



Department
for Education

Further Education Commissioner-led structure and prospects appraisals

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Summary

This document relates to Further Education (FE) Commissioner-led Structure and Prospects Appraisals (SPAs).

This document will help college corporations understand the FE Commissioner-Led SPA process, and should be read by all members of college governing bodies. This is particularly relevant to colleges that are either going through a SPA, have been advised to undertake a SPA by the FE Commissioner's team, or are considering restructuring. However, all colleges should be considering whether a Commissioner-Led SPA would help them secure long-term sustainability.

Expiry or review date

This guidance will be reviewed before November 2019

Who is this publication for?

This document is for:

- FE colleges, sixth form colleges and specialist designated institutions

Introduction

1. Further Education (FE) colleges are integral to their local and regional communities, equipping people with the skills that employers need and want. It is essential that colleges continue to assess their long-term viability, are resilient to change, and are meeting the needs of learners.

2. All colleges need to be dynamic in their response to the ever-changing environment in which they operate. Changes that colleges should be aware of might include:

- a change to demographics in their area;
- increased competition;
- a widening range of skills needed by local and regional employers; or
- upcoming financial challenges.

3. The ultimate responsibility of any college corporation is to ensure their college maintains financial sustainability to deliver high quality education. In light of this, college governors need to ensure they are holding college leaders to account for robust forward planning. Periodic strategic reviews involving governors, college leaders and stakeholders are essential. Through this process, governors should regularly consider whether a SPA is relevant to their college.

4. If a college believes that restructuring may be an effective way of adapting to these challenges, the Commissioner-Led Structure and Prospects Appraisal (SPA) process enables them to do this in a clear, objective, and evidence based way. Any college can ask the FE Commissioner's team to lead a SPA, regardless of their current financial situation or the quality of their provision. Possible outcomes of a SPA include:

- merger;
- internal restructure;
- academisation;
- disaggregation (in which part of the college becomes a separate entity);
- curriculum and estates rationalisation;
- maintaining the status quo; or
- closure.

5. This document outlines the process that the FE Commissioner's team, with significant support from the ESFA, will follow when leading a SPA. It is not designed to

set out a SPA process undertaken by a college independently, or replace existing guidance on this area.¹

The Role of the Corporation

6. FE Corporations act as social enterprises serving learners and employers. In ensuring that what they are delivering is right for their area and communities, they should periodically review their mission, governance, structures and delivery model.² This is set alongside the responsibility of a corporation to ensure the continuing financial viability of their college.³

7. There may also be an opportunity to simply organise provision more effectively to improve quality or efficiency. It is the corporation's role as independent trustees to consider whether the college has the right structure to achieve its overall objectives.

8. Colleges are independent and it is the responsibility of their corporations to consider the case for structural change. The SPA process sets out a considered, evidence-based way to do this.⁴ While colleges can undertake their own SPAs, any college may wish to ask the FE Commissioner for support in conducting a SPA. The FE Commissioner's team has considerable expertise in evaluating the potential options and presenting a clear analysis to the governing body.⁵ Any college which is likely to require Government financial support for structural change must request an FE Commissioner-Led SPA.

The Case for a Commissioner-Led SPA

9. Implementation of the insolvency regime for colleges is likely to coincide with Exceptional Financial Support no longer being available. Therefore, it is critical that colleges regularly assess their viability, their financial resilience to an unexpected change in income, their resilience to changes in other areas, such as learner and employer needs, and their ability to continue to be able to provide excellent opportunities for their

¹ Further education funding: structure and prospects appraisals guidance:

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

² As specialist designated institutions do not have a corporation, these institution's governing bodies will perform the role of the corporation within the remit of this document.

³ For the purposes of this document, the term 'colleges' covers FE colleges, sixth form colleges and specialist designated institutions

⁴ Some structural changes may not need a SPA, for example, changes to staffing structures. The FE Commissioner's Team will be able to advise colleges on where a SPA is appropriate.

⁵ The FE Commissioner's team will support colleges to find a merger partner if the SPA recommends it. However, implementation of other outcomes from a SPA, such as an internal restructure, is not likely to require the same degree of FE Commissioner team support.

learners in the long term. This is particularly important for colleges who remained standalone after the Area Reviews, without access to Restructuring Facility support.

