

Provider Risk Assessment and Management

This document describes how the Skills Funding Agency will integrate the high-level 'New Challenges, New Chances' approach into its operational processes.

July 2012

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Provider Risk Assessment and Management

Background

- 1 The Department for Business, Innovation and Skills (BIS) policy document 'New Challenges, New Chances' sets out a revised approach to intervention for the adult further education and skills sector to ensure that where learners' and employers' needs are not being met and/or performance is poor, the Government will intervene quickly and effectively to restore high-quality provision.
- 2 This document describes the how the Agency will integrate the high-level 'New Challenges, New Chances' approach into its operational processes for Provider¹ Risk Assessment and Management and how the Chief Executive of Skills Funding will exercise his/her powers and duties to meet the policy intent of 'New Challenges, New Chances' across all providers.
- 3 Market entry and exit will be controlled through the Agency's Register of Training Organisations. This document is focused on the end-to-end process for the assessment and management of risk associated with providers in receipt of funding from the Chief Executive of Skills Funding for education and training.
- 4 The legislative changes introduced through the Education Act 2011 mean that the only powers the Chief Executive of Skills Funding possesses to effect change in provider behaviour are: the power to fund post-19 provision, and the power to impose conditions of funding to seek assurance that public money and learners' interests are being protected. Therefore the process and actions described below are based on the use of these powers. The duties of the Chief Executive of Skills Funding remain to secure sufficient post-19 provision and to make best use of resources.
- 5 We do not expect the abolition of the statutory post of Chief Executive of Skills Funding and transfer of funding powers to the Secretary of State to have a significant impact on the processes set out below. We anticipate that decisions about the post-19 funding of individual providers will be delegated to the executive agency of the Department for Business, Innovation and Skills.
- 6 The statutory intervention powers of the Secretary of State in relation to Further Education Corporations, which are set out in the Education Act 2011, are distinct from the powers and duties of the Chief Executive of Skills Funding. It is the policy intention that the statutory powers of the Secretary of State would be used only in the final stage of intervention (see Annex A) where direction of a Further Education Corporation to

¹ The term 'Providers' is used to include colleges, training organisations, local authorities and employers in receipt of funding from the Chief Executive of Skills Funding to deliver education and training.

secure leadership change, or to dissolve itself, is the most appropriate and necessary intervention to protect learners' interests.

- 7 In the case of providers funded through a contract for services, the assessment, escalation and intervention process set out in the contract will apply.

Risk Assessment

- 8 The starting point for the Agency is the assessment of the risk of a provider failing to deliver post-19 provision that makes efficient and effective use of public funds. There is a range of factors that are considered as part of this assessment including:
 - quality of provision
 - delivery of provision
 - delivery model
 - financial stability
 - control of public funds
 - significant change.
- 9 Information on any of these factors may cause the Agency to seek additional assurance that the provider has the necessary controls in place to protect public money and meet the needs of learners. If the Agency does not receive assurance at this stage, the provider may be subject to heightened account management, but would not necessarily move into the formal intervention escalation process. These risk assessment factors are shared with the Education Funding Agency (EFA) and both Agencies will work closely together where providers have pre- and post-19 learners
- 10 The following factors that have been identified as triggers in 'New Challenges, New Chances' will however lead to the Agency taking action:
 - a a provider receiving an "inadequate" Ofsted inspection judgement for overall effectiveness
 - b provision falling below the post-19 Minimum Quality Standards being developed as a successor to the current Minimum Levels of Performance (the Department for Education (DfE) is currently reviewing the mechanism for determining any pre-19 minimum standards that might apply)
 - c a provider being rated as "inadequate" by the Agency for financial health or financial control.
- 11 The Agency view of the provider base is brought together on a quarterly basis through the Agency's Provider Risk Assessment Matrix Review Group, which includes representation from all functions within the Agency, and from the National Apprenticeship Service and the EFA. This group considers information and intelligence on providers in order to make recommendations about moving providers into or out of the Agency's formal risk management arrangements and moving between

stages of the process. The recommendations are approved by the Agency's Delivery, Capacity and Infrastructure Board (Executive Directors) prior to any actions being taken.

