



Department  
for Education

# **Further Education Commissioner-led structure and prospects appraisals**

**December 2022**

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## Summary

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

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

This document is for:

FE colleges, sixth form colleges and specialist designated institutions.

## Expiry or review date

This guidance will be kept under review and updated when necessary.

## Terminology

For the purpose of this document, the term 'colleges' covers FE colleges, sixth form colleges and designated institutions.

## Main points

This December 2022 update reflects changes affecting colleges and SPAs, which include:

- the Skills and Post 16 Education Act 2022, including the duty placed on relevant providers with respect to Local Skills Improvement Plans (LSIPs)<sup>1</sup>
- the introduction of Active Support for colleges
- the introduction of pre-SPA strategic reviews and post-merger reviews

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<sup>1</sup> [Sections 1-4 Skills and Post-16 Education Act 2022](#)

## Introduction

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

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

- a change to demographics in their area
- increased competition
- continuing to meet skills needs
- the duties placed upon relevant providers by the Skills and Post 16 Education Act 2022 with regards to Local Skills Improvement Plans (LSIPs)
- financial and environmental sustainability

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

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

- merger
- internal restructure
- becoming an academy
- disaggregation (in which part of the college becomes a separate entity)
- curriculum and/or estates rationalisation
- maintaining the status quo; or
- closure (where continued financial viability is in doubt)

This document outlines the process that the FE Commissioner's team, with significant support from DfE and ESFA teams will follow when leading a SPA. This guidance reflects the established practice for a single institution-focussed SPA, rather than assessing options for changing the provision or structure of multiple institutions (including FE Commissioner local provision reviews, as outlined in the [College oversight: support and intervention guidance - GOV.UK \(www.gov.uk\)](#). If there are cases where the scope of the SPA should address wider regional issues, the approach should be adapted accordingly.

The Office for National Statistics (ONS) has decided to reclassify statutory FE providers into the central government sector. More information is available on [GOV.UK](#).

## The Role of the Corporation

FE Corporations act as social enterprises serving learners and employers. In ensuring that what they are delivering is right for their area and communities, they should periodically review their mission, governance, structures and delivery model.<sup>2</sup> In addition to this, colleges have a duty to regularly review how well the education or training that they provide meets local needs, and to consider what action might be taken to better meet those needs. This is set alongside the responsibility of a corporation to ensure the continuing financial viability of their college.

Relevant providers, which include FE colleges, sixth form colleges, and designated institutions alongside independent training providers and higher education institutions, that deliver post-16 technical training and education in England, have duties with respect to LSIPs. These duties are to co-operate with the Employer Representative Body (ERB) designated to a specified area to develop an LSIP, keep it under review and as appropriate develop a replacement plan. Colleges should have regard to these plans when making decisions on post-16 technical education or training that may be relevant or required in the area. Providers are also required to take account of the guidance<sup>3</sup> published in respect to this.

There may also be an opportunity to organise provision more effectively to improve quality or efficiency. It is the corporation's role as independent trustees to consider whether the college has the right structure to achieve its overall objectives. Colleges are independent and it is the responsibility of their corporations to consider the case for structural change. The SPA process sets out a considered, evidence-based way to do

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

<sup>3</sup>[Statutory guidance for the development and review of local skills improvement plans \(LSIPs\)](#).

this.<sup>4</sup> Colleges that feel they could benefit from a SPA are recommended to contact the FE Commissioner. The FE Commissioner's team has considerable expertise in evaluating the potential options and presenting an evidence-based analysis to the governing body.

## The Case for a Commissioner-Led SPA

It is critical that colleges regularly assess their viability, their financial resilience to an unexpected change in income, their resilience to changes in other areas, such as learner and employer needs, and their ability to continue to be able to provide excellent opportunities for their learners in the long term. This is particularly important in light of the insolvency regime introduced through the Technical and Further Education 2017, the Further Education Bodies (Insolvency) Regulations 2019 and the Education Administration Rules 2018.

The department has published specific guidance that provides more information on the insolvency regime for FE bodies, which can be found here: [Further education bodies: insolvency guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/further-education-bodies-insolvency-guidance).

