



## **LSC Intervention Policy Consultation Response**

A submission from the Association of Colleges  
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### Introduction

AoC (the Association of Colleges) is the representative body for colleges of further education, including general FE colleges, sixth form colleges and specialist colleges in England, Wales (through our association with *fforum*) and Northern Ireland (through our association with ANIC). AoC was established in 1996 by the colleges themselves to provide a voice for further education at national and regional levels. Some 98% of the 415-plus general FE colleges, sixth form colleges and specialist colleges in the three countries are in membership. These colleges are the largest providers of post-16 general and vocational education and training in the UK. They serve over 4 million of the 6 million learners participating in post-statutory education and training, offering lifelong learning opportunities for school leavers and adults over a vast range of academic and vocational qualifications. Levels of study range from the basic skills needed to remedy disadvantage, through to professional qualifications and higher education degrees.

The key role played by the sector and its 250,000 staff in raising the level of skills and competitiveness of the nation's workforce make [colleges](#) central to the Government's national and regional agenda for economic prosperity and social inclusion. AoC services to member college corporations include information, professional development and support in all aspects of institutional management, governance, curriculum development, quality, employment, business development and funding. AoC also works in close partnership with the government and all other key national and regional agencies to assist policy development, continuously to improve quality and to secure the best possible provision for post-16 education and training.

The Association of Colleges AoC fully endorses LSC's goal of eliminating underperformance in the publicly funded Learning and Skills sector, in the interest of accountability and of the user. We also welcome LSC's recognition that collective sector responsibility for performance is vital to achieving this goal. We particularly welcome the LSC's commitment to work with the sector to forge a new relationship in the move towards self-regulation.

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## **General comments on the Proposed Statutory Intervention Policy**

### **Policy document overlap**

It is unfortunate that it is necessary to refer to a series of recent documents to obtain the full picture of the whole process rather having everything available in one place, or at least properly cross referred. These include Ofsted's definition of Satisfactory but not Improving Colleges, a term which originally came from the White Paper *Raising Standards, Raising Skills*; LSC's *Minimum Levels of Performance* published for consultation in October 07; and LSC's *Identifying and Managing Underperformance*, and now the *Intervention Policy*. The policy document, unless read in conjunction with the others and within the context of a continuing process, could be misconstrued. College Governors, for example, might not appreciate the difference between the Ofsted definition of success and the LSC definition.

We recommend

- Thorough cross referencing in the *Intervention Policy* to the companion publications.
- Publication of a document that provides the guidance and the explanation necessary to fully understand the interpretation of the Intervention paper.

### **LEA funding transfer**

An explanation is required in a foreword, referring to the impending transfer of funding for college 16-19s to the LEAs, and how this will impact on this policy, in the context of the change in the Machinery of Government. Following the consultation, we would welcome a statement about the application of the policy to schools. It is a key concern to AoC that the same standards, measures and interventions are not being applied to the schools sector. We are particularly concerned about the consequences, where colleges may be penalised by having provision withdrawn, whereas LEAs may not be penalties to the school sector.

## **Part 1 AoC response to Consultation questions**

### *Question 1.*

#### *The appropriateness of the principles and approach to intervention*

We wish to comment here on both the process of intervention and the criteria for intervention.

#### **a) The process**

While welcoming the statement of a process and the helpful diagrams provided in the document, there are a number of aspects of this that need to be clarified, because as they stand they raise points of concern. We are fully aware that the LSC will not be the only responsible body in the very near future, as LEAs take over 16-19 funding in colleges, and that this policy document is supposed to provide an enduring framework that can be used into the future, but we still find gaps and ambiguities that are dangerous and unhelpful:

- LSC levels. The level of the LSC (local/national) which has responsibility at various stages is not clear. We would like to see this specified at each stage of action – local/ regional, or national LSC. This is particularly important in a period of uncertainty for LSC staff, and during which valued expertise may be lost as staff seek security of employment, for example by transferring to the National Apprenticeship Service.
- Challenge. The document does not clarify the issue of colleges wishing to challenge LSC decisions in this process.
- The respective roles of Governors and the Principal. These roles are not clearly spelled out and this raises some concerns. The document relies on competent and well informed governors and does not take into account instances where there is a difference of opinion between Principal and Chair.

