



Department
for Education

Area reviews of post- 16 education and training institutions

Implementation guidance

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Introduction

Each area review of post-16 education and training is expected to lead to in-principle agreement to a set of recommendations for creating stronger, more sustainable institutions and an offer that meets the area's educational and economic needs. In many cases, implementing recommendations will represent a complex project which must be carefully managed if it is to succeed.

Who is this guidance for?

This document is intended to act as a resource for colleges undertaking restructuring of various kinds in response to area review recommendations. This may include mergers, federation, establishment of joint ventures or shared services, as well as curriculum rationalisation or expansion of delivery via apprenticeship companies. Colleges who will be continuing as standalone institutions but which are nevertheless embarking on significant change programmes following area review recommendations may also find the principles set out here useful. Separate guidance is available on becoming an academy for sixth-form colleges.¹

Although the guidance given here is intended to be as broadly applicable as possible, each institution will face its own particular challenges in restructuring. College governors and leaders will want to obtain their own independent legal and financial advice. Colleges can also make use of support available to them from other colleges, membership networks and sector bodies.

The challenges of implementing area review recommendations are not to be underestimated. College leaders will want to move quickly to ensure that they carry out thorough planning in order to successfully bid for approvals and funding from creditors and government as necessary. Alongside this, colleges will recognise the importance of continuing to deliver an effective day-to-day service to learners and employers.

Although this guidance is primarily of interest to colleges, it may also be relevant to stakeholders involved in restructuring. In particular, it is recognised that Local Enterprise Partnerships (LEPs) and local authorities will be able to play an important role in supporting colleges through the change, building on the good partnerships developed during the area review itself. Government is publishing guidance for LEPs and local authorities on the role they can play alongside this guidance.

¹[Becoming a 16 to 19 academy: advice for sixth form colleges](#)

About this guidance

This guidance gives an outline of the processes involved in progressing from area review recommendations to restructured institutions, providing links to further guidance where necessary. This is not an exhaustive to-do list for implementation, but rather a broad overview of the processes that are likely to be involved.

‘Section One: Timeline’ presents an overview of the implementation process, structured into a series of phases. At each phase, the document lists major actions and decisions to be taken, indicating best practice and highlighting important considerations. In practice, these phases, whilst broadly successive, are likely to overlap to some degree.

‘Section Two: Essential Considerations’ provides information on a range of other practical and policy matters that colleges will want to take into account as part of the implementation process. This section outlines key aspects of each topic and provides links to sources of further guidance where applicable.

Annex A provides a list of other sources of guidance and recommended reading, including links to relevant documents.

Guidance presented here has been developed based on lessons learned from previous mergers and reorganisations in the further education sector, as well as experience from restructuring elsewhere. It builds on and supersedes guidance given on implementation in the March 2016 area review publication. This new guidance should be read in conjunction with:

- Updated Area Review Guidance (March 2016)²
- Transition Grant Guidance and Restructuring Facility Guidance³
- Due Diligence Framework (to be published alongside this document)

Guidance presented here is based on the legal and policy framework at the time of publication.

Status of this guidance

Nothing in this guidance represents legal advice to colleges or others and all colleges, governors and those with management responsibility need to ensure that appropriate independent legal and financial advice is taken at suitable points during the process of implementation.

² [Updated Area Review Guidance](#)

³ [Transition Grant Guidance](#) and [Restructuring Facility Guidance](#)

Key principles

Taking account of lessons from previous restructuring, the following key principles have been developed, and will be critical to success in all cases:

- **Good planning and project management.**
- **Have the right expertise in place to manage change.** Expertise in restructuring is essential.
- **Strong governance and leadership of transformation.** The leadership team, both governors and senior managers, must have the capacity and skills to manage the change and put in place clear governance arrangements which enable issues and risks to be escalated and handled effectively.
- **Engage early on and continuously with learners, employers, staff and all stakeholders** (e.g. banks, funding agencies, pension funds, LEPs, and local authorities, as well as other interested organisations).
- **Commitment to a shared vision is needed from all parties to the restructuring.**
- **Clear accountability and lines of decision making.**

From recommendations to implementation

All area reviews result in a set of recommendations from the Steering Group being put to governing bodies of institutions concerned. By this point, options for recommendations have already been subject to testing against benchmarks and educational and economic needs, amongst other criteria. Governing bodies, having deliberated, will reach an in-principle decision. This guidance sets out how colleges can navigate the journey from in-principle decision to completed implementation.

Colleges involved in a restructuring must have a shared vision regarding what the end result will look like, how to get there and likely timescales. There must be clarity on the terms of restructuring from the start. Models might include a merger, either of two or more colleges in a similar situation and/or with different strengths and weaknesses, or a takeover of an institution by a stronger or larger institution (e.g. a college group), or other forms of collaboration or restructuring, for example hard or soft federation, shared services or a joint venture.

In any case, clarity of aims, decision making and accountability will be essential. Each instance of restructuring will be in some respects unique, and the guidance given in this publication will need to be adapted to suit the relevant context.

Timing

The implementation process is presented here as a series of phases, each covering a number of key actions. Exact sequencing and timing of actions will vary from case to case and colleges will want to set their own timelines for restructuring and carry out careful planning from the outset. This should take into account local circumstances, but also the need to capitalise on the momentum established in the review process, realising the benefits of the restructuring as early as possible. There are some fixed points to bear in mind, including:

- Applications for Transition Grants should be made within 2 months of the date of the final Steering Group meeting.
- Applications to the Restructuring Facility should be made within 6 months of the date of the final Steering Group meeting.
- Colleges seeking to dissolve as part of a merger must publish proposals and carry out consultation at least four months before the date of dissolution, consulting for at least one month, ideally during college term time.