10. All colleges need to think carefully about the best structure to enable them to deliver high quality, sustainable provision for learners and employers. This particularly applies where a college has identified significant risks to quality or financial health. However any college may decide that there are opportunities to organise provision in their local area more effectively which should be tested through an objective process.

11. The SPA is an organised process to assess options to change structure, provision, or both. Any college that foresees a change in circumstances, has any doubt about their ability to sufficiently improve quality or maintain financial stability, or is in a position that suggests their delivery model should change, should consider a SPA. As well as a college requesting it, an FE Commissioner-led SPA may be recommended after formal intervention, a Diagnostic Assessment, or by the FE Commissioner's team in another advisory capacity.

Benefits of the FE Commissioner's Team Leading a SPA

12. The FE Commissioner's team is a centrally-funded resource, which means that colleges can minimise the need to divert funds from their core activities in order to undertake their own SPA.

13. As former highly experienced FE leaders who understand the way colleges work, the FE Commissioner's team has a huge amount of experience and expertise that can be used to help colleges assess their restructuring options. If necessary, the team can also provide valuable support to help the college find appropriate partners.

14. Through an FE Commissioner-led SPA, colleges can expect:

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

The Commissioner-Led SPA Process

15. Once college corporations have agreed to undertake a SPA, they should contact the FE Commissioner's team as soon as possible.⁶ The FE Commissioner's team will then consider what help is necessary, and will arrange, with the college, to provide support and lead the SPA process, if appropriate. An outline SPA process diagram can be found in **Annex A**.

16. The SPA process is overseen by a Steering Group which is chaired by the FE Commissioner or a Deputy FE Commissioner and is likely to include:

- the Principal/Chief Executive of the subject college;
- the Clerk (and where appropriate the Director of Finance);
- the Chair of the college corporation governing body;
- a small number of other experienced governors;
- representatives of the ESFA.

Assessing Options

17. The SPA process will involve an analysis of the college's current situation and likely future sustainability. This information is assessed in order to make recommendations on a preferred restructuring option, if a restructuring is considered necessary. The FE Commissioner's team, with support from the ESFA, will support this process by:

- **Scrutinising publically available information.** Information gathered may include local demography, educational attainment, employment patterns, Local Enterprise Partnership (LEP) priorities, local authority priorities, areas of deprivation.
- **Scrutinising information held by the college and submitted to the ESFA by the college.** Information that will be considered might include the college's financial position, information on quality of teaching and learning, and systems of governance, the college's curriculum offer, quality information (including Ofsted outcomes), learner numbers (including trends), and travel to learn patterns.
- **Engaging with stakeholders, such as LEPs, Local Authorities or Mayoral Combined Authorities, and the relevant Regional Schools Commissioner,**

⁶ The FE Commissioner's team can be contacted by email at: FE.COMMISSIONER@education.gov.uk, or colleges can enquire about SPAs through their local ESFA team.

as appropriate.⁷ Further stakeholder consultation may be required to update and expand on evidence collected during Area Reviews. Those being consulted may include local learners, employers, communities, local MPs, and staff.

- **Analysing this information to compile a shortlist of options and a recommendation for a way forward.**⁸ The steering group will agree a set of criteria to help select a recommendation.

Criteria for Making a Decision

18. There are a set of core criteria which a college corporation should consider and use to evaluate options in making its decision in relation to the college's future structure:

- How will the area's educational needs be met by the college and other institutions?
- How will the areas economic and business needs be met?
- How will the quality of provision for current and future learners be sustained and improved?
- How will value for money and sustained financial viability be achieved, and the College's existing financial liabilities be addressed? (This includes meeting the Area Review financial benchmarks, and considering future financial stability for up to 5 years)

19. In making this assessment, the Corporation should consider a broader range of factors which are integral to the effective performance of the college:⁹

- What are the plans for delivering effective strategic leadership and management of this provision?
- What are the plans for investment?
- What impact do proposals have on staff?
- What impact do proposals have on learners?
- What impact do proposals have on employers?
- What impact do proposals have on the local community?
- What impact do proposals have on overall provision in the locality?

⁷ If the SPA is being undertaken by a sixth-form college, and the college is linked to a Diocese or Trust, the Diocese or Trust for the college will be consulted.

⁸ This may include merger, internal restructure, curriculum and estates rationalisation, academisation, disaggregation, maintaining the status quo, or closure.

⁹ This list is not comprehensive, and other criteria might be included depending on the local situation.

