wrongful trading if company directors can prove that they took "every step with a view to minimising the potential loss to the company's creditors as [they] ought to have taken." These respondents voiced a concern that this could directly conflict with the special objective to protect learner provision above all else.

Government response

The directors' duties regime is a key component of corporate insolvency and ensures protection of creditors. Creditor protection is important to retain lender confidence and the Government agrees it is right that this regime includes similar protections for those who deal with the FE sector. It is right that governors and principals act to ensure that colleges are run in a financially prudent way, and exhibit a clear duty to their creditors as well as their staff and students.

Governors and college senior management should have regard for their duty to their creditors as well as providing education for their learners. The point at which one begins to seriously compromise the other is the point at which governors should question the ability of the college to continue to deliver effectively and to seek professional advice about its future position.

College governors come from a variety of backgrounds and play a valuable role on the boards of FE colleges. Not all will have financial expertise, and their duties should not require them to become experts in financial management. They are, however, required to have full regard to their duties as charity trustees and to question the financial position of the college where this is unclear, requesting advice and explanation as necessary, and to give early warning if the position is recognised as being precarious.

Provisions setting out the full extent of governors' liabilities will be a matter for secondary legislation and the Government will ensure that, when this is developed, it will be clear on whom the duties fall. As a position of principle, however, we intend that any governor or member of college staff who was knowingly party to activity intended to defraud creditors may be subject to a charge of fraudulent trading and liable for any penalty the court may impose. This reflects the position which applies to companies, and, given the seriousness of fraudulent trading, should not be a factor which dissuades any person from joining a college.

We further intend that governors should be liable for wrongful trading. It is also intended that principals should fall within the scope of this liability even in the unusual case that they are not a governor, given their critical position in the college and their accountability for the use of public money. In unusual circumstances liability may also extend to shadow governors and de facto governors (which could include the Chief Financial Officer if he acted as if he were a governor). This is because liability should follow the substance of the position and a person should not avoid liability simply because they have not been appointed as a governor, if in practice they are acting as such or the governors are accustomed to follow their directions. However, this would be extremely unlikely in the context of any properly run college. We will consult on the detail of our proposals in due course.

Application of the law on wrongful trading would essentially require governors and principals to give proper consideration to creditor protection in circumstances where their

college was at serious risk of insolvency, and ultimately could attach personal liability to individuals who failed to do so. We recognise that this is a more significant consideration for an individual considering taking a position as a governor, as it does not require deliberate wrongdoing in the same way as fraudulent trading. However, the position would then be similar to that which applies to directors of charities which are companies; and these duties are similar to fiduciary duties that governors already bear as charity trustees. Understanding and managing the financial health of the college is a vital part of trustees' compliance with their existing legal duties to act in the interests of their charity and its beneficiaries; protect and safeguard the assets of their charity; and act with reasonable care and skill.

To be clear, it is not the purpose of wrongful trading law to punish governors or make them liable only because a college has become insolvent; or because of the outcome of a misjudged decision by the Board, that led or contributed to insolvency, but was taken after proper, evidenced, consideration. What governors will need to avoid is turning a blind eye to financial difficulty or failing to protect creditors when there is no reasonable prospect of avoiding insolvency. Governors who consider the evidence, follow a proper decision making process, take advice in circumstances of financial difficulty and record the rationale for decisions taken in good faith, are very unlikely to be at risk of wrongful trading.

Further advice as a reminder of governors' duties as charity trustees can be found on the Charity Commission website[6] and through the 'Code of Good Governance for English Colleges' on the Association of Colleges' website[7].

Having considered the responses to the consultation, the Government will proceed with its plan to include governors' liabilities within the proposed insolvency regime, including provision for fraudulent and wrongful trading. We agree, however, that it will be important for governors to have clear guidance on their duties and liabilities under insolvency law, and we will ensure that this is provided ahead of the insolvency regime coming into force.

With regard to the special objective to protect learner provision, this only applies to the Special Administration Regime and is a duty placed on the education administrator, not the members of the college board or senior management team. It only comes into force when the college is in education administration; up until the point when the college is

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[6] https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do

[7] https://www.aoc.co.uk/sites/default/files/Code%20of%20Good%20Governance%20for%20English%20Colleges%20FINAL_1.pdf

recognised and reported as being insolvent, the governors and senior management team of the college retain their duty to the college's creditors and to manage the college's affairs in a way that keeps it solvent.

