



Department
for Education

Intervention policy in colleges and expansion of the Further Education Commissioner role

November 2017

Contents

1. Introduction	3
An expanded role for the FE Commissioner	3
2. Diagnostic Assessment and Targeted Support	5
Triggering targeted support	5
Targeted support process	6
Outcomes and recommendations	6
Escalation to formal intervention	7
3. Formal Intervention	8
Intervention process	8
Recommendations	8
Monitoring and Review	9
Ending the FE Commissioner's intervention	10
4. Accountability, Oversight and Co-ordination	11
Annex A: Process Diagrams	12
Further Education Intervention: Overview	12
Formal Intervention: Process	13

Expiry or review date

This document will be reviewed before November 2018

1. Introduction

- 1.1. The Further Education (FE) Commissioner role was established in 2013 as an independent adviser to ministers. The Commissioner was given responsibility for assessing the capacity of leadership and governance in colleges¹ and in local authority ESFA funded adult learning services that have serious weakness in quality or financial health. The role is non-statutory, with the responsibility for regulating colleges as exempt charities resting with the Secretary of State, alongside legal powers of intervention under the Further and Higher Education Act 1992.
- 1.2. In July 2017, the Secretary of State for Education announced that the FE Commissioner would take on a broader role. This includes engaging with colleges earlier to support more rapid improvement, and reduce the number that require formal intervention. Two new sources of support - a Strategic College Improvement Fund and a National Leaders of Further Education program - will underpin this expanded role.
- 1.3. Colleges remain independent and their governing bodies are accountable for their performance. The role of the FE Commissioner is to make recommendations for actions that college governing bodies should take to improve. The responsibility for effectively carrying out those actions, and for holding leadership teams to account remains with the college Corporation.
- 1.4. The role of the FE Commissioner is closely aligned with that of the Education and Skills Funding Agency (ESFA), with both sitting within the Department for Education (DfE). The ESFA funds education and training, and is also responsible for regulating and assessing the financial health of colleges. There are a number of other organisations with roles in assessing the performance of colleges, and supporting improvement, including Ofsted, the Education and Training Foundation and the Institute for Apprenticeships.

An expanded role for the FE Commissioner

- 1.5. The large majority of colleges are Ofsted Good or Outstanding. There has been progress in relation to the number of colleges that are Ofsted Inadequate, all of which are subject to FE Commissioner Intervention. Greater action needs to be taken to support progress in colleges that are Ofsted Requires Improvement (RI)

¹ For the purposes of this document, the term 'colleges' covers FE colleges, sixth form colleges and specialist designated institutions

– which until now have not attracted any engagement from the Commissioner. In some cases, colleges have remained RI through multiple inspections.

- 1.6. There are strong links between a college's quality and its financial health. Following the area review programme, significant progress is being made in addressing colleges in the weakest financial position – providing stronger leadership through mergers and support to improve governance. This has included substantial support from the restructuring facility to deliver structural changes which will improve the financial resilience of colleges, and enhance outcomes for learners. However, there are still a significant proportion of colleges which need to strengthen their financial health.²
- 1.7. The expanded role for the FE Commissioner will focus on earlier engagement with colleges with significant risks, or that are failing to improve. By engaging with colleges earlier, the FE Commissioner will be able to support leadership teams and governing bodies with recommendations that will enable improvement to be accelerated. The Commissioner will now also be able to recommend that colleges access greater support to strengthen their capacity – including through the Strategic College Improvement Fund and National Leaders of Further Education. This approach is intended to enable colleges to improve faster, reducing the impact of poor performance on learners, and the likelihood of the college requiring formal intervention.
- 1.8. Many colleges identified to be at risk will already be taking appropriate actions to improve or strengthen their capability. The FE Commissioner's engagement will serve to verify their approach, and recommend measures that could be taken to accelerate it. Colleges in this position are likely to benefit from additional support – including from college leaders who have experience of securing improvement in standards. In some cases, colleges will not be improving because their leadership and governance arrangements need to be substantially strengthened. In this case, it is important to act early to minimise the impact on learners, and the cost and time involved in securing improvement.

² The ESFA identifies for Early Intervention colleges which have not yet reached a trigger for formal financial intervention to support a rapid turnaround at lower cost to public funds whilst maintaining quality learning and outcomes. Where a college fails to demonstrate sufficient progress the ESFA can, through the provisions in the funding agreement, escalate to formal intervention.