These parameters should help to provide a structure for implementation, and to keep momentum going, whilst ensuring the target date for any formal legal transition is realistic.

Engaging stakeholders

There should be a clear, proactive internal and external communication strategy regarding proposals and benefits throughout the process. This should include key decision-makers such as banks, local authorities, LEPs, funding agencies and pension schemes, as well as stakeholders such as staff, students, unions, parents/carers, employers and local press.

Communication with those likely to be interested in or affected by the changes will be critical to a smooth transition. Those leading the change should build the confidence of staff, students, parents, employers and the local community by making sure that the impact of changes on local provision and local needs, and how the transition process will be managed, are clearly explained and understood. These stakeholders should be proactively engaged, giving them an opportunity to express their views and raise any questions about implementation of the planned changes

Section One: Timeline

Overview

This section gives an overview of the implementation process as set out in this document. ‘Actions’ are covered in Section One, and ‘Essential Considerations’ in Section Two. These phases should be underpinned by a communications plan which ensures effective consultation and communication with learners, employers and stakeholders.

Phase	Phase 1: The right people with the right skills	Phase 2: Planning	Phase 3: Approvals	Phase 4: Legal transition and delivery
Actions (Section One)	<ul style="list-style-type: none"> Appoint Transition Board Appoint a restructuring and change management team Apply for a Transition Grant Agree a communications plan 	<ul style="list-style-type: none"> Develop strategic business case Appoint new institution’s leadership Develop detailed Implementation Plan, including integrated financial model and commercial strategy 	<ul style="list-style-type: none"> Public consultation Discussions with lenders and bank approvals Due diligence Apply to Restructuring Facility 	<ul style="list-style-type: none"> Legal transition to new institution Delivery of Implementation Plan
Essential considerations (Section Two)	<ul style="list-style-type: none"> Clerks to governing bodies and their role Training and support for governors and senior leaders 	<ul style="list-style-type: none"> Apprenticeship delivery Clawback of capital Commercial strategy Equality Impact Assessment Higher Education provision Local Government Pension Scheme Post-16 skills plan Remuneration of principals TUPE Technology VAT on buildings VAT on shared services 	<ul style="list-style-type: none"> Capital funding Name changes 	<ul style="list-style-type: none"> Monitoring of implementation

Phase 1: The right people with the right skills

Actions:

Appoint Transition Board

Appoint a restructuring and change management team

Apply for a Transition Grant

Agree a communications plan

Essential considerations:

Clerks to governing bodies and their role

Training and support for governors and senior leaders

Appoint a Transition Board

A Transition Board is a temporary body formed specifically with the purpose of overseeing the restructuring. It is supported by a dedicated change management and restructuring team.

The Transition Board should be set up as soon as possible, to provide the capacity to drive forward implementation, allowing existing boards to focus on day to day oversight of the existing institutions. It is likely to include some governors from existing boards of all institutions involved, but should also have new, independent membership. Transformation must be seen as a joint project, with full commitment from all parties.

Choosing a Transition Board chair

Given the nature of the role, the Transition Board chair should ideally be someone with experience of overseeing major structural change of a similar size and nature to the restructuring to be undertaken and with strong commercial skills. The chair should have the confidence of all predecessor boards and needs to be seen as an impartial figure. In most cases, this will be best achieved by appointing a chair who is independent of existing institutions. In all cases, the role should be filled quickly through a fair, objective and transparent process.

Getting the right skills in place

Governing a major restructuring project requires a different skill set to business as usual leadership of a steady-state institution. The Transition Board should have the right capabilities; experience of organisational change and restructuring will be particularly important in order to be effective in its oversight role.

Some of these skills may be found among members of the existing boards. Institutions should conduct a skills audit of existing boards to consider who might serve on the Transition Board, identifying overall strengths and gaps in capability.

New membership from outside the boards of predecessor institutions helps to improve focus on joint goals, and move beyond the perspective of two or more separate institutions. This is particularly important where the merger is bringing together two institutions in a similar position. Even in a takeover scenario, an external perspective and particularly experience of restructuring beyond the college sector will add value.

In addition to formal meetings, engaging members of the Transition Board in small working groups (with a mixed membership in terms of prior institutions) can help to promote shared ownership of the project, and may enable progress to be made faster on some issues.

Meeting outstanding capability gaps could involve appointing new governors, non-executive board members or advisers. Where relevant, institutions may also wish to consider training for members of the Transition Board. Sources of such training might include the Education and Training Foundation (ETF), and the Association of Colleges (AoC) amongst others. More information on support available is given in Section Two.

Even where colleges are not merging, implementing area review recommendations requires strong governance, and experience and understanding of transformation projects will be a significant benefit to the board. For example, a college may continue as a standalone institution but embark on a significant change programme, or may be undertaking a soft federation, joint venture or shared services project. In such cases, at an early stage a skills audit of governors would also be beneficial.

Relationship between Transition Board and existing boards

The role of the Transition Board is to oversee the project that delivers the restructuring. Members who also sit on the boards of existing colleges should therefore see it as their role to support the delivery of the benefits that structural change is designed to achieve, rather than simply representing the interests of their existing institution.

To be effective in its role, the Transition Board will require appropriate authority delegated from the boards of the existing institutions. The existing boards will continue to have formal responsibility for final approval of certain key decisions as part of the restructuring process, and will continue to be important stakeholders. The fullest possible delegation to the Transition Board is, however, critical to ensure clarity of leadership and speed of decision making. From the outset, there should be agreement on processes for decision making and accountability between the Transition Board and existing boards, for example concerning allocation of a budget for restructuring. Such delegation to the Transition Board must of course be consistent with the legal duties of governors, including under charity and trust law, and with each college's governance documents.