Question 7

Do you agree that, as a matter of general principle, the insolvency law applying to companies on the avoidance of transactions should apply to colleges? Please explain your answer.

An overriding principle of insolvency proceedings is that (other than in some well-defined exceptions), once commenced, all creditors are treated equally and fairly. The provisions on avoidance of transactions are a way of extending that principle of equality back to before the commencement of those insolvency proceedings, and allow some transactions which breach this principle to be set aside ("avoided") by the administrator to effectively put creditors back in the position they would have been had the transaction not taken place.

Of the 32 respondents who offered a view on this question, only one respondent disagreed that insolvency law on avoidance of transactions should apply to colleges. Though a small number of respondents thought it unlikely that colleges would engage in the type of transactions which this law seeks to protect against (e.g. preferring related companies), 28 respondents were supportive of the proposal, with a number of respondents again commenting that it made sense for the SAR to follow company insolvency law as closely as possible.

Although supportive, some respondents raised a number of concerns in relation to the proposal, particularly that the SAR regime may naturally create transactions at an undervalue or preferences to protect the position of learners and that, in those circumstances where such action is necessary, "Government should consider whether the existing provisions within s.238(5)[8] & s.239(5)[9] of the Insolvency Act 1986 adequately

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[8] "*The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied:*

(a)that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and

(b)that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company"

[9] "*The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b)"*

protect governors …. in that context”. As with responses to Question 6, some respondents commented that there was risk for governors in relation to pre-insolvency transactions, with governors being unclear as to whether they should be acting in the best interests of learners or creditors, and called for guidance for governors to give clarity on how they should act in such a situation.

The potential impact on governors was raised by another respondent, who expressed concern that these proposals would subject governors “to the significant provisions around wrongful and fraudulent trading which could bring about criminal liability, personal financial liability, and the possibility of being disqualified from being a Company Director or Trustee of a charity”, and that this was likely to make it harder for colleges to appoint and retain good governors.

One respondent observed that the anti-deprivation rule was one of the fundamental principles of insolvency law and that they could see no grounds for an exemption in relation to the SAR, especially as any “claims should not impact student interests since they would most likely be pursued after the conclusion of a special administration”. Another respondent expressed concern that in ordinary administration, any monies resulting from avoidance of transactions claims would be held by the Administrator for the benefit of unsecured creditors, but that in the proposed SAR, the funds could be used by the education administrator to achieve the special objective instead.

Government response

We welcome the broad support from respondents for the proposal. As in an ordinary administration, an education administrator will be able to transfer a (fixed charge) asset without the consent of a third party, subject to an order of the court. While we accept that the SAR may in limited circumstances lead the education administrator to transfer assets at an undervalue in order to secure the agreement of the transferee and facilitate the special objective, this is not a decision of the governors and there is therefore no need to amend the relevant provisions in the Insolvency Act 1986, as suggested by one respondent. If a secured (fixed charge) asset were sold without third party consent based on a court order, the creditor would be protected by having a right to receive the market value of the asset.

With regard to the concerns raised in relation to governors carrying out their duties in a pre-insolvency context, as explained in our response to Question 6, we do not consider there should be any uncertainty as to how governors should act; the special objective putting the protection of learners ahead of the interests of creditors applies only in the event a college is in education administration, and, again, will apply to the actions of the education administrator rather than governors. Prior to the commencement of a SAR, governors will be expected to act in the interests of the college but in accordance with their existing fiduciary duties and in accordance with insolvency law.

With regard to the concerns expressed in relation to governors and wrongful trading, these were also raised by others in their response to Question 6, and we have responded to these above.

Question 8

Do you agree that only provisions of Part 3 of the Insolvency Act 1986 that deal with fixed charges should apply to colleges? Please explain your answer.

Part 3 of the Insolvency Act 1986 contains provisions relating to the appointment of receivers by creditors holding fixed or floating charges. Colleges do not have the power to create floating charges and so we proposed to apply only those provisions relating to fixed charges.