2. Diagnostic Assessment and Targeted Support

- 2.1. The 'diagnostic assessment' process will enable the FE Commissioner to broker support for colleges that are 'at risk' from a quality and/or financial perspective but who have not reached a trigger for formal intervention. The diagnostic assessment process acts alongside the ongoing ESFA approaches to early intervention and risk assessment.
- 2.2. In exceptional cases, in the event that the diagnostic assessment finds evidence of a high risk of failure in quality or financial performance, or serious gaps in the capability of a college to address the issues identified, the college can be escalated for formal intervention.

Triggering targeted support

- 2.3. The FE Commissioner and the ESFA will jointly consider a series of risk indicators that result in a 'targeted support pool' that will be the group of colleges that are in scope for a diagnostic assessment. The pool will consist of:
 - all colleges that have an Ofsted RI rating and/or Ofsted RI or Inadequate for apprenticeships;
 - all colleges assessed by ESFA to be in early intervention for financial health.³
- 2.4. The FE Commissioner and the ESFA will work together to prioritise engagement within that group, taking into account a range of information and risk factors for example:
 - Ofsted trend data (in particular where a college has consecutively been judged to be RI or identified issues with a substantial provision area);
 - whether a college has recently completed or is judged to be on track to complete a structural change and the financial/inspection position of the colleges involved;
 - if, generally, a college would benefit from targeted support – for instance, where a college is improving but would benefit from challenge to accelerate the process.

³ If a college is in ESFA early intervention this will continue and not every college in early intervention for finance will be referred to the FE Commissioner.

Targeted support process

- 2.5. Where colleges are referred for a diagnostic assessment, the college principal and chair of governors will receive a letter from the FE Commissioner setting out the reasons for the assessment, and confirming the agenda. A diagnostic assessment can be conducted by the FE Commissioner or a member of his team.
- 2.6. The diagnostic assessment will normally comprise of a two-day visit and will be an opportunity to:
- review the college's financial and educational performance, self-assessment and improvement plans;
 - meet with the leadership team, governing body, student and union representatives and other key personnel;
 - assess the capacity and capability of leadership and governance to see improvement through.
- 2.7. The FE Commissioner will fact-check their findings and recommendations with the college, before feeding back to the chair and principal, outlining the outcome and recommendations from the assessment.

Outcomes and recommendations

- 2.8. There are three possible outcomes from a diagnostic assessment:
- An endorsement of the college's approach. While there may have been significant failings, the college has robust plans in place to address the issues identified, and senior management has the capacity to secure improvement.
 - Suggested actions to strengthen or supplement existing improvement plans. While the college's leadership has the capacity to lead improvement in financial health and/or quality, the existing improvement plans need further strengthening to ensure that improvement is rapidly secured.
 - Escalation to formal intervention (detail at para 2.10). If the college does not have the capacity to secure sustainable improvement in financial health and/or quality, and enhanced oversight is required.
- 2.9. Where a college needs to strengthen or supplement its existing improvement plans, the report from the diagnostic assessment will set out the additional improvement needs to be addressed. Where this will require significant funds, it would be expected that the college apply to the Strategic College Improvement Fund.

Escalation to formal intervention

2.10. Escalation to formal intervention from a diagnostic assessment means that strong action is required quickly, which is likely to include leadership and governance change, or potentially a structural solution. It is anticipated that escalation to formal intervention will only occur in exceptional cases, for example if the diagnostic assessment leads to a judgement that:

- the college is not taking action, or has no realistic plan to improve areas which have been flagged for concern by Ofsted or the EFSA;
- existing leadership and/or governance at the college is an impediment to securing necessary improvement.

2.11. In these cases, the FE Commissioner will write to the college to indicate that they are 'minded' to escalate the college for formal intervention. In doing so the FE Commissioner will set out their reasons for that view and given the college a short period in which to respond. The reasons may include:

- significant failures in governance, which may be evidenced by substantial non-compliance with the relevant code or other widely applicable standard;
- lack of appropriate financial and/or quality skills on the board;
- financial plans are based on weak or inaccurate assumptions of future income and expenditure.

3. Formal Intervention

3.1. The four trigger points for formal intervention will now be:

- an Ofsted inspection assessment of inadequate for overall effectiveness; and/or
- an inadequate assessment for financial health and/or financial management and control by the ESFA; and/or
- failure to meet national minimum standards of performance set by DfE; and/or
- in certain circumstances, escalation to formal intervention following a diagnostic assessment, by the FE Commissioner, as set out in Chapter 2.