Remunerating governors

Colleges may wish to consider applying for permission to remunerate particular members of the Transition Board or governing body, including the chair, especially where it is necessary to appoint new members to fill particular skills gaps, or where involvement in the restructuring process is likely to lead to significant demands on a particular governor's time.

In order to approve such remuneration, a case must be made to the Charity Commission. Guidance from the Charity Commission can be found online.⁴ The AoC has also published guidance on applying to remunerate a governor. Applicants will need to put forward a robust case, which will be thoroughly tested by the Charity Commission. Case studies of examples of where remuneration has been used in the past are available.⁵

Appoint a restructuring and change management team

Change management is different from running a steady state institution. It is critical to get the right expertise in place early in order to ensure swift progression in planning and approvals. Having the right leadership to manage the transition, supported by a strong team, will build momentum and ensure confidence with stakeholders around delivery.

Restructuring and change management should be led by a senior executive with the relevant experience to lead and manage the transition, assisted by additional restructuring support as necessary, including a project team. This guidance refers to this role as the restructuring director – although it is sometimes known elsewhere as a turnaround director or transition director.

The Transition Board should be responsible for appointing an individual to this role, and for putting in place the project team. The restructuring director will:

- Be accountable to the Transition Board for the practical planning and delivery of the change.
- Be responsible for creation of the strategic business case and Implementation Plan, as well as stakeholder management.
- Have a key role in delivering the transformation following the planning phase.

⁴ [Payments to charity trustees: what the rules are ; A review of Further Education and Sixth Form College Governance: report on findings and recommendations](#)

⁵ [A review of Further Education and Sixth Form College Governance: report on findings and recommendations](#)

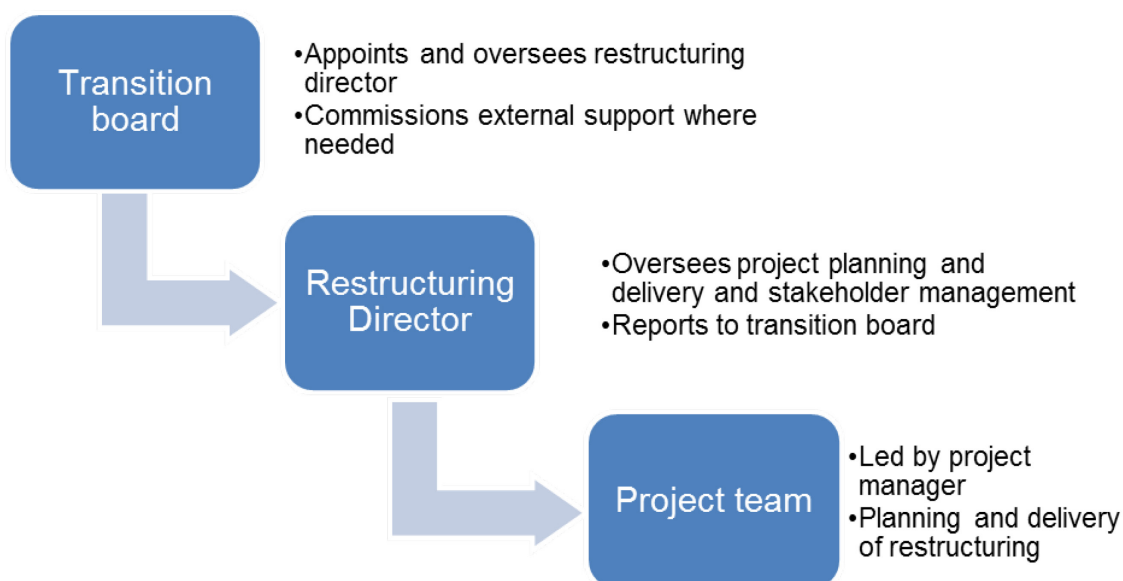
The restructuring director will need to be supported by a project team. That team could be made up of external contractors (either a larger organisation offering a range of services, or by a number of individuals/smaller company), or a mixture of external support and internal staff.

Procuring external support

In many cases, colleges will not have sufficient restructuring expertise or capacity on existing senior management teams and it will be appropriate to source external support to fill the roles of restructuring director and/or project team.

The Transition Board should establish what kind of support is needed, and make sure that this is what they procure (i.e. primarily restructuring, not just finance or audit). Full consideration should be given to value for money: procuring the wrong kind of support could have potentially damaging consequences for timely delivery of the transition.

There are clear advantages to recruiting support that will be able see the transition process through from beginning to completion. However, the Transition Board may, for example, decide to procure support quickly to prepare the initial strategic business case. They could then consider what capacity is needed to deliver the more detailed development of the Implementation Plan and subsequent delivery, and decide whether to secure new support elsewhere or to continue with existing providers.



Apply for a Transition Grant

A grant of up to £100,000 is available for each significant change arising from the recommendations of an area review. This is intended to support colleges in putting the right skill set in place to implement recommendations. Guidance on how to apply can be found on GOV.UK.⁶

Agree a communications plan

Effective communication and consultation with learners, employers, staff and other key stakeholders is a central part of any restructuring. The Transition Board will want to ensure that a communications plan is developed as early as possible. The communications plan is a key part of implementation and as such we would expect the restructuring director to be responsible for its development and for managing stakeholder engagement throughout the implementation process, working with the existing institutions to ensure effective use of established channels.

The communications plan should ensure that key stakeholders, staff and customers are all aware of the restructuring plans and how they will be communicated with, as well as what arrangements will be available to enable them to feedback and input where appropriate. Governors of the existing institutions will have a particular interest in ensuring that communications are effective and careful thought will need to be given to their approval of communications.