Of the 14 respondents who addressed this question, the majority agreed with the proposal that only those provisions of Part 3 of the Insolvency Act 1986 relating to fixed charges should apply to colleges. Despite agreeing with the proposal, some respondents expressed some reservations – for example, one respondent commented on the tension between “the rights of fixed charge holders and the SAR regime in terms of the duty of care”. Those respondents who disagreed with the proposal, did so on the basis they considered there was a case for introducing the ability for colleges to offer floating charges.

Government response

We do not agree that there is a conflict in the duty of care as a consequence of the SAR. In an ordinary administration, the administrator would be under a duty to act in the interests of creditors, without any regard to how that might impact on the provision of learning. The special objective, however, places a requirement on the education administrator to act first in the best interests of the students; we consider that the special objective therefore removes any tension that would otherwise exist.

Where the court makes an education administration order, this will have the effect of placing the protection of learners ahead of the interests of creditors. This may have an impact on the disposal of assets, in particular where the education administrator deems it necessary to run the college on for a period of time to “teach-out” the students. However, we would expect that the education administrator will seek to release assets as soon as practicable, especially given their duty so far as is consistent with the special objective, to carry out their functions in a way that achieves the best result for creditors as a whole. Where creditors believe that the education administrator is not acting in accordance with their duties, we consider it is right that they should be able to challenge this conduct. We have therefore amended the clauses to provide for creditors to bring such a challenge.

With regard to those respondents who argued for colleges having the ability to create floating charges, as we set out in the consultation document, we do not propose to introduce such charges; there has been no call from colleges to be able to create floating charges and, as one respondent noted, in reality colleges' principal assets (their real estate) are most suited to fixed charge security.

One respondent expressed concern that the powers of a receiver "would not be sufficient to fulfil the needs of operating a college", and suggested that the SAR should adopt the same powers granted to an administrator appointed under a conventional floating charge. It is right that the powers afforded to a receiver would be insufficient to run a college but the education administrator will have the power to manage the college's affairs, business and property which will allow the administrator to run the college for as long as necessary during the special administration. It will be for the education administrator to decide whether it is appropriate to retain the services of the college's senior management team to support them in carrying out their functions.

Question 9

Do you have any other comments on the proposals set out in the consultation document?

We provided the opportunity for stakeholders to offer any other thoughts that they may have on the proposals overall and nearly all (60) of the respondents to the consultation took the opportunity to offer comments on issues not specifically addressed in the consultation. In the main, these related to concerns around pensions, in particular the Local Government Pension Scheme (LGPS), the impact of the SAR on creditors and access to finance, and the different approaches being adopted in HE and FE. A number of respondents were also critical of the length and timing of the consultation period, noting that a Summer consultation in the education sector was unsatisfactory given that many of those affected by the proposals may not be available to respond.

Pensions

The LGPS was the most common issue raised by those who commented, with 60% of respondents (mainly Pension Funds) concerned about the potential impact of the proposals, in particular that LGPS funds would have the status of unsecured creditor and that the cost of unfunded liabilities would fall on the other employers in the fund. Any unfunded liabilities may have to be mitigated, for example by other colleges paying higher contributions, with some respondents therefore suggesting that Government should provide the sort of guarantee of pension liabilities it currently provides in relation to academies.

Respondents also commented that it was important for pension contributions to continue to be paid during insolvency proceedings.

SAR

With regard to the SAR, while one respondent commented that "there is a need for colleges to be more commercial in their approach, without the safety net of automatic government funding support in the event that they fail financially", around half of those who commented on this question, particularly the banks, raised concerns about the impact the SAR might have on access to finance in the sector, the behaviour of colleges and the impact on students. Respondents highlighted fears that the introduction of the insolvency regime would prompt banks to require security to protect their position and, where sufficient security was not available, they were unlikely to extend – or might even withdraw - debt funding, even where the debt was serviceable. This was considered more likely to be an issue for colleges in areas with lower property values.

There were also concerns that the behaviour of FE bodies would change, with colleges acting to conserve cash and cut capital spending instead of investing to service an increase in demand from young people and business, ultimately leading to a worse outcome for all.