A SPA is an organised process to assess options to change structure, provision, or both. Any college that foresees a change in circumstances, has any doubt about their ability to sufficiently improve quality or maintain financial stability or is in a position that suggests their delivery model should change, should consider a SPA. SPAs are included in the range of active support tools currently being offered to all colleges.

More information on the Active Support offer can be found here: [Help and support for colleges - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/help-and-support-for-colleges)

As well as a college requesting it, an FE Commissioner-led SPA may be recommended as a potential solution as part of the intervention process. Colleges considering whether to proceed with a SPA can request a pre-SPA strategic review as part of the FE Commissioner's Active Support offer. The terms of reference for strategic reviews will be tailored to the circumstances of individual colleges but will typically include a local provision needs analysis and an evaluation of the college's performance, prospects, and effectiveness to inform considerations and options for structural change that might arise from a SPA.

Pre-SPA strategic reviews might also be a recommendation from intervention, stocktakes, health checks or recommendation/referral from the DfE territorial team and/or the ESFA Finance Provider Oversight directorate (FPMO).

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

## Benefits of the FE Commissioner’s Team Leading a SPA

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

As experienced former FE leaders, the FE Commissioner’s team has extensive expertise that can be used to help colleges assess their restructuring options. Where a merger is being considered, the team can also provide valuable support to help the college find an appropriate merger partner.

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

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

## The Commissioner-Led SPA Process

Once college corporations have agreed to undertake a SPA, they should contact the FE Commissioner’s team as soon as possible.<sup>5</sup> The FE Commissioner’s team will then consider what help is necessary, and will arrange, with the college, to provide support and lead the SPA process, if appropriate. An outline SPA process diagram can be found in Annex A.

The SPA process is overseen by a steering group which is chaired by the FE Commissioner or a Deputy FE Commissioner and is likely to include:

- the principal/chief executive of the subject college
- the director of finance
- the clerk of the college corporation governing body

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<sup>5</sup> The FE Commissioner’s team can be contacted by email at: [FE.COMMISSIONER@education.gov.uk](mailto:FE.COMMISSIONER@education.gov.uk), or colleges can enquire about SPAs through their DfE territorial team.

- the chair of the college corporation governing body
- a small number of other experienced governors
- representatives of the DfE and ESFA teams

## Assessing Options

The SPA process will involve an analysis of the college's current situation and future sustainability. This information is assessed to make recommendations to the board on a preferred restructuring option if a restructuring is considered necessary. Options for structural change will usually be assessed alongside a standalone option and (where financial viability is in doubt) a closure scenario. The FE Commissioner's team, with DfE and ESFA teams will support this process by:

- scrutinising publicly available information: Information gathered may include local demography, educational attainment, employment patterns, Local Skills Improvement Plans for the areas the college operates, Mayoral Combined Authority (MCA), Local Enterprise Partnership (LEP), local authority priorities and areas of deprivation
- scrutinising information held by the college and submitted to the DfE and ESFA by the college: Information that will be considered might include the college's financial position, information on quality of teaching and learning, and systems of governance, the college's curriculum offer, quality information (including Ofsted outcomes), learner numbers (including trends), and travel to learn patterns
- engaging with stakeholders: Including local MPs, LEPs, Employer Representative Bodies (ERB), Local Authorities or MCAs, and the relevant Regional Director, as appropriate.<sup>6</sup> Further stakeholder consultation may be required to update and expand on evidence. Those being consulted may include local learners, employers, communities, and staff
- where data gaps have been identified (including property/estates, pension valuations etc), this data will need to be sourced

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<sup>6</sup> If the SPA is being undertaken by a sixth-form college, and the college is linked to a Diocese or Trust, the Diocese or Trust for the college will be consulted.



- analysing this information to compile a shortlist of options and a recommendation for a way forward:<sup>7</sup> The steering group will agree a set of criteria to help select a recommendation

A Local Provision Needs Analysis (LPNA) will generally be required for all structure and prospects appraisals. This will be produced by the relevant DfE territorial team.