The Education and Training Foundation (ETF) is preparing an effective practice guide on staff communications in area reviews. This guide is based on lessons learnt thus far and is available online.⁷

⁶ [Transition Grant Guidance](#)

⁷ [ETF effective practice guide](#)

Phase 2: Planning

Actions:

Develop strategic business case

Appoint new institution's leadership

Develop detailed Implementation Plan, including integrated financial model and commercial strategy

Essential considerations:

Apprenticeship delivery

Clawback of capital

Commercial strategy

Equality Impact Assessment

Higher Education provision

Local Government Pension Scheme (LGPS)

Post-16 skills plan

Remuneration of principals

Technology

TUPE

VAT on buildings

VAT on shared services

Develop strategic business case

The purpose of the strategic business case is to provide the rationale for the restructuring. It serves as the basis for more detailed planning, and also supports early engagement with stakeholders, setting out a vision for the new institution, and the benefits to be achieved by the structural change.

The Transition Board should be responsible for overseeing production of the strategic business case by the restructuring director and team. This should be completed early in the implementation process, and should be concise, realistic and based on robust

evidence, building on the area review data and analysis. The strategic business case should cover:

- Nature of planned change and organisational structure of the new institution.
- Rationale for restructuring, including the educational, economic, and financial case.
- High level financial plan for the institution post-change, including plans for increasing efficiencies and diversifying income.

The strategic business case is necessarily high level but should consider the full range of issues relevant to decision making on the viability of restructuring. Likely implementation costs should be identified from the outset, but full details can be elaborated in more depth in the Implementation Plan. Identifying any concerns at this stage and confirming the rationale for proposals will help to avoid delays later on.

The high level financial plan involves combining financial plans of the two institutions together and making an initial assessment of impact of synergies. This should ideally include progress against benchmarks and 3 year monthly cash flow forecasts for the reformed institution, taking account of synergies.

The strategic business case should be shared and, where it would be beneficial, developed with key stakeholders, including banks, in order to secure initial support and facilitate discussions on how to progress towards formal approvals and implementation. Colleges should also draw on the material in the strategic business case when communicating with staff, students, employers and other stakeholders such as local authorities, LEPs and other interested parties.

Appoint new institution's leadership

Assuming that a new college is to be established, the 'organisational structure' element of the strategic business case should set out the leadership structure for the new institution, giving consideration to skills and capabilities required in both the governing body and the senior leadership team.

Once this has been developed and shared with stakeholders, the Transition Board should agree the appointment process for the board and senior leadership of the new institution. At this stage, the focus should be on appointments of the chair and board of governors of the new institution, followed by the clerk and the principal.⁸ All appointments should be made through a fair and transparent process. Parties independent of either

⁸ 'Principal' here refers to the individual in charge of the day-to-day operation and management of an institution, who may also be referred to as the CEO or by another title.

institution may also be involved in this process in order to help ensure fairness and balance. This might include local employers, LEP, local authority or combined authority.

Chair of Governors

The nature of the restructuring and the leadership needs of the new institution should inform the person specification for its chair. In some circumstances, this may lead to appointment of a chair who is independent of predecessor institutions. In other circumstances, with different leadership needs, this may not be the case. The Transition Board chair could, in principle, also go on to be the chair of the permanent institution, depending on skills and the qualities sought.

Principal

As with the chair of governors, any restructuring will have implications for the responsibilities of the principal of the new institution. These need to be carefully considered on a case by case basis when drawing up a person specification for the new role.

The Transition Board will want to be sure that the future management has the right skills to lead the future institution, taking into account challenges associated with realising the vision set out in the strategic business case, and with the management of a significantly larger institution. Financial and commercial understanding are likely to be important, as is the ability to deliver through others as part of a skilled senior management team.

A principal of the one of the existing institutions may be a strong candidate for the new role – particularly where there is a clear takeover of a smaller college by a larger, more strongly performing institution. This should not, however, be an automatic choice. Experience from the sector shows that there can be clear advantages to an open competition in which external candidates are also considered.⁹

Develop detailed Implementation Plan, including integrated financial model

The Implementation Plan sets out in detail how the strategic business case (including the educational and economic case) will be delivered. The plan needs to be bottom up, including (for example) the strategy for improving the quality and relevance of the curriculum, estates strategy, use of IT and a commercial strategy. The plan provides the detail that will underpin the business case and the financial forecasts.

⁹[Current models of collaboration – post 14 further education](#)

The plan will support discussions with creditors as well as applications to the Restructuring Facility. The plan should be developed by the restructuring director and overseen by the Transition Board.

Key elements of the Implementation Plan are:

- **What:** A detailed business plan for the new institution including progress against quality and financial benchmarks and three year monthly integrated financial model with cash flow forecast showing cash flow available for debt service (CFADS)¹⁰ with fully documented assumptions.
- **How and when:** Fully elaborated implementation delivery plan, including all actions required to deliver the change, resources and costs required to carry out the actions and also how the benefits identified in the Strategic Business Case will be obtained as a consequence. The plan should also provide practical evidence of the ability to deliver those actions, including risks and assumptions.
- **Who:** Project governance, management, and key individuals.

The [Restructuring Facility guidance](#) gives a detailed list of elements to be included in the Implementation Plan. Lenders or other stakeholders may wish to see additional content, and exact requirements should be established at an early stage.

¹⁰ Template available from restructuringfacility@sfa.bis.gov.uk

Phase 3: Approvals and funding

Actions:

Public consultation

Discussions with lenders and bank approvals

Due diligence

Apply to Restructuring Facility

Essential considerations:

Capital funding

Name changes

Public consultation

Where colleges are to dissolve as part of a merger, public consultation should be undertaken in accordance with the relevant legal requirements. Given the length of time required for consultation, this process might be undertaken in parallel with other actions, for example discussions on funding. Colleges should ensure that consultation fits appropriately with the timeline for restructuring, recognising different stakeholder interests.