#### **Recommendations on process**

A supplementary guidance should accompany the diagram or run alongside it, to expand and clarify these points.

#### **b) The criteria and evidence base**

##### **Financial health**

- The impact on financial health, of borrowing for capital projects. Colleges are concerned about falling into a lower category of financial health due to risk associated with borrowing for capital projects (encouraged by LSC), while the evidence base for the judgement has not changed. This would not be a fair basis for a notice to improve or intervention. Unless the vocabulary changes, the increased level of borrowing associated with capital projects, reflected in a higher level of risk could be misinterpreted as increased financial mismanagement and bring the sector into disrepute if not carefully handled. LSC assures us that it is working out a way of taking into account legitimate borrowing, and we recommend that this needs to be stated explicitly and made transparent in the criteria.

- Grading of financial health. The introduction of ten bands whereas the old scheme only had four makes it easier for a college to shift between them and drop as a result of very slender differences in the evidence base. AoC recommends that LSC considers the impact on college reputation as the downwards shift in financial health gradings will give a misleading impression of the underlying financial health of the sector.
- Funding methods. There is still a lot of uncertainty about the impact of the new funding methods. Colleges are concerned about the implications of these changes for the measures of financial health, particularly in this early phase of the Framework for Excellence. Current financial agreements between colleges and the LSC were made before funding changes.

### **Recommendations on financial health**

1. It would be desirable to have an Annexe on financial health. The document is very scant on this section compared to the other three indicators. Colleges would very much appreciate more information.
2. The criteria needs to be urgently re-assessed before roll out
3. The evidence base of the gradings needs to be reviewed so that they are clearer and give less misleading categorisations.

### **Minimum levels of performance**

- The aggregation of Level 3 MLP. We are concerned about the impact on colleges of the aggregation of full level 3 scores. Colleges have better results for level 3 other than A levels, and thus are in danger of being negatively impacted by aggregation as compared with schools (currently colleges have only 10 subjects which reach the MPL of 75%). While we accept that colleges should not be complacent about A level grades, and we do not condone any underperformance, we are concerned that good level 3 provision might be at risk in the aggregated score in a minority of cases.
- We would also like to point out that there is a danger of perverse effects on the curriculum caused by a discrepancy between pass rates per A level, e.g. it is statistically easier to get high grades in English than say physics, but success rates have not been adjusted. This means that in order to improve their overall performance levels, colleges may be tempted to cut out these A levels subjects in which it is hard to get high grades - not good for the STEM subjects government are so concerned about, and risking an unbalanced curriculum.
- Furthermore we do not want to see this criterion having the effect of colleges withdrawing from A levels altogether. LSC did not intend to trigger these perverse effects, given that colleges produce 48% of all university entrants. We should also bear in mind that the viable alternative for this cohort of learners (the Diploma) does not become an entitlement till 2013.
- We also feel that there is an anomaly in that A levels and other vocational level 3 qualifications such as BTEC National Diploma (and the Diploma) are different in kind: an A level package consists of separate components, while a vocational level 3 is a whole qualification.
- In view of these concerns we recommend that LSC undertakes further modelling of the effects of level 3 aggregation

- The inclusion of AS scores with A2 scores is unreasonable as AS are not full level 3, and tend to carry lower scores than A2, and thus their inclusion impacts negatively on colleges' profile. Colleges report to AoC that the local LSC appears not to know what to do about this. We therefore recommend that LSC makes a firm decision not to include AS scores in level 3 totals.