In preparing an LPNA, consideration will be given to:

- the existing and forecast future learners at the target provider
- their current travel-to-learn distance and how this might be affected by closure of provision
- whether a change in travel-to-learn distance is reasonable given available or feasible transport considerations
- the ability and suitability of surrounding providers to continue the provision for learners with their existing or feasible capacity

## Criteria for Making a Decision

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

- what provision does the college offer?
- how will the area's educational needs be met by the college and other institutions?
- how will the areas economic and business needs be met?
- how will the quality of provision for current and future learners be sustained and improved?
- how will value for money and sustained financial viability be achieved, and the College's existing financial liabilities be addressed? ([This includes the FE Commissioner financial benchmarks](#) and ESFA financial health measures.)

In making this assessment, the Corporation should consider a broader range of factors which are integral to the effective performance of the college:<sup>8</sup>

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<sup>7</sup> This may include merger, internal restructure, curriculum, and estates rationalisation, academisation, disaggregation, maintaining the status quo, or closure.

<sup>8</sup> This list is not comprehensive, and other criteria might be included depending on the local situation.

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

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

## Potential Outcomes

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

- continuation of the college as a stand-alone organisation
- changes to the college's business model, or a re-evaluation of its geographical presence
- merger with another FE corporation
- dividing the college's delivery, with some aspects of it taken on by other institutions (disaggregation). Realignment of provision with other neighbouring colleges
- closure (where financial viability is in doubt)

## Mergers

In some cases, FE Commissioner-led SPAs will lead to a merger. As part of the SPA, selecting a partner will usually involve running a competition. The FE Commissioner's team will help colleges to do this with support from DfE and ESFA teams. This includes:

- supporting the SPA steering group to set criteria for approaching organisations that may be interested in a merger. At the start of the SPA, the FE Commissioner's Team will work with the supported college to set initial criteria for organisations that will be approached about a possible merger. This is usually done by setting out a geographical area within which FE organisations will be approached to register their interest<sup>9</sup>
- supporting the college to engage with organisations that the steering group has identified as potential partners, to assess appetite for merger. Colleges that do register interest are likely to be asked for some initial information, to help advise the interested party on whether submitting an Expression of Interest (EOI) is worthwhile
- supporting the college to assess EOIs from potential partner organisations and drawing up a shortlist. After receiving EOIs from organisations that may be interested in merging, the FE Commissioner's team will support the subject college to create a shortlist of interested parties to invite to present to the steering group. The criteria for selecting a shortlist will be agreed by the steering group
- facilitating information sharing with shortlisted potential partners, including by brokering site visits. Once a shortlist of interested parties has been agreed, potential partners will generally require access to the physical site of the supported college (to evaluate the condition of the estate) and to detailed information about the financial and quality performance of the college
- a member of the FE Commissioner's team will chair a meeting of the steering group to assess presentations from shortlisted organisations. The shortlisted potential partners will be invited to present to a panel, which will include representatives of the supported college, the FE Commissioner's team, and DfE and ESFA teams

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

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<sup>9</sup> Expressions of Interest will not generally be considered from organisations outside of the scope of the partner search.

## Recommending a Merger Partner after the Competition Phase

The supported college's corporation will ultimately decide the organisation with which they will merge<sup>10</sup>. However, the FE Commissioner's team supports the college to select a merger partner by guiding them through the SPA process from soliciting Expressions of Interest to choosing a preferred partner.

The FE Commissioner's team will work with the college and DfE and ESFA teams to assess the strengths and weaknesses of each option, and in particular, the degree to which each option is financially viable and meets the educational needs of the area. The steering group will regularly review progress at each stage of the process. The FE Commissioner's team will present the analysis to the steering group. The decision to proceed with any option for structural change following a SPA rests with the college's corporation. It will be important that in making this decision corporations carefully consider the analysis. This may present a finally balanced judgement for the corporation to make between competing alternatives, or in some cases that there will be only one viable proposal.