A college seeking to dissolve must follow the process set out in legislation.¹¹ This includes publishing a proposal at least four months before the date of dissolution in at least one national and one local newspaper, and consulting with stakeholders as defined in the regulations. The college intending to dissolve must, as part of its proposal, identify a suitable institution to take on provision of education for students who are already on courses, and set out the proposed arrangements for the transfer of its property, rights and liabilities to a prescribed body.¹² In a Type B merger, this recipient will normally be the continuing institution.

¹¹ [The Further Education Corporations \(Publication of Proposals\) \(England\) Regulations 2012](#) or [The Sixth Form College Corporations \(Publication of Proposals\) \(England\) Regulations 2012](#)

¹² The list of prescribed bodies is set out in [The Dissolution of Further Education Corporations and Sixth Form College Corporations \(Prescribed Bodies\) Regulations 2012](#)

The college must consult for at least one month following publication of the proposal, consider the responses and publish a consultation summary within two months of the consultation closing. The Corporation can then make a resolution to dissolve.

Discussions with lenders and bank approvals

In many cases, colleges involved in structural change will have existing bank loans, and therefore require bank consent for certain types of changes to take place. There may also be an application for further bank funding to meet costs associated with restructuring. Where colleges involved in the change are in a more challenging financial position and all other possible sources of funding have been exhausted, it is likely that there will also be an application to the Restructuring Facility. This will also be subject to conditions and approval.

Bank decision making process:

The processes to be completed ahead of a bank making a decision on whether or not to support the proposed restructure (either by providing new funding or by extending/novating existing financial facilities) are likely to be time and resource intensive, and incur costs. Important factors include:

- The banks' lending appetite for lending associate with the restructuring, which will reflect amongst other things repayment ability, level of risk and security.
- The pricing and term on offer.
- Lending terms and covenants.
- The details and costing of the bank-related processes, e.g. cost of due diligence, break costs, novation fees etc.

Colleges need to ensure that their business case takes account of all of these aspects. Colleges will also require the correct skill set to manage interactions with the bank.

Engaging with banks regularly from early on will help in gauging their level of support before the detailed financial assessment process is launched. This early engagement will be supported by the strategic business case. As discussions progress, and in order to approve any funding applications, banks will need to see the detailed Implementation Plan.

In making decisions, banks are likely to focus on the quality of the business plan, the quality of the Implementation Plan (including financial projections and 36 month cash flow

forecast), along with the quality of management and leadership (including the restructuring director and senior leadership), and repayment ability.

Where the funding required to undertake restructuring cannot be met from the colleges' existing funds, from private lending or from other sources, colleges will want to consider applying to the Restructuring Facility (see below).

Due diligence

Most types of restructuring will require due diligence to some extent, in order to gain necessary approvals. Due diligence is an important part of the work needed to satisfy colleges and their stakeholders of the likely success of the proposed structural change. All parties to a proposed restructuring will want to understand how the key risks identified during due diligence will be mitigated in the final Implementation Plan which supports the restructuring.

The 'Framework for Due Diligence following Area Reviews of Post-16 Education and Training Institutions' has been produced for colleges undertaking restructuring following an area review and is published alongside this guidance. It has been developed through wide consultation with a range of colleges, professional advisors, lenders, other users of due diligence and other stakeholders to a restructuring. It aims to:

- Achieve better alignment between the requirements for due diligence by multiple organisations and stakeholders involved in structural change in colleges;
- Help colleges commission due diligence that is proportionate to need, cost effective and commissioned at the right time to ensure it meets stakeholders' needs
- Avoid duplication of effort, time and cost where possible.

Colleges are encouraged to make use of this framework when planning and carrying out due diligence. By using the Framework from an early stage, colleges can steer a course through an assessment of the restructuring option they are taking forward.

Apply to the Restructuring Facility

Depending on the availability of bank funding and the financial position of the colleges undertaking restructuring, an application may be made to the Restructuring Facility for a loan to support implementation of an area review recommendation. Specific guidance has been published explaining how to apply to the Restructuring Facility.¹³

¹³ [Restructuring Facility Guidance](#)

Applications to the Restructuring Facility should be made within six months of the date of the final Steering Group meeting. Due diligence should be completed in advance of applications to the Restructuring Facility. Funds are likely to be released in tranches based on the achievement of milestones and compliance with any covenants set as part of the contracting process.

Phase 4: Transition to new institution and delivery of Implementation Plan

Actions:

Legal transition to new institution

Delivery of Implementation Plan

Essential considerations:

Monitoring of implementation

Legal transition to new institution

The exact processes for finalising the legal transition to the new institution will depend on the nature of the restructuring being undertaken.

For mergers, in most cases, one college will dissolve and transfer its property, rights and liabilities to another college. In this case the accepting corporation must meet and agree to accept the property, rights and liabilities of the dissolving corporation before the transfer can take place. Once this has been done, the resolution to dissolve can be made by the dissolving corporation.¹⁴

In some cases, two or more colleges will dissolve and a new corporation will be established. Procedures for such cases are described in legislation and in published guidance.¹⁵

Delivery of Implementation Plan

Once funding has been secured and any formal public consultation has been completed, and the governing bodies of existing institutions have formally agreed to merge or dissolve, the legal transformation will take place to move to the new structure. Once the new structure is in place, the board of the new institution will formally take on responsibility for delivery of the remaining actions set out in the Implementation Plan.

It is likely that there will be a significant volume of implementation actions that are scheduled to be completed after the formal legal transition. Colleges therefore need to ensure that there is adequate capacity to oversee the delivery of those actions. For

¹⁴ More information is available in [College Governance: A Guide](#)

¹⁵ See [College Governance: A Guide](#)

example, the board of the new institution may want to retain the Transition Board for that purpose, allowing the new institution's board to focus on day to day running of the institution. The project team and/or restructuring director may also have a continuing role. Whatever is decided, responsibility, accountability and decision making should be clearly apportioned here as throughout the restructuring process.