### **Summary of recommendations on MLP**

1. LSC carries out further modelling of level 3 aggregation.
2. Exclusion of AS as a full level 3.

#### *Question 2.*

*Whether there are circumstances that might lead to intervention not fulfilling its obligations and in which it would not be appropriate for the LSC to intervene*

- In the dismissal of a Principal and other senior staff by the governors at the instigation of the LSC, the naming of individuals may not be compatible with Employment law.
- It is also not clear whether the LSC can dismiss a governing body.

#### *Question 3*

*The importance of flexibility in managing intervention.*

A considerable degree of negotiation between the LSC and the Principal and governors underpins the process as laid out in the document. We welcome this element of flexibility in principle, as local situations and context are important factors to be taken into account in making the decision to intervene. However, we feel that the document needs to tighten up some elements of the process to avoid inconsistency and to ensure transparency:

- Grounds for discretion in decisions to intervene. There is a reference to 'exceptional circumstances'. We would recommend that LSC provides a list of these and other grounds for discretion available to the LSC. There could be inconsistency where local LSC has discretions that are interpreted and applied differently.
- Responsibility for intervention decisions. The level of the LSC (local/national) which has responsibility at various stages should be consistent, not variable. We would like to see roles and responsibilities local/ regional, or national LSC spelled out more transparently for each stage of action.
- Equally, an individual Principal's rights have kept key information secret from Governors which prevented them from acting.

#### *Question 4*

*The definition of non co-operation or obstruction.*

In cases where there is no co-operation by the college executive and/or governing body and all possible approaches have been exhausted, AoC acknowledges LSC 's rights to exercise its statutory powers. However, it would be fruitful to consider what alternative approaches might be useful. For example it may be that cases arise when a Principal is constrained from co-operating by decisions of the governing body. We would like to propose a situation of this kind might be resolved by mediating by the Association of Colleges at an early stage in the process, and by Single Voice in the future .

*Question 5*

*The appropriateness and fairness of the time scales.*

- Turn around time is unclear. The one year turn-around time is unrealistic and not entirely clear. It is implied that the turn-around is one year from the notice to improve.
- Turn around time may be *de facto* variable. In relation to retention and achievement, if a notice to improve is triggered by an inspection, the possibility of improvement in a year depends very much where in the annual cycle that inspection occurs, and what length of course is in the frame.
- Evidence for improvement. The reliance on previous year's data for evidence may not reflect the improvement/action already taken. Where the notice to improve includes the financial health of the college, a year turn-around is difficult to envisage in the light of three year planning and the large capital borrowings of many colleges.

*Question 6*

*The grounds for immediate intervention.*

AoC support the grounds for immediate intervention where health and safety is undermined, putting learners in imminent danger.

*Question 7*

*The impact of the use of the powers on the diversity of staff .*

We have no comment at present, but we look forward to reading the LSC equality impact assessment in the final Policy document.

## **Part 2 Self regulation**

We welcome the LSC's commitment to work with the sector to forge a new relationship in the move towards self-regulation. We hope very much that this will build on the relationship already established in the joint AoC/LSC Strategic Quality Group, which has met regularly during 2006-8. Working with Principals, this group has enabled AoC to contribute to the LSC's strategic thinking on the Framework for Excellence, Minimum Levels of Performance and early drafts of the Intervention Policy. AoC has consistently placed these developments within the self regulation agenda, and sought both to reinforce the LSC requirement that the sector is rigorous in complying with the highest standards and eliminating underperformance, while stating the case for the regulation of performance to be sector rather than externally driven. We look forward to working with LSC in the transition to self regulatory systems as the new machinery of government and funding agencies are defined over the next two years.

To further the thinking about self regulation, AoC has proposed the model which underpins the Single Voice response to this consultation, and we refer you to it in its entirety. It is based on a model in which providers respond swiftly to their own assessment of performance, a process which is monitored by the Single Voice as it progresses, and which is supported by peer review and the new quality improvement body. The principle of a presumption that any funding body may contract in confidence with any provider that holds a Single Voice 'licence to practice' is an important one.