20. Once a recommendation has been adopted by the corporation, the FE Commissioner's Team can advise on the next steps. In particular, the FE Commissioner's Team will be able to offer advice on implementing the outcome of this stage of the SPA.

Potential Outcomes

21. A structure and prospects assessment could lead to the following outcomes, which are not mutually exclusive:

- Continuation of the college as a stand-alone organisation.
- Changes to the college's business model, or a re-evaluation of its geographical presence.
- Merger with another FE corporation.
- Dividing the college's delivery, with some aspects of it taken on by other institutions (disaggregation).
- An application to the Restructuring Facility.
- Realignment of provision with other neighbouring colleges.

Mergers

22. In some cases, FE Commissioner-led SPAs will lead to a merger; if they do, selecting a partner will usually involve running a competition, and the FE Commissioner's team, with support from the ESFA, will help colleges to run a competition process and choose a partner.

23. The FE Commissioner's team and the ESFA will support the college by:

- **Supporting the steering group to set criteria for approaching organisations that may be interested in a merger.** At the start of the competition, the FE Commissioner's Team will work with the supported college to set initial criteria for organisations that will be approached about a possible merger. This is usually done by setting out a geographical area within which FE organisations will be approached to register their interest.¹⁰
- **Supporting the college to engage with organisations that the steering group has identified as potential partners, to assess appetite for merger.** Colleges that do register interest are likely to be asked for some initial

¹⁰ Expressions of Interest will not generally be considered from organisations outside of the scope of the partner search.

information, to help advise the interested party on whether submitting an Expression of Interest (EOI) is worthwhile.

- **Support the college to assess EOIs from potential partner organisations, and drawing up a shortlist.** After receiving EOIs from organisations that may be interested in merging, the FE Commissioner’s team will support the subject college to create a shortlist of interested parties to invite to present to the steering group. The criteria for selecting a shortlist will be agreed by the steering group, and is likely to be similar to that set out in paragraphs 15 and 16.
- **Facilitate information sharing with shortlisted potential partners, including by brokering site visits.** Once a shortlist of interested parties has been agreed, potential partners will generally require access to the physical site of the supported college (to evaluate the condition of the estate) and to detailed information about the financial and quality performance of the college.
- **A member of the FE Commissioner’s team will chair a meeting of the steering group to assess presentations from shortlisted organisations.** The shortlisted potential partners will be invited to present to a panel, which will include representatives of the supported college, the FE Commissioner’s team, and the ESFA. Again, this panel will use similar criteria to those set out in paragraphs 15 and 16.

24. Potential merger options may be evaluated against a stand-alone option, or other options such as disaggregation.

Recommending a Merger Partner after the Competition Phase

25. The supported college’s corporation will ultimately decide the organisation with which they will merge¹¹. However, the FE Commissioner’s team supports the college to select a merger partner by guiding them through the SPA process from soliciting Expressions of Interest to choosing a preferred partner.

26. The FE Commissioner’s team will work with the college and the ESFA to assess the strengths and weaknesses of each option, and in particular, the degree to which each option is financially viable and meets the educational needs of the area. The steering group will regularly review progress at each stage of the process. The FE Commissioner’s team will present the analysis to the steering group.

¹¹ If the college is in formal intervention and/or administered status, then a higher level of scrutiny and oversight of Board decisions is likely to be in place. See *FE colleges: intervention policy and the FE Commissioner role* at: <https://www.gov.uk/government/publications/fe-colleges-intervention-policy-and-the-fe-commissioner-role>

27. The decision to proceed with any option for structural change following a SPA rests with the college's corporation. It will be important that in making this decision corporations carefully consider the analysis. This may present a finally balanced judgement for the corporation to make between competing alternatives, or in some cases that there will be only one viable proposal.