Section two: Essential considerations

This section provides high level information on a range of practical and policy matters for consideration in implementing area review recommendations. In many cases, awareness of these issues will be crucial to successful decision making in the implementation process. Subjects are listed alphabetically and, where appropriate, links are given to sources of further guidance. As with Section One, this is not intended to be a comprehensive checklist of considerations, but aims to cover the most important and most widely applicable issues.

Apprenticeship delivery

An important purpose of the area review programme is to ensure that colleges are well equipped to respond to the reform and expansion of the apprenticeship programme. Responding to new opportunities arising from that expansion should be reflected in both the strategic business case and the detailed Implementation Plan, including in the commercial strategy.

Areas may have been considering whether an Institute of Technology could help them deliver on their apprenticeship commitments and provide the technical education needed to meet local skills needs at higher levels. The Government is considering the process for developing Institutes of Technology with more detail to follow in autumn.

Benchmarks and Indicators

Benchmarks for improving quality and efficiency are published in Annex F of the March 2016 Area Review Guidance. These allow comparison of individual colleges against the sector as a whole. Every college is different and outliers are to be expected - but it is important that colleges understand where they are outliers and why that is that is the case.

Use of benchmarks in implementation

During the area review process, benchmarks will have been used to assess the options for change and they will therefore also be important for assessing the impact of the changes.

Colleges should look at the benchmarks in planning implementation, and in the longer term, post-restructuring, benchmarks will be one part of checking that a college is moving towards a financially sustainable position in the long term.

The benchmarks should always be considered within the wider context; taken as a whole and not in isolation. For example, there is little merit in having a very financially stable college which has poor learning outcomes which do not match local need.

Capital Funding

Under the Government's Local Growth Fund, LEPs will be awarded capital funding which can be used for a range of capital interventions. This is intended to promote flexible investment meeting the most important needs of local areas. Colleges should be aware that this is expected to be the only source of skills capital funding available for the remainder of this Parliament, and they will therefore want to ensure that they are in dialogue with their LEPs concerning any capital needs arising from area review recommendations required to support implementation.

Clawback of capital

The Secretary of State and the Chief Executive of the Skills Funding Agency and the Education Funding Agency are concerned with the appropriate use of those capital assets owned by a Further Education Corporation or Sixth-Form College Corporation that have been acquired, developed or redeveloped with public funding. Where a college intends to raise funds by disposing of such an asset, the SFA or EFA may have a right to claw back some or all of the grant. Corporations are advised to undertake early discussions with the funding agencies to identify the relevant assets and any potential repayment of some or all of the associated grant or proceeds of sale.

Clerks to governing bodies and their role

Letters and annual reports from the FE Commissioner have routinely highlighted the importance of appropriate clerking arrangements as a part of good governance.¹⁶ Clerks can act as a valuable source of advice and challenge on questions of governance, as well as helping to ensure that boards carry out their functions effectively and in accordance with correct procedures.

The Association of Colleges supports the National Clerks Network and has also produced a range of materials for training and support of clerks. This includes 'The Effective Clerk' (March 2015).¹⁷

Commercial strategy

One of the key considerations for institutions going forward should be developing a commercial strategy. This strategy should aim to maximize the opportunities that might be available to enhance the provision for students/employers and generate revenue from

¹⁶ [Further Education Commissioner Annual Report 2013/14](#)

¹⁷ [The Effective Clerk](#)

a wider range of sources including both apprenticeships, loans based learning and other forms of commercial income. This will be particularly important where two or more colleges are coming together and where a culture of building in a strong focus on looking for commercial opportunities is not part of the inherent behaviour of all the legacy colleges. , It should form a key part of the Implementation Plan.

Equality Impact Assessment

Under the Equality Act 2010, colleges have a duty to consider the potential equality impact (positive and negative) of their decisions against protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation). Equality matters will already have been considered as part of the area review, but governors of institutions implementing restructuring also have a duty to consider the equality impact of decisions, and will need to be able to demonstrate that impacts have been considered as part of detailed implementation planning. Written records should be kept of the analysis and decision-making.

For example, where mergers affected travel arrangements colleges involved in the decision making will need to consider the equality impacts of this. If there is a significant impact on a particular protected group they may want to think about mitigation of the impacts, for example through access to technology, introduction of new transport arrangements etc. Where a change in curriculum is being proposed, colleges will need to consider the equality impacts of this, for example, it could reduce the proportion of ethnic minority learners or female learners. Again, colleges may need to think about mitigation of those impacts.

Higher Education provision

Where colleges have existing higher education provision, restructuring may have implications for funding, data returns, quality assurance, student interest and public information, amongst other points. The Higher Education Funding Council for England (HEFCE) has developed guidance for colleges who are considering merging.¹⁸

Colleges considering merging should proactively contact HEFCE, so they can support colleges to ensure that Higher Education provision transitions effectively through the merger process. HEFCE will write to colleges it is advised are intending to merge highlighting the implications for Higher Education they will need to consider. This will also contain information HEFCE need from colleges so it can assure itself that proposed

¹⁸ <http://www.hefce.ac.uk/workprovide/hefe/fepolicy/areareviews/>

structural changes do not affect its legal ability to fund higher education in the new college.

Local Government Pension Schemes (LGPS)

Pensions costs, deficits and liabilities associated with existing institutions can be very significant and will be a factor in determining whether or not a proposed merger, takeover or restructure is financially viable.

Early engagement with pension funds will be essential, and pension costs and forecasts should be factored into any financial forecasts as early as possible.

An information note on the Local Government Pension Scheme is available in the members' area of the AoC and Sixth Form Colleges Association (SFCA) websites.