Intervention process

- 3.2. Colleges and local authority ESFA funded adult learning services that have triggered formal intervention will be subject to a Notice to Improve issued by ESFA. This Notice will be published.
- 3.3. The FE Commissioner's role is to assess the capacity and capability of the existing governance and leadership to deliver rapid and sustainable improvement. In coming to their advice the FE Commissioner considers all relevant available information on the college and take account of the views of stakeholders, learners, employers, local and mayoral combined authorities, and staff, as well as Ofsted, DfE and the ESFA. In determining their recommendations, the FE Commissioner considers the full range of intervention actions available.
- 3.4. The recommendations are discussed with the college, after which the FE Commissioner will prepare a report setting out their findings, conclusions and recommendations.
- 3.5. Ministers will approve the final recommendations and will write to the college with a summary report of the findings and recommendations. The Minister will task the Chair with developing a robust action plan for how the college will implement the recommendations.
- 3.6. The college is asked to write to the Minister within 10 working days setting out how it will implement the recommendations.
- 3.7. The intervention process for local authorities is similar to that for colleges. Local authorities will only be referred where they are Ofsted Inadequate, not for financial health.

Recommendations

- 3.8. The Commissioner will assess the capability of a college and its leadership and governance team to pursue a college led recovery. This may include

recommending the college apply for support through the Strategic College Improvement Fund.

3.9. Where there are concerns about the capability of the college to address the issues that led to its intervention the Commissioner will consider recommendations in the following areas:

- changes to governance and/or leadership
- conditions or restrictions on funding
- the appointment of ESFA observers on the Board
- new or revisions to existing recovery plans, curriculum reviews and quality improvement plans
- a college or FE Commissioner led Structure and Prospects Appraisal (SPA) to determine the most appropriate way forward that is in the best interest of local learners and employers, including whether the college should be closed and alternative provision found for learners and employers^{4 5}
- use of the Secretary of State's intervention powers: the FE Commissioner may advise on the appropriateness of using the Secretary of State's intervention powers (as set out in section 56A of the Further and Higher Education Act 1992) to implement the recommendations
- Administered College Status: this involves enhanced monitoring and review by the ESFA and FE Commissioner. When in this status, colleges will be expected to keep the FE Commissioner and ESFA informed of major upcoming decisions, such as intentions for major financial expenditure.

3.10. Should the FE Commissioner have concerns about possible non-compliance with charity law they may recommend that the Principal Regulator (the Secretary of State) ask the Charity Commission to exercise its regulatory powers, which may include opening a Statutory Inquiry.

Monitoring and Review

3.11. The FE Commissioner oversees the monitoring and review process for all the colleges assessed. The FE Commissioner and the ESFA local teams work together to ensure this process aligns, wherever possible, with normal monitoring and review arrangements. The precise approach to monitoring will depend on what actions the college are implementing, but is likely to involve:

- Regular contact between the college, FE Commissioner's team and the ESFA. Periodic progress meetings between the FE Commissioner, ESFA

⁴ The FE Commissioner can recommend a SPA for both FE colleges and Sixth Form Colleges.

⁵ Where a college is going through a SPA as a formal recommendation, it will be a commissioner-led SPA. The FE Commissioner team will assess the viable options for learners and make a recommendation to the College's Corporation.

and the college and other strategic partners to monitor progress against the action plan.

- A formal 'stock take' assessment. The FE Commissioner conducts a re-assessment of the college, and provides advice on any further action needed to secure continued improvement.
- If a college fails to deliver improvement to the agreed timetable or subsequently breaches another trigger the FE Commissioner may recommend further intervention actions, including placing the college in Administered College Status.

Ending the FE Commissioner's intervention

3.12. The FE Commissioner will remain engaged in a case until there is evidence that the implementation of the action plan has secured improvement (i.e. the college no longer falls below one of the intervention triggers).⁶

3.13. Where a Notice to Improve has been issued by ESFA, that Notice will remain in place until such time as all the additional conditions of funding placed on the college have been complied with to ESFA's satisfaction. A Notice may remain in place even after the FE Commissioner's scrutiny has completed. Equally it could be lifted before the Commissioner's engagement ceases.