- 12 Each quarter, the Agency will publish summary information in relation to the numbers of providers at each stage of the risk management process, but will not share details of individual providers with third parties other than as stated in this document.
- 13 Where the assessment of risk results in the identification of a generic issue or theme, the Agency will convene an Enquiry Panel to determine the appropriate management response and to identify any changes to policy, process or documentation that may be required to mitigate the risk. The Enquiry Panel will be chaired by a member of the Agency's Executive Management Team and will include representation from internal functions and external partners as appropriate.

Risk Management – Intervention Escalation Process

- 14 The intervention process set out in 'New Challenges, New Chances' has three stages, and the Agency has aligned its approach to provider risk management with these stages. A flowchart of the process is provided at Annex A.

Stage 1: Monitoring and Support

- 15 'New Challenges, New Chances' states that a college that has fallen below standards in relation to financial health, financial control, Ofsted judgement or Minimum Levels of Performance (which will be replaced by post-19 Minimum Quality Standards) will be issued with an "Inadequacy Warning – Notice of Concerns".
- 16 To make it clear to providers where they are in the stages of the intervention escalation process, at Stage 1, the Agency will issue an "Inadequacy Warning – Notice of Concerns" to any college that has failed to meet standards or maintain controls of public funding as set out in paragraph 10. Providers funded under a contract for services will receive a notice of breach in accordance with the terms of the contract
- 17 The Notice of Concerns will set out the evidence required from the college to restore the Agency's confidence that public funds are fully protected and the needs of learners are being met, together with clear timescales for the Agency to assess whether or not the concerns have been addressed and full assurance can be restored. The timescales will be aligned with the availability of information (for example, success rates, financial accounts, re-inspection) and milestones will be identified to ensure that progress is being made towards addressing the concerns. Similarly a notice of breach issued under the contract for services will set out the breaches of contract and the actions required to remedy those breaches.
- 18 Support to address the concerns will be available from the (Learning and Skills Improvement Service (LSIS) for colleges, as set out in 'New

Challenges, New Chances'. The Agency will alert the LSIS Improvement Development Service when a Notice of Concerns is issued.

- 19 In recognition of the serious nature of the concerns at this stage, there will normally be additional conditions of funding imposed by the Agency on colleges, including restrictions on growth, until such time as the concerns have been addressed. Additional conditions may also be imposed by DfE/EFA in respect of its funding. There may be exceptional circumstances where there is evidence that the concerns do not impact on specific areas of provision, or where progress is being made swiftly towards addressing the concerns where these additional conditions of funding may be modified before the end of the Notice period.
- 20 If the college successfully addresses the concerns within the timescales the Notice of Concerns, and any associated additional conditions of funding, will be lifted.

Stage 2: Intensive Support

- 21 If a college does not address the concerns within the timescales, or is not making the necessary progress against the milestones, the Agency will move to Stage 2 of the escalation process. A provider who receives a breach notice under the contract for services and who fails to comply with the requirements to remedy a serious breach, may be required to suspend the recruitment of learners, have funding withdrawn for the part of the service to which the breach applies, or have its contract terminated.
- 22 Colleges will be issued with an "Inadequacy Warning – Notice of Withdrawal of Post-19 Funding". This Notice is designed to make it clear to the college that the consequences of failure to address the Agency's concerns are fundamental and profound; it is for the college to identify and present the action that it believes will address those concerns.
- 23 The Notice of Withdrawal of Funding of Post-19 Funding will allow the college a final opportunity to provide a clear and robust plan that demonstrates how they will address the concerns identified in Stage 1 and how they will efficiently and effectively deliver education and training that meets learners' and employers' needs.
- 24 Given the gravity of a Notice of Withdrawal of Post-19 Funding in terms of services to learners, a college served with such a notice will be required to carry out a Structure and Prospects Appraisal to identify a way forward using the framework and criteria set out in 'New Challenges, New Chances'. If a college reaches this stage of the intervention escalation process, it is an indication that the existing leadership and structure has failed to address the Agency's concerns. Therefore for a proposal to be considered robust, it would be expected to include leadership change and/or consideration of alternative structural models.
- 25 Specialist support will be available to colleges through the LSIS Escalated Intervention Service (EIS). The support from LSIS will consist

of an experienced senior team recruited from the FE sector, including experts with transformational change management experience, high level intervention skills and prior experience of working or leading outstanding colleges and/or in turning round failing colleges. The team will support the college leadership and governors in carrying out a Structures and Prospects Appraisal that will help develop a robust proposal which is intended to bring about significant new opportunities and outcomes for learners. The Appraisal and subsequent proposal should normally be completed within three months from the start of the LSIS support period. The college is not obliged to accept the support from LSIS, but if it does not then the Agency will want to understand how the college will ensure it has sufficient support to identify an effective solution.