Some respondents raised concerns that the creditor position would deteriorate over time "whilst the SAR administrator prioritises the special objective", which might result in the administrator having to continue providing ongoing learning for a small number of students at the expense of creditors, as the college assets were depleted to fund the ongoing costs.

The banks themselves were clear that, although the introduction of an insolvency regime was welcome in terms of providing clarity of process in the event that a college fails, it was important that lenders to the FE sector were not treated any differently than lenders to other sectors in an insolvency scenario. The SAR proposals were in their view likely to considerably reduce funds that would otherwise be recoverable by creditors in an ordinary insolvency, and this would inevitably affect decisions on whether, how much, and on what terms, to lend to FE bodies. The banks noted that the draft clauses provided powers for the Secretary of State to make loans or grants to the FE body "for the purpose of achieving the objective" of the SAR, and sought clarity about how it was intended that this power might be used, and whether that might mitigate their concerns.

One bank proposed an alternative approach, suggesting that a better option would be to apply the corporate insolvency regime to the sector instead, supplemented if necessary with a duty on administrators of the FE body "to seek to protect the interests of "existing learners" to the extent consistent with the achievement of ordinary administration objectives". They argued that this would allow administrators to raise funding on a subordinated basis, whether from Government or other sources, to keep the college running while learners were either transferred or taught out. Such an approach would mean creditors would be more likely to be comfortable continuing to lend into the sector.

Differences between Higher Education and Further Education

The different approach being adopted in relation to universities that might fail was an issue raised by some, with respondents noting that "some universities are companies and registered charities but most are statutory corporations", yet the approach in the Higher Education and Research Bill is to place a duty on universities to guarantee student protection, rather than to include them in a SAR.

Government response

We recognise that the timing of the consultation may have caused difficulties for some respondents. The rules relating to local elections and the EU referendum meant that some Government activity was deferred until after the Purdah periods had ended. However, during that period, officials held meetings with key stakeholders to discuss the proposals and provide them with as much time as possible to consider their response ahead of the formal launch of the consultation. We are grateful to those who participated in those meetings, and to those who responded to the consultation.

Pensions

In light of a number of comments from respondents on the way the scheme was described in the consultation document, it is important to clarify what type of scheme the LGPS is. The LGPS is a funded, locally managed, defined benefit scheme based on salary and service, and benefits are guaranteed in statute. Access to the LGPS for non-teaching employees (including new employees) of colleges is a requirement of the LGPS Regulations, as FE and SF colleges are listed as Scheduled Bodies. Currently colleges are generally considered by pension funds to be a "stable and reliable employer". However, some funds are starting to reconsider their assessment of colleges.

In the exceptional event of a college insolvency, as pension funds would be an unsecured creditor (unless they had taken security), any shortfall in funding would need to be met from other employers in the fund.

It is important not to overstate the risk of college insolvency. Following implementation of the Area Review recommendations, which will put colleges on a stable financial footing, assisted where necessary by the restructuring facility, the Government believes that the risk of a college becoming insolvent is very low, particularly given the robust financial monitoring and intervention regime which will be part of the new landscape for the sector post Area Review. The use of the SAR will therefore be a tool of last resort. It is, however, important that colleges engage with their pension fund organisations at the earliest opportunity as options and recommendations begin to be developed. This will ensure that the implications for LGPS can be taken fully into account and can inform how any necessary restructuring is taken forward most effectively.

In any event, were there to be a college insolvency, most transfers would not result in crystallisation of any pension deficit and therefore exit costs if the education administrator proposal included a merger or transfer with another provider who was also a member of the LGPS scheme.

The key issue therefore is how pension funds assess the residual risk of college insolvency and incorporate that into contribution rates going forward. Pension Funds will wish to assess the strength of each employer's covenant.

Some respondents have suggested that the Government should provide guarantees for colleges in the same way as has been done for Academies. However, Academies are public bodies on the Government's Balance Sheet, and the guarantee is a reflection of that fact. Colleges, on the other hand, have financial and other freedoms and flexibilities to be independent of Government and are therefore classified as private sector. Accordingly, any guarantee would neither reflect nor be appropriate to that status.