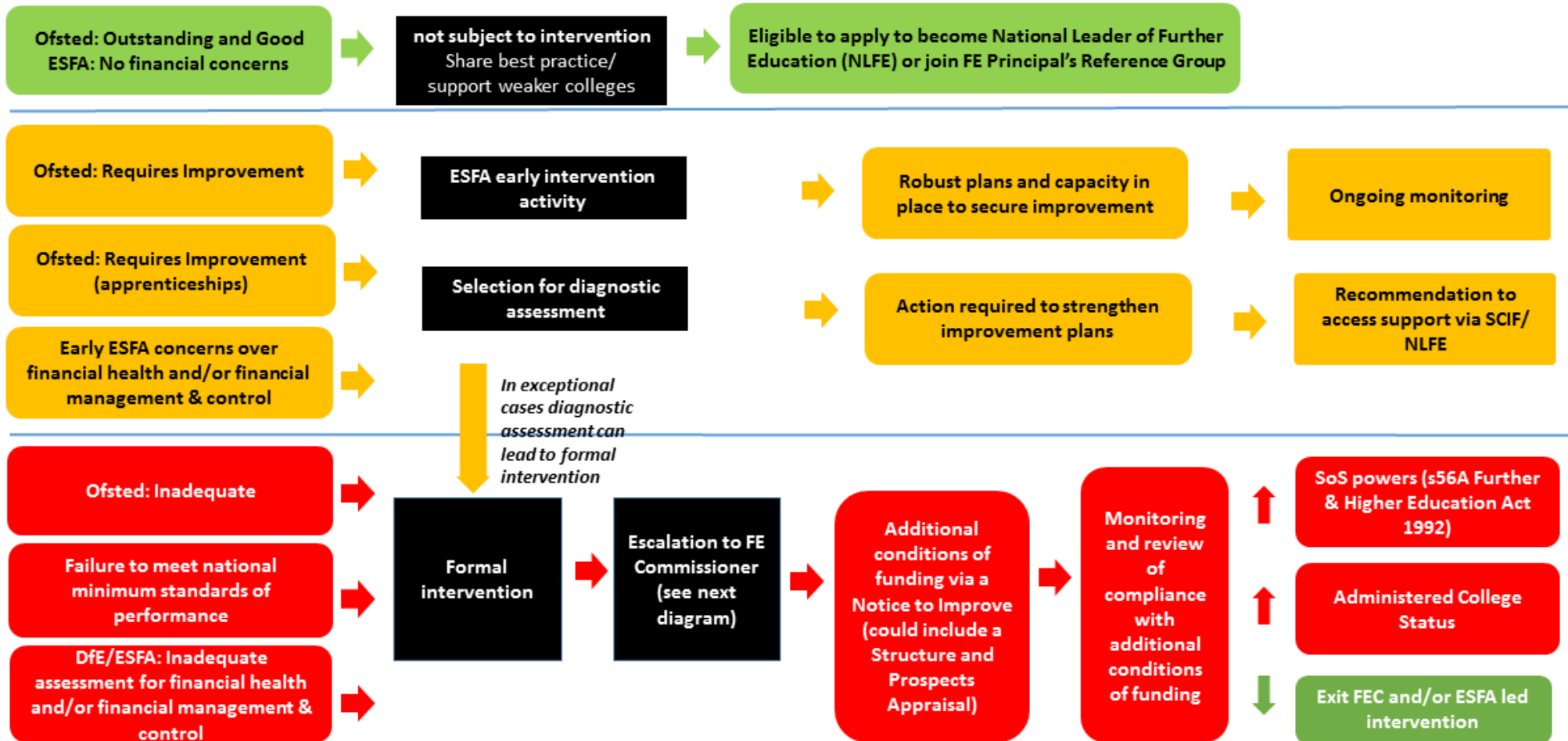
⁶ Where a Corporation is to close, with a transfer of learners, assets and liabilities to other institutions, the intervention will remain until the corporation dissolves.