Monitoring of implementation

The aims of the area review process will only be realised if there is successful implementation of review recommendations. As such, progress in implementation will be of interest to local and national stakeholders, including Government. Primary responsibility for implementation of area review recommendations rests with the colleges concerned. This will be supported through oversight arrangements at a national and local level.

As part of the area review process, Steering Groups are encouraged to agree how implementation is to be monitored at a local level and the role that members of the group will play in ensuring that the benefits from the agreed recommendations are realised. The guidance for LEPs and local authorities published alongside this document gives more detail on how this might work.

At a national level, monitoring arrangements will be tailored to the level of risk associated with individual recommendations, and the scale of their impact. Monitoring will be carried out in the first instance by the funding agencies, with the FE Commissioner, Sixth-Form College Commissioner and Ministers also playing a role in oversight.

Name changes

Colleges who wish to change their name must apply for appropriate permission. Separate guidance is available on rules for changes of name for FE colleges¹⁹ and for sixth-form colleges.²⁰

Post-16 Skills Plan

The Government has recently announced the biggest reform of post-16 technical education for over seventy years with the publication of the Post-16 Skills Plan.²¹ These reforms follow a review led by an independent panel chaired by Lord Sainsbury.

There is a need for more highly skilled people; this is essential for our country's economic growth and also for social justice, so that all individuals can get a good job and enjoy higher living standards. Young people should have a choice at 16 between two equally high quality options: academic and technical. The reforms introduce 15 new occupational routes which will lead to skilled employment for both young people and adults.

Colleges are well-placed to play an important role in shaping and implementing these reforms, and area reviews will put them in a strong position to do so.

Remuneration of principals

Where colleges are restructuring following area reviews, the result is likely to be fewer, larger institutions, with principals taking on greater responsibilities. Additionally, some mergers or structural changes will result in a principal leaving their role under a severance agreement with financial package.

As independent corporations, colleges are themselves responsible for setting the pay and conditions of service of their staff. The governing body employs the principal of the college, appraises their performance and agrees their remuneration package. Further education corporations and sixth-form colleges are both classified as exempt charities, and governors as the charity trustees, are responsible for the control and management of the administration of their charity. In particular, as trustees, governors have a duty to:

- Ensure the charity is carrying out its purposes for the public benefit
- Comply with the governing document and the law (including employment law)

¹⁹ [Further Education Corporation Names: Guidance on changing existing corporation / college name or developing new names](#)

²⁰ [Sixth Form Colleges: apply to change name](#)

²¹ [Post-16 skills plan and independent report on technical education](#)

- Act in the charity's best interests (including acting as a good employer)
- Manage the charity's resources responsibly
- Ensure the charity is accountable²²

In agreeing remuneration or severance packages, governors will therefore need to consider their responsibilities as trustees and decide how they can best make fair and responsible use of resources to manage a smooth and successful structural change.

Governors should be aware that high value packages, whether for new or departing staff, are likely to attract public interest and questioning of whether the decision is in line with the charitable objectives of the college, particularly where (in the case of severance agreements) the package exceeds contractual requirements or is being paid to a principal with a record of poor performance.

Colleges are reminded that they are expected to publish information on their top three salaries.

Technology

Sharing back office services (pay, HR, administration etc.) can help deliver efficiencies. Technology can be used for curriculum delivery at distance or as part of a blended learning model. This can be significant in rural areas and promote inclusivity but can also drive improved outcomes in their own right.

Mergers will require integration of information technology systems across multiple sites. This can be time-consuming and complex and colleges will therefore want to consider it early in the planning process. The use of technology should be considered as an important part of implementation planning, including the need for specialist advice (both external and as part of the Senior Management Team skill-set), and in any application to the Restructuring Facility. Jisc, the not-for-profit organisation for digital services and solutions serving the UK higher, further education and skills sectors, is able to offer expert, neutral advice, both as part of the area review process and in any restructuring.

Jisc Offer

Colleges embarking on a change programme post area review have the opportunity within their planning to incorporate the digital technology they need to achieve their institutional goals. To enable every college to understand the technology they should

²² [The Essential Trustee](#); more information on the regulation of colleges as exempt charities is available in this [information note](#)

consider when entering implementation, Jisc has developed guidance that outlines the fundamental technology services.²³

The eleven fundamental services identified, including both Jisc and non-Jisc solutions, will help colleges to create a solid digital foundation to drive quality improvement and derive efficiencies. They are underpinned by essential services such as a resilient and secure network, learner enrolment and tracking, learner management systems, blended learning content, cross-workforce technology training and shared services. This guidance highlights the importance obtaining advice and guidance on digital technology early on to help inform the development of a college's digital strategy.

Jisc can also work with colleges to develop or review their digital strategy. This support can help colleges in developing their application to the Restructuring Facility and can also guide the organisation to maximise the potential of digital technology across everything they do, from enterprise systems through to business process and curriculum design.

Training and support for governors and senior leaders

There are many sources of guidance, training and support available to governors and senior leaders undertaking implementation of area review recommendations. Links to some sources of guidance are given in Annex A. In addition, some specialised sources of support from sector bodies are described below.

Education and Training Foundation

ETF has developed a specific programme of support to assist colleges throughout the area review process. In the implementation phase, college leaders will find the consultancy support offer of particular interest:

- Free half or full day consultancy offer to each college principal and chair emerging from each wave. This comprises a free session resulting in a needs analysis; tailored action plan identifying the executive and non-executive skills required and support with elaboration of the workforce development sections of the Implementation Plan.
- Specialist support programme for principals and chairs focussing on managing newly merged and large colleges.

²³ <https://www.jisc.ac.uk/guides/fundamental-technology-services-every-college-should-embrace-during-area-review-implementation>.