- 26 If the college develops a robust plan that is supported by stakeholders including the local authority, EFA and DfE, and which involves open, transparent and (if necessary) competitive processes for its implementation, the Agency will not withdraw post-19 funding. Timescales and evidence requirements will be agreed to ensure rigorous monitoring of progress in implementing the college's plan. Once the college's plan is agreed and accepted by the Agency, LSIS can offer further subsidised support to the college for implementation.

Stage 3: Government Leads Action

- 27 If the college does not have a robust plan at Stage 2, or is not making the necessary progress in implementing its plan, the Agency will move to Stage 3 of the intervention escalation process and confirm its decision to withdraw funding. The Agency will consult the Department for Business, Innovation and Skills and consider whether it is appropriate to request the Secretary of State to use statutory powers of intervention to direct the Corporation to take appropriate action.
- 28 If Withdrawal of Post-19 Funding is confirmed for any type of provider, the provider will be removed from the Register of Training Organisations and arrangements will be made for learners to continue their studies with alternative providers. The provider will be expected to assist the Agency in making these arrangements.
- 29 The Agency will consider the most appropriate market mechanism to secure alternative post-19 provision; this may be through competition, negotiation with local providers, or a combination of both approaches. The DfE and EFA will consider with the local authority what the best arrangements are for pre-19 provision, subject to existing market capacity in the area.

Exceptions

- 30 Any repeat of the need to issue a Notice of Concerns within an agreed timescale would indicate that the problem had not been resolved and

therefore the college will move straight to Stage 2 and a Notice of Withdrawal of Post-19 Funding or breach notice will be issued.

- 31 Where significant amounts of public funds are at risk, or where there is significant risk to learners, the Agency reserves the right to accelerate the process.