In the event of a college insolvency, the Government would consider whether, and to what extent, ongoing certified fund contributions during the special administration period should form part of the general costs of the administration to be funded by Government. Likewise, we understand the importance of notifying Funds of an insolvency event; the Rules around notification will apply to funds.

Differences between Higher Education and Further Education insolvency

Some respondents commented on the different approach to learner protection in the HE sector.

The FE sector includes a high proportion of young and more vulnerable learners, who are more likely to have originated as local residents and who would find it harder to travel to find alternative provision than typical HE students. In contrast, the HE sector caters primarily for students over the age of 18, and who tend to be more geographically mobile and therefore able to transfer to another provider in the event of institution closure.

Given that the two sectors have different characteristics, the Government adopts approaches to insolvency which are considered appropriate for each sector.

Application of the Further Education insolvency regime to colleges in Wales

Although not specifically addressed in a listed consultation question, the Government set out in the consultation document that it was envisaged that the scope of the insolvency regime would only apply to further education and sixth form colleges in England. However it made clear that the legislation could also be applied to colleges in Wales because insolvency is a matter for Westminster in relation to England and Wales. The Government welcomed views on whether to apply the proposed regime to colleges in Wales and sought the views of Ministers in the Welsh Assembly.

Welsh Ministers wanted the provisions of the proposed insolvency regime to extend to colleges in Wales as well as England. The new regime will give Welsh Ministers the power to make operational decisions on whether or not to apply to the Court for a Special Administration Regime to be ordered for an insolvent college in Wales, and to make further operational decisions relating to a SAR for an insolvent college in Wales.

Next steps

The Government would like to thank all respondents for taking the time to respond to this consultation.

Having considered the responses received, the Government has decided to proceed with the introduction of a statutory insolvency framework, including a Special Administration Regime, for further education and sixth form college corporations. We will take forward the necessary primary legislation as soon as Parliamentary time permits.

As with company insolvency, much of the process underpinning the new education SAR will be set out in rules and regulations. We will consult on the detail of the new regime in due course, and will lay the necessary legislation once the primary provisions have come into force.

It is our intention that the new regime should be in place around the start of the 2018/19 academic year.

Annex A: List of organisations that responded to the consultation

- 157 Group
- Aon Hewitt
- Association of Colleges
- Association of School and College Leaders
- Association of Teachers and Lecturers
- Avon Pension Fund
- Barclays
- BHASVIC (Brighton, Hove and Sussex Sixth Form College)
- Catholic Education Service
- Chartered Institute of Credit Management
- Chichester College
- CIPFA (Chartered Institute of Public Finance and Accountancy)
- College of Haringey, Enfield and North East London
- Collyer's
- Cornwall Pension Fund
- Deloitte LP
- East Norfolk Sixth Form College
- East Riding of Yorkshire Council/East Riding Pension Fund
- Epping Forest College
- Essex Pension Fund
- FE & Sixth Form Colleges in Sheffield City Region
- Gloucestershire LGPS
- Greater London Authority
- Greater Manchester Pension Fund
- Hampshire LGPS
- Havering College of FHE
- Hertfordshire County Council
- Hymans Robertson

- KPMG
- Lincolnshire County Council
- Lloyds Banking Group PLC
- Local Government Association (LGA) and the Local Government Pensions Committee (LGPC)
- London Councils
- LPFA
- LTE Group (trading name for the Manchester College)
- Mid Cheshire College
- Mills & Reeve LLP
- NCG
- North Yorkshire Pension Fund
- Nottinghamshire County Council
- Paston Sixth Form College Corporation
- Pinsent Masons LLP
- PwC
- RSM Restructuring Advisory
- Shrewsbury College
- Sixth Form Colleges Association
- Society of County Treasurers
- Staffordshire County Council
- Suffolk County Council
- Surrey County Council
- The Association of Employment and Learning Providers
- The Institute of Chartered Accountants of Scotland (ICAS)
- The Sheffield College
- Trafford Council and Skills, Employment & Worklessness for Greater Manchester Combined Authority
- Tyne and Wear Pension Fund
- UCU (University and College Union)
- UNISON

- West Midlands Pension Fund
- West Sussex County Council Pension Fund
- Worcestershire County Council

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