Disaggregation

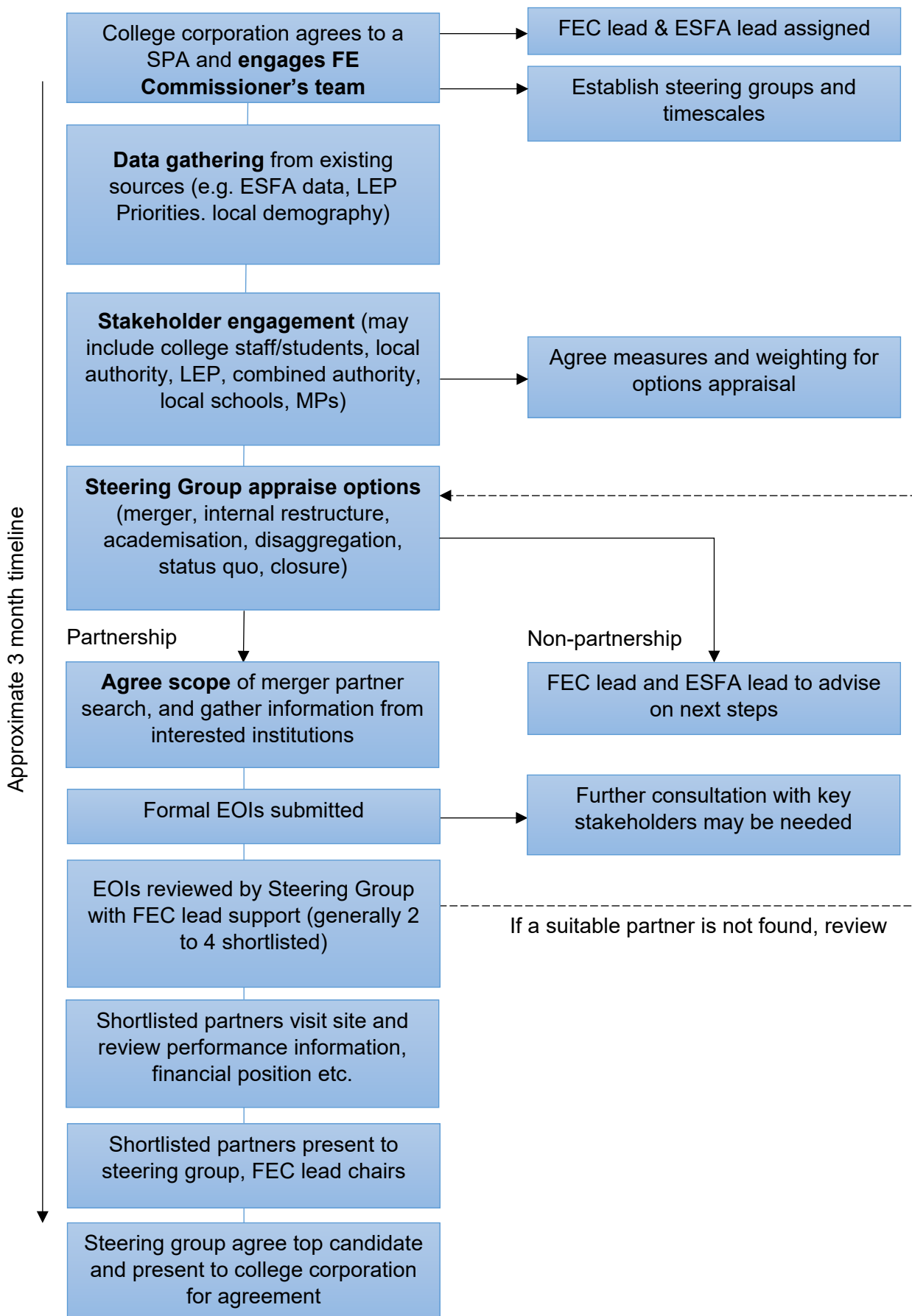
28. In some circumstances a valid option for a SPA may be for some aspect of the college's provision, or for one of its sites to be taken on by another institution which is not the merger partner. This may take place either alongside stand-alone or merger. The same considerations and principles should apply in evaluating this option. In this case there may be further involvement from the ESFA, and the FE Commissioner's team in agreeing the financial settlement for dividing the college's assets and liabilities between successor institutions. This may also take place in the context of an application to the Restructuring Facility.

Support Following the SPA

29. Whether the SPA has ended in a merger, or another outcome, such as disaggregation or academisation, has been agreed as a result of the SPA, the ESFA will work with the college on implementation. If appropriate, the FE Commissioner's team will be available to provide advice. In the case of mergers, further information can be found in the Area Review Implementation Guidance.¹²

¹² See *Further education area reviews: guidance on restructuring* at: <https://www.gov.uk/government/publications/further-education-area-reviews-guidance-on-restructuring>

Annex A – FE Commissioner-Led SPA Process Map





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