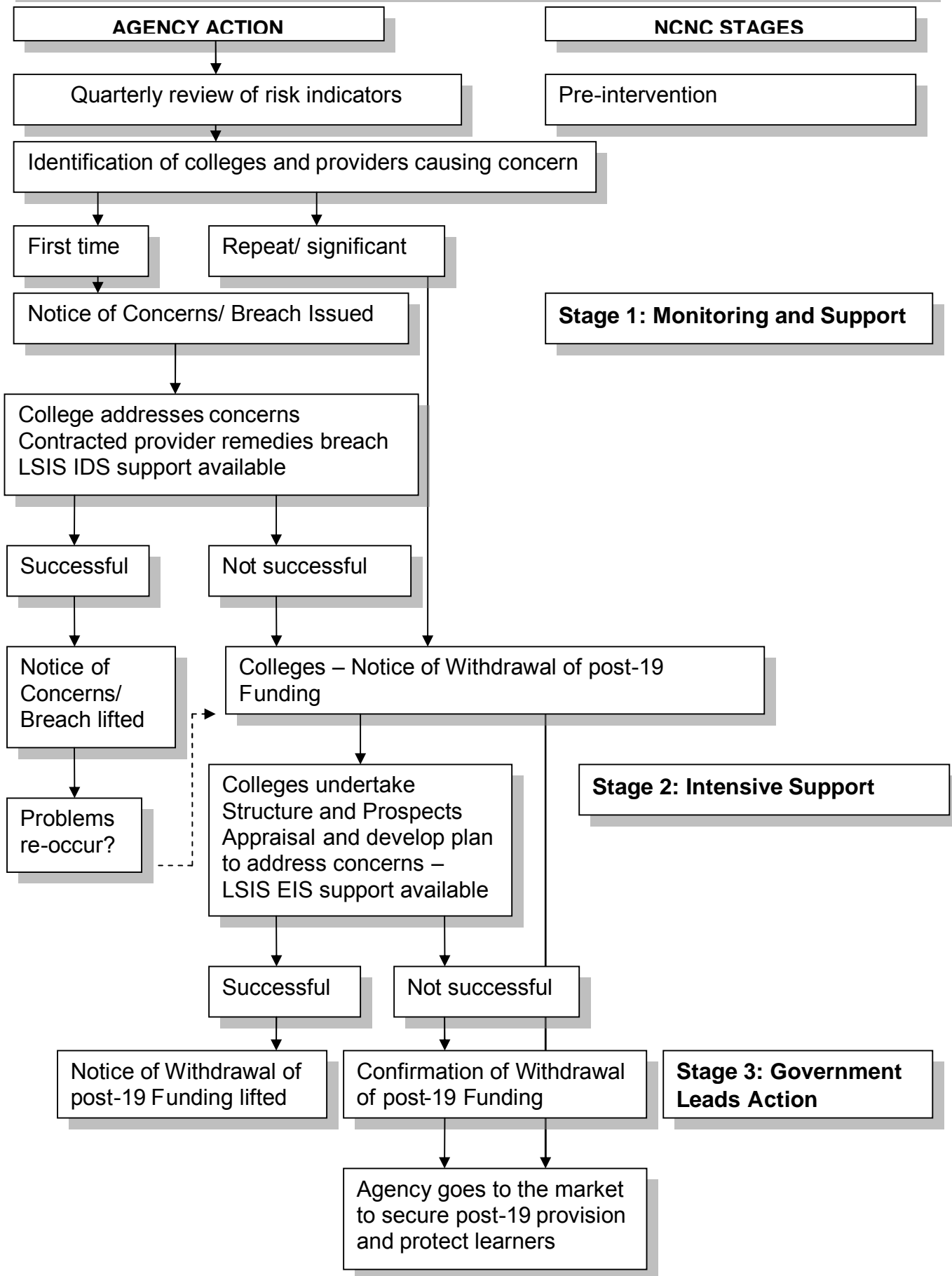
Cross-Government Working

- 32 At all stages of the process, the Agency will work closely with the EFA to ensure that issues affecting 16-18 year-olds are addressed and that there is continuity of 16-18 provision. This does not necessarily mean that the solutions identified at Stage 2 or Stage 3 of the intervention escalation process will be the same for pre- and post-19 provision. It may also be the case that where a college is also an Academy sponsor, DfE will wish to consider whether it should retain that sponsorship role.
- 33 The Agency expects that the EFA and/or DfE will engage and involve relevant local authorities as appropriate, while maintaining necessary controls to ensure that local authorities do not secure an advantageous position should either or both agencies have to tender for provision.
- 34 The Agency recognises that if it is ever obliged to withdraw post-19 funding from a college or provider, the EFA may wish to take a different approach to securing a market solution for the benefit of 16-18 learners from that taken by the Agency to meet the needs of post-19 learners. The Agency will work closely with the EFA to ensure that a coherent plan is developed and implemented to ensure that the needs of all learners are protected and met, regardless of potentially different routes or mechanisms to secure new or replacement provision.
- 35 The Agency shares relevant information with Ofsted, to ensure a consistent view of the provider base, and with LSIS, in order to identify support requirements at an early stage. The Agency also informs the Higher Education Funding Council for England if a Notice of Withdrawal of Post-19 Funding is issued, as any resulting structural change, or moving to Stage 3 of intervention, may have implications for higher education learners.
- 36 The Agency keeps BIS informed as providers move through the intervention process so that Ministers can be assured that action is being taken to address underperformance in line with the policy intent of 'New Challenges, New Chances'. When a college reaches Stage 2 of the process, the Agency will begin to discuss contingency plans and any potential role for the Secretary of State (for example, if a college reaches Stage 3, it may be necessary for the Secretary of State to use statutory powers of intervention to direct the Corporation to make changes or to dissolve if funding has been withdrawn).
- 37 An overview of roles and responsibilities is provided in Annex B.

Timing and Transition

- 38 The Agency has already implemented the approach to risk assessment described above and will implement the approach to risk management through the intervention escalation process from the start of the academic year 2012/13.
- 39 Any current Notices to Improve that are not due to be lifted before August 2012 will be converted into Notices of Concerns. The Agency will write to all providers affected as soon as possible.

