

## **Further Education and Sixth Form Colleges: Consultation on Developing an Insolvency Regime for the Sector**

**(July 2016, Department for Business, Innovation and Skills)**

### **Question 1: Do you agree that only the SAR element of this regime should be applied only to Designated Institutions that are companies?**

The Greater London Authority (GLA) is supportive of the proposal to apply the SAR element of the regime to those Designated Institutions that are companies. The majority of Designated Institutions are located in London and frequented by London residents. The GLA would want assurance that in the unlikely event of insolvency, learners at those institutions would be afforded protection for continuity of provision.

### **Question 2: Do you think any of the insolvency measures summarised in our proposals (Company Voluntary Arrangement, ordinary administration, compulsory liquidation and creditors' voluntary liquidation) should be available in the event of college insolvency as well as a Special Administration Regime?**

The GLA is supportive of the proposal to offer a number of options in the event of insolvency to allow for college rescue, or voluntary or compulsory wind up, depending on the circumstances facing the individual institution. The proposals set out in the consultation document provide a comprehensive set of options that have the advantage of mirroring established corporate insolvency practices that are widely understood.

The GLA agrees with the proposal that these options should be accompanied by a Special Administration Regime. This is important in affording protection to learners who would not otherwise be guaranteed any protection for continuity of provision, particularly in relation to the proposed Compulsory Liquidation option.

### **Question 3: Does the proposed special objective sufficiently reflect the needs of learners and creditors?**

The proposed special objective sufficiently reflects the needs of learners providing it is interpreted in the terms set out in the accompanying foot note in the consultation document. That is to say that it should cover all those who are studying at the college when the administration begins, or who have accepted a place on a course at the college when the administration begins. This should include those undertaking learning that has been sub-contracted to other providers.

In order to ensure this level of protection, it may be worth revising the wording of the special objective to clarify this. For example:

*(1) The objective of an education administration is to:*

*(a) avoid or minimise disruption to the studies of the existing students of the further education body as a whole, including those studying at the college or accepted onto a course at the college when the administration begins, and*

*(b) ensure that it becomes unnecessary for the body to remain in education administration for that purpose.*

### **Question 4: Do you have any comments on our proposals for SAR initiation?**

The consultation document sets out a proposal that a SAR would be initiated either by the Secretary of State applying to the court for a SAR order, or by the Secretary of State using the statutory period to decide whether to apply for a SAR order following a college or its creditors

petitioning the court for another type of insolvency order under the Insolvency Act 1986. The GLA is supportive of this proposal and agrees that the duty for initiating a SAR should rest with the Secretary of State.

The consultation document states that proposals for a new insolvency regime for the college sector in England take into account the evolving policy context with regards to devolution. However it is unclear how - if at all - skills devolution agreements would impact on the proposals for SAR initiation. It is the GLA's view that the duty for initiating a SAR in relation to a college within a devolved area should still rest with the Secretary of State. This is because colleges within devolved areas will continue to receive a mix of public sector funding, beyond the devolved Adult Education Budget, and to cater for learners from outside devolved areas.

**Question 5: What issues, if any, would you envisage in the event transfer of provision or assets/liabilities were required?**

No response

**Question 6: Do you have any views on our proposals in relation to directors' and governors' liabilities?**

No response

**Question 7: Do you agree that, as a matter of general principle, the insolvency law applying to companies on the avoidance of transactions should apply to colleges?**

No response

**Question 8: Do you agree that only provisions of Part 3 of the Insolvency Act 1986 that deal with fixed charges should apply to colleges?**

No response

**Question 9: Do you have any other comments on the proposals set out in the consultation document?**

The consultation paper proposes that in the event of an LGPS pension deficit crystallising either through merger or winding up of a college, the liability would fall on the pension scheme itself. In London this would either be the London Pension Fund Authority or a London borough pension scheme. The GLA cannot support this proposal.

The usual practice in such situations involving public bodies with LGPS liabilities is that the transferee body or pension scheme would receive a compensation lump sum payment. In this case it would fall to Central Government to provide this given that the bulk of funding has been and still will be from Central Government bodies and the liabilities would be unrelated to decisions made directly by either the London Pension Fund Authority or any London borough pension scheme. Furthermore, as the proposed statutory duty for a SAR rests with the Secretary of State it follows that the Secretary of State should provide sufficient funding at the point any LGPS pension liabilities crystallise.

**Consultation document:** <https://www.gov.uk/government/consultations/developing-an-insolvency-regime-for-the-further-education-and-sixth-form-sector>