Other initiatives likely to be helpful during implementation include:

- Support for governing bodies in the form of one to one support from a governance expert/leader (National Leaders of Governors)
- Ongoing professional development provision with a range of courses and online resources available on the ETF leadership and governance portal www.elmag.org.uk (Excellence in Leadership, Management, and Governance).
- A number of new programmes in development to provide senior teams with additional support through the area review process. This includes equipping middle managers to take on more accountability, improve decision making, handle change and prepare for working in a differently configured institution. Principals are also keen to identify the managers of the future. ETF is therefore working with colleges to develop a short course for aspiring leaders, and first line management and middle management development programmes.

Additional bespoke support may be arranged on an Area basis, or by arrangement with individual organisations/consortia. These initiatives form part of ETF's wider programme of support to the sector.²⁴

Association of Colleges

Support is also available from the Association of Colleges. More information is available at the AoC website and in Annex A.²⁵

Sixth Form Colleges' Association

A range of guidance and support materials is available to sixth-form colleges on the area review & academies section of the SFCA website.²⁶

TUPE

TUPE stands for the Transfer of Undertakings (Protection of Employment) regulations. TUPE applies when employees' roles and/or terms and conditions are being transferred from one organisation to another, with continuity of employment being maintained.

The effect of TUPE in relation to college restructuring is, in broad terms, as follows:

²⁴ Full details can be found on the [ETF website](#).

²⁵ [AoC website](#)

²⁶ [SFCA Website](#)

- Contracts for employees of a college whose business is being transferred as part of the restructuring will be transferred so that they will automatically become employed by the new merged college on their existing terms and conditions of employment. This includes pension arrangements;
- Colleges must inform representatives of employees affected by a proposed merger of the plans for merger and changes which may result from it. In some cases consultation may also be required;
- Collective agreements may still be applicable to the new merged college; and
- Trade union recognition may remain in place.

Further guidance is available in 'Employment Law Issues arising from College Mergers - Guidance for Colleges' (Association of Colleges, February 2016)

Acas guidance on TUPE is available.²⁷

VAT on buildings

Where a college holds a VAT exemption certificate for a building that will change ownership directly as a result of an area review recommendation (notably becoming an academy or merger) and this will require the repayment of VAT, a compensatory payment may (subject to an assessment of the information) be provided from the Restructuring Facility. Further details, including how to apply, are available in the Restructuring Facility guidance.²⁸

VAT on shared services

Many colleges have already set up organisations to provide shared services with other colleges in a more cost efficient way, and more colleges may enter into this kind of arrangement as a result of the area review process. A VAT exemption applies when two or more organisations with exempt and/or non-business activities join together on a cooperative basis to form a separate, independent entity (a cost sharing group) to supply themselves with certain services at cost and exempt from VAT. The HMRC VAT Cost Sharing Exemption Manual provides more information on this subject.²⁹

²⁷ [Acas guidance on TUPE](#)

²⁸ [Restructuring Facility guidance](#)

²⁹ [HMRC VAT Cost Sharing Exemption Manual](#)

Annex A – Sources of guidance and recommended reading

Area Review Guidance

Document	Description	Link
Reviewing post-16 Education and Training Institutions (July 2015)	Guidance covering the rationale for area reviews, the structure of the area review process and the roles of the different parties involved.	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446516/BIS-15-433-reviewing-post-16-education-policy.pdf
'Reviewing post-16 education and training institutions: Updated guidance on area reviews (March 2016)	Updated guidance on area reviews.	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520838/BIS-16-118-reviewing-post-16-education-and-training-institutions-updated-guidance-on-area-reviews.pdf

Guidance for colleges undertaking restructuring

Document	Description	Link
Transition Grants guidance: area reviews of post-16 education and training institutions (April 2016)	Explains purpose of Transition Grants and how to submit an application.	https://www.gov.uk/government/publications/post-16-education-and-training-institutions-transition-grants-for-area-reviews/transition-grants-guidance-area-reviews-of-post-16-education-and-training-institutions
Restructuring facility guidance and application forms (May 2016)	Explains purpose of and conditions for Restructuring Facility, as well as how to apply.	https://www.gov.uk/government/publications/post-16-education-and-training-institutions-apply-for-financial-support-for-area-reviews

Document	Description	Link
Framework for Due Diligence (September 2016)	Explains the process, timing and key issues colleges may need to consider when undertaking due diligence as part of mergers.	
Guidance for Local Enterprise Partnerships, Combined Authorities and Local Authorities (September 2016)	Intended to help LEPs, Local Authorities and Combined Authorities engage effectively with area reviews.	
Current Models of Collaboration – Post 14 Education (June 2015)	Report drawing on evaluation of mergers and models of collaboration in the college sector, aiming to increase understanding of existing models.	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437848/bis_15_324_current_models_of_collaboration_-_post_14_Further_Education_2.pdf

Guidance on college leadership and governance

Document	Description	Link
College Governance: a Guide	Describes the environment in which FE colleges operate and sets out the framework by which they are accountable to the learners, employers and communities they serve.	https://www.gov.uk/government/publications/college-governance-how-further-education-colleges-operate

Guidance from other bodies

As described in Section Two, a variety of guidance and advice to support colleges is available from sector organisations and other sources.

A range of information on college mergers is available [from AoC](#).

Annex B – List of abbreviations used

AoC – Association of Colleges

CFADS – Cash Flow Available for Debt Service

DfE – Department of Education

EFA – Education Funding Agency

ETF – Education and Training Foundation

LEP – Local Enterprise Partnership

LGPS – Local Government Pension Scheme

SFA – Skills Funding Agency

SFCA – Sixth Form Colleges' Association

TUPE – Transfer of Undertakings (Protection of Employment)



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