ANNEX A: INTERVENTION ESCALATION PROCESS IN LINE WITH 'NEW CHALLENGES, NEW CHANCES' (NCNC)



Annex B: ROLES AND RESPONSIBILITIES

STAGE	ROLES		
	AGENCY	DEPARTMENTS BIS/ DfE	OTHERS
<p>Pre-Stage 1. Risk Assessment</p>	<p>Identifies emerging risks and trends through analysis of data and information recorded on Provider Risk Assessment Matrix</p> <p>Collates and shares data with Ofsted, EFA, LSIS</p>	<p>Monitor emerging risks and trends to inform future developments</p>	<p>LSIS – develops pre-emptive support programmes in response to emerging risks and trends</p>
<p>Stage 1. Monitoring and Support</p> <p>Provider fails to meet measures set out in NCNC</p>	<p>Identifies problem through Provider Risk Assessment Matrix</p> <p>Agrees action through Agency management groups</p> <p>Issues Notice and lifts Notice if concerns are successfully addressed</p> <p>Alerts LSIS IDS for colleges</p> <p>Agrees milestones and measurement with provider</p> <p>Monitors provider's progress in addressing concerns during Notice period</p>	<p>Review summary data from Matrix and intervention cases at stocktake meetings with the Agency</p> <p>Monitor progress of intervention cases as part of overall FE sector performance monitoring</p> <p>Agree policy where 16-18 provision involved</p> <p>Alert Ministers where progress is not being made and statutory intervention may be necessary</p>	<p>EFA – brings LA view for 16-18</p> <p>LSIS – provides IDS support during Notice period. Reports progress/ issues to Agency</p>
<p>Stage 2. Intensive Support</p> <p>College undertakes Structures and Prospects Appraisal and develops plan to address concerns</p>	<p>Identifies failure to address concerns outlined in Stage 1</p> <p>Agrees action through Agency management groups</p> <p>Issues formal notification of moving to Stage 2</p> <p>Alerts LSIS EIS for colleges</p> <p>Reviews college plan/ provider response to determine whether it will address concerns</p> <p>If plan is acceptable, agrees milestones and measurement for implementation and monitors progress</p> <p>Removes Notice as/when necessary</p> <p>If significant doubts about</p>	<p>Monitor progress as part of overall FE sector performance monitoring.</p> <p>BIS comments on any contingency plans, in relation to consistency with policy framework & any role proposed for Secretary of State</p> <p>BIS agrees policy with DfE where 16-18 provision involved.</p>	<p>LSIS – EIS Team deployed to help Governors make strategic decisions. Reports progress to Agency.</p> <p>LSIS – offers implementation support if required</p> <p>EFA – brings LA view for 16-18</p> <p>Local Stakeholders - are consulted as part of the Appraisal and support the college's plan</p>

STAGE	ROLES		
	AGENCY	DEPARTMENTS BIS/ DfE	OTHERS
	<p>college or provider direction, then draws up contingency plan</p> <p>Communicates any concerns and contingency plans for colleges to BIS</p>		
<p>3. Government Leads Action</p> <p>Appraisal outcome not robust, plan does not receive local stakeholder acceptance or support from funding bodies or implementation of previously accepted plan fails</p>	<p>Implements contingency plans</p> <p>Confirms withdrawal of funding if necessary (including notice period to ensure orderly transition for learners)</p> <p>Secures alternative provision through competition, negotiation or a combination depending on market circumstances and needs analysis</p>	<p>Alert Ministers and/or request decisions, including use of statutory powers, to direct corporation to secure leadership change or dissolve</p> <p>BIS agrees policy with DfE where 16-18 provision involved</p>	<p>LSIS – may provide support to Governors to assist development of dissolution proposals</p> <p>EFA – agree procurement approach if 16-18 provision involved (not necessarily the same approach as for post-19 provision)</p>

Skills Funding Agency
Cheylesmore House
Quinton Road
Coventry CV1 2WT
T 0845 377 5000
F 024 7682 3675
www.bis.gov.uk/skillsfundingagency



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