## Disaggregation

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

## Support Following the SPA

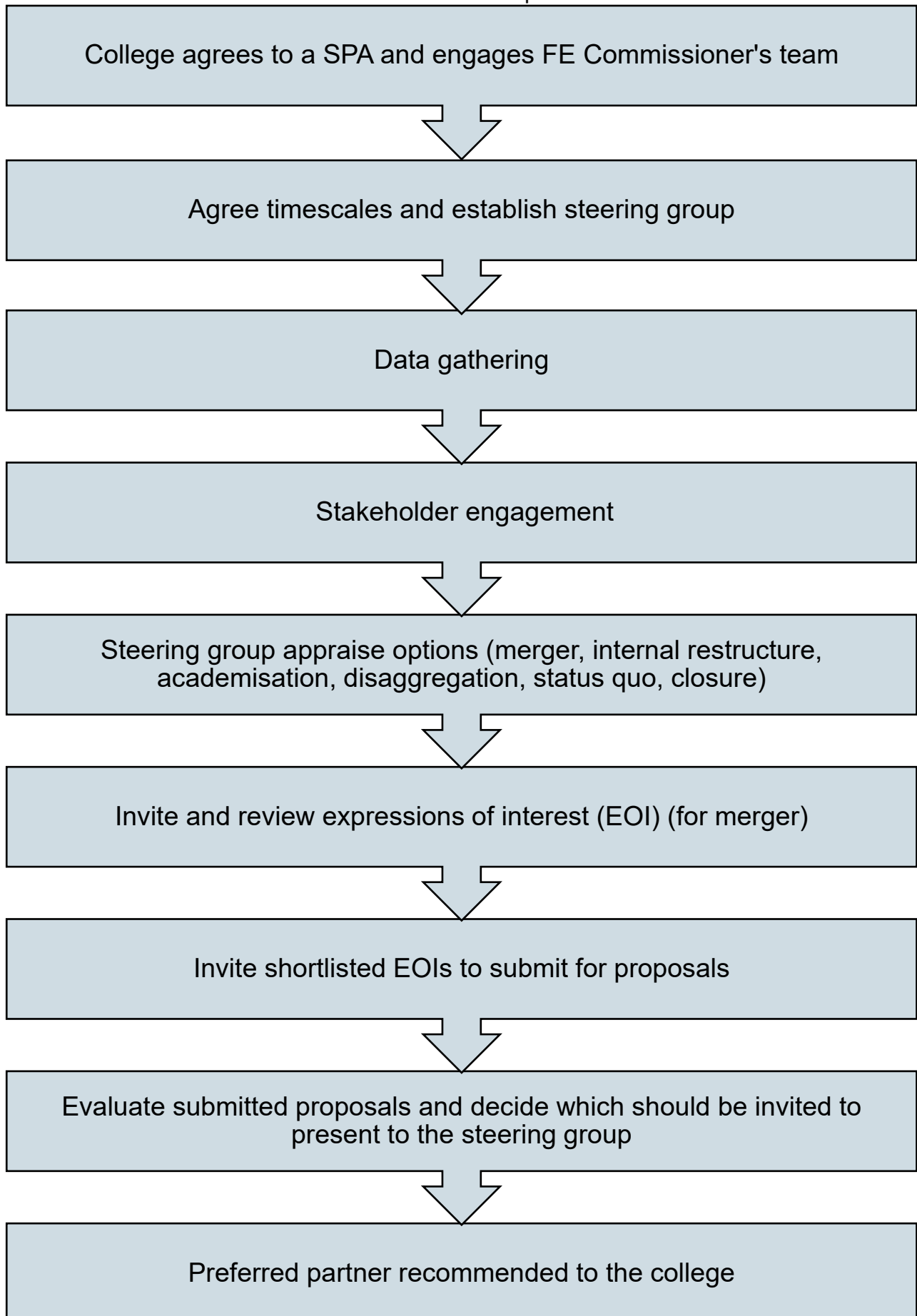
Whether the SPA has ended with a merger recommendation, or another outcome, such as disaggregation or academisation, has been agreed as a result of the SPA, DfE and ESFA teams will work with the college on implementation. If appropriate, the FE Commissioner's team will be available to provide advice. The FE Commissioner's team

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<sup>10</sup> If the college is in intervention and/or administered status, then a higher level of scrutiny and oversight of Board decisions is likely to be in place. See College oversight: support and intervention at: [College oversight: support and intervention - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/college-oversight-support-and-intervention)

may conduct a post-merger review to identify any lessons learned, capture examples of effective practice and confirm any areas where support may be beneficial.

Annex A – FE Commissioner-Led SPA Process Map





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