4. Accountability, Oversight and Co-ordination

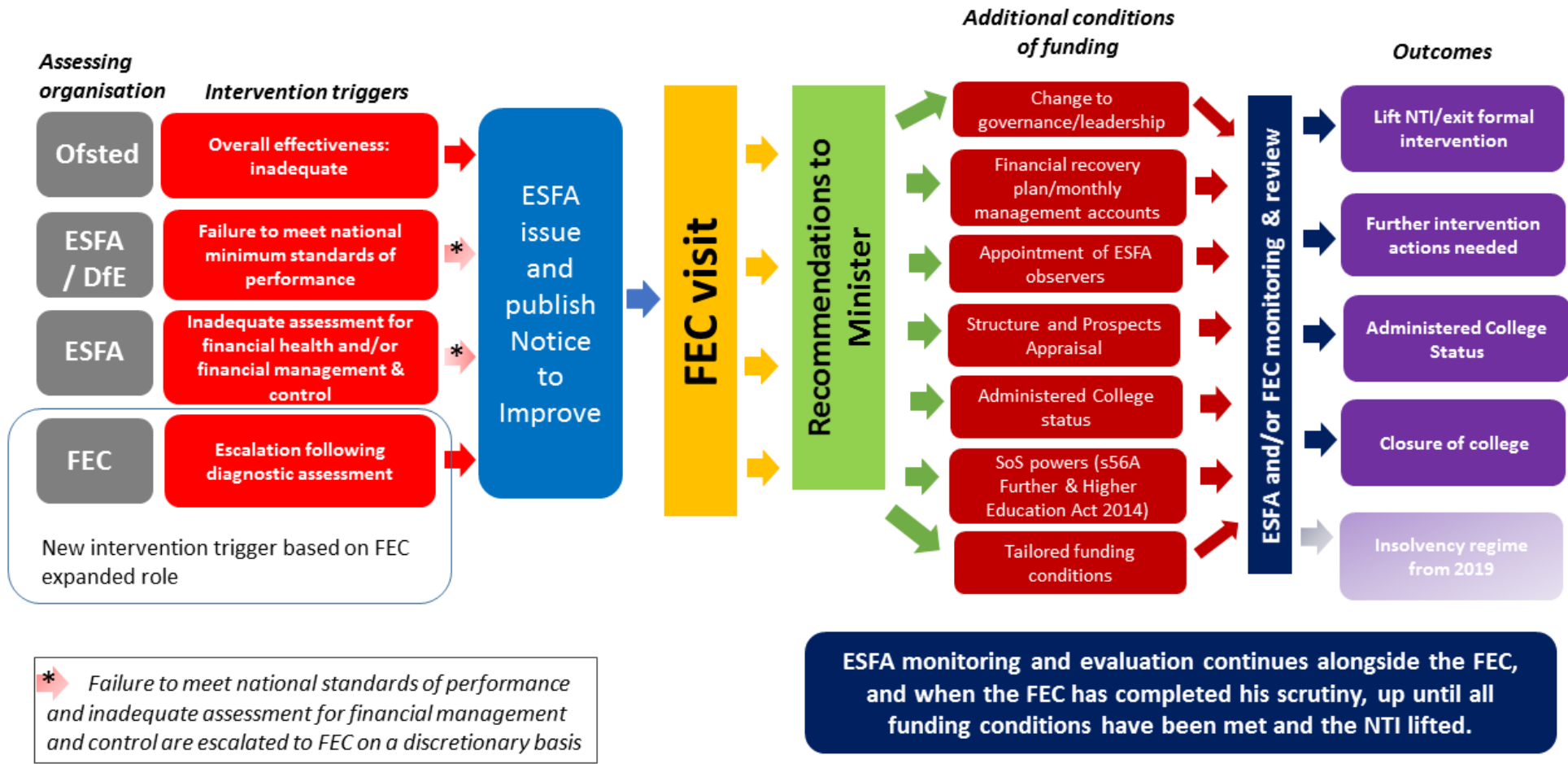
- 4.1. The FE Commissioner works closely with colleagues in the ESFA and provides independent advice to Ministers. The FE Commissioner is appointed by the Secretary of State for Education. Ministers receive quarterly reports on progress and impact and an annual report is published.
- 4.2. The FE Commissioner will have a team of Deputies and Advisors with expertise from further education colleges, apprenticeships and sixth form colleges to support his work. The FE Commissioner will also seek advice from a wide range of sources within the sector.
- 4.3. The FE Commissioner will consult leading college principals on issues in improving college performance through a newly established Principals Reference Group. The Group will bring a practitioner voice to decision-making and encourage sharing of best practice.
- 4.4. A new College Improvement Board will bring together organisations and sector representatives to provide oversight of the range of measures aimed at raising standards in colleges. The Board will be chaired by the FE Commissioner and meet four times a year. Its membership will include senior representatives from Ofsted, the ESFA, the Education and Training Foundation, the Institute for Apprenticeships and DfE as well as serving college Principals.

Annex A: Process Diagrams

Further Education Intervention: Overview



Formal Intervention: Process





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