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Merger Tips

April 2016

Merger tips

1. There is no secret formula to implementing a merger. Like any project, it requires leadership, management, communication and good sense. The report for the FE Commissioner “Current Models of Collaboration” contains a useful description of five factors necessary for successful structural change:
 - Clarity and realism about the process and outcomes
 - Identifying and addressing vested interests
 - Rigorous consideration of options
 - Strong, sustained leadership
 - Appropriate governance structures
2. Some of the hardest challenges in college mergers revolve around the simplest issues, for example the name and identity of the combined entity or who fills the senior roles. Colleges rely on the commitment of lots of people from a variety of backgrounds. Successful mergers require a strong focus on the culture of the new organisation and need a great deal of work to ensure that those involved understand its purpose.
3. Colleges also work within an increasingly challenging environment and when it comes to mergers need to deal with a complex web of laws, rules and contracts. A typical college merger might easily require the leadership to update more than 100 policies and processes.
4. The people aspects of college mergers cannot be separated from the legal and process issues. In his 11 June 2015 letter to chairs of governors and principals, the FE Commissioner David Collins rightly says that merger “does not mean that everything has to be harmonised and uniform”¹. This has certainly been the experience in recent mergers but the governors and managers of the new college will need to work out early what should be combined and what should be kept separate. If different policies apply to different groups of staff, these need to be properly justified to avoid creating a sense of unfairness. Efficiencies and scale economies will generally come from applying new systems and rules to all parts of the new college.
5. One recent lesson from mergers is that colleges need to maintain the confidence of financially important stakeholders. The views of students, parents, employers, staff, MPs and councils all matter but funding agencies,

¹ FE Commissioner letter, 11 June 2015
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435433/Current_Models_of_Collaboration_-_FE_Commissioner_letter_to_the_sector.pdf

banks and Local Government Pension Scheme (LGPS) funds may have financial stakes which give them the ability to delay or prevent a merger taking place. They need to be involved at an early stage.

Research

6. There is no shortage of books, articles and opinions on mergers between companies. Much of this is relevant to decisions involving colleges. There is a much smaller number of reports about college mergers and organisational change. Here are the key documents:
 - LSC "[Evaluation of mergers in the FE sector 1996 to 2000](#)" (2003) written by Warwick University researchers who were commissioned to evaluate the effectiveness of policy and funding which encouraged college mergers. The report covers general issues which are still relevant now but the college environment is now very different. LSC staff continued to encourage mergers until the late 2000s in cases as a strategy to turn around a financially weak college.
 - Department for Innovation, Universities and Skills (DIUS) "[Models for Success](#)" (2008) which raised awareness of other structural options available to colleges in addition to merger². This was published at the same time as BIS "The Evidence Base on College Size and Mergers" which made the case that larger colleges were no more successful than smaller ones.
 - KPMG "[Delivering Value for Money Through Infrastructural Change](#)" (2010) was commissioned at the request of the LSC chief executive, Geoff Russell, who expressed the view that large scale consolidation of colleges would be a good thing. The policy of the incoming Coalition Government was not particularly favourable to mergers.
 - LSIS "[Delivery Models](#)" (2012) presented a number of case studies of innovative approaches taken by colleges to organising partnerships with academies and commercial ventures.
 - BIS "[Current Models of Collaboration – Post-14 Further Education](#)" (June 2015), written by the FE advisers who support the FE Commissioner who wished to have some better information on what works well and less well when colleges collaborate.

²<http://webarchive.nationalarchives.gov.uk/20130802100617/http://lsis.org.uk/Services/Policy/Documents/BGModelsForSuccess.pdf>

- Audit Scotland "[Scotland's Colleges 2015](#)" (2015) provides a commentary on the nationwide college merger programme directed by the Scottish government.
- AoC "[Guide for Governors and Senior Leaders on New Structures - Collaborations, Federations and Mergers](#)" (2016) provides detailed practical advice on area reviews and approaching structural change.
- BIS/DFE "[Reviewing Post-16 education and training institutions: Updated guidance on area reviews](#)" (March 2016) contains some suggestions about taking forward mergers as well as more information on the area review process and objectives

The legal process

7. Colleges are statutory corporations. A merger involves the dissolution of one or more corporation and the transfer of activities, assets and liabilities to another corporation. Using the Type A and B classification, a merger between two colleges involves:
 - Type A: A double dissolution (of both corporations) and the creation of a new corporation. This involves a Secretary of State decision following a formal consultation.
 - Type B: A single dissolution (of one corporation) and the transfer of activities, assets and liabilities to the other corporation. This involves one governing body deciding to dissolve and transfer its activities to the other in line with requirement.
8. Most college mergers involve a Type B process for the following reasons:
 - Continuity of name and brand for one of the colleges.
 - Continuity of employment and contracts for one of the colleges.
 - Continuity of Ofsted grading for one of the colleges.
 - It may make the transfer easier in terms of long-term loans, LGPS pension debts and VAT liabilities if one of the colleges has a zero-rated building³.
 - Possibly easier to explain to students and stakeholders.
 - Lower cost and more predictable timetable.
9. There are sometimes good reasons for choosing a Type A process:

³ These issues are summarised later in the paper

- It indicates a fresh start and avoids any suggestion of a takeover by one college of the other.
 - The new colleges can be established before the existing colleges are dissolved.
10. The merger process for FE colleges and sixth form colleges is slightly different because the two groups of colleges are sponsored by different departments (BIS and DfE respectively) and there are two different sets of regulations⁴. It is generally helpful for colleges to have early discussions with SFA or EFA relationship managers about merger plans and to ensure early support. If the colleges plan a Type A process, this also needs to be discussed with officials.

Timetable

11. Those involved in college mergers often want to move quickly to completion but there are a number of things that can slow things down. College mergers typically take around six to nine months between the formal public announcement of a merger plan and the actual merger date but the time taken depends on circumstances.
12. Mergers involving FE colleges are covered by dissolution regulations published by BIS. These regulations state that:
- The publication of the formal consultation must take place at least four months before the proposed dissolution date.
 - At least one month must be allowed for the consultation.
 - At least one month must elapse between the publication of the draft dissolution resolution and the decision to dissolve.
13. The case for fast action and a short timetable is generally strongest where it is necessary to maintain confidence, where one of the colleges is in a financially weak position or where there is a leadership vacuum (for example if one of the principals has left or is planning to leave). Speed may help the new college secure the benefits from merger as soon as possible.
14. The case for a slower, longer timetable is that it allows the colleges more time for implementation and planning. There are some big issues involved in bringing two different colleges together. These include:
- If there is a Type A process then the Minister and funding agency will need to review the proposal and regulations will need to be published

⁴ Further Education Corporations (Publication of Proposal) (England) Regulations (SI 2012/1157) and Sixth Form College Corporations (Publication of Proposals) (England) Regulations (SI 2012/1158)

and approved. The new corporation will need to be approved before the existing corporations can be dissolved.

- In every merger (both Type A and B), the governing bodies have to reach agreement on key issues in parallel. They need to approve the merger consultation document (or delegate authority to a joint committee). Following the consultation, they need to make the decision to merge in parallel with each other.
 - Agreement from banks and other stakeholders (e.g. trust or landowners) plus legal processes relating to LGPS pension funds need to be completed.
 - Decisions on the leadership of the new college should be settled in good time so that other decisions can be made. The auditor general in Scotland reported in 2012 that, ideally, the chair and chief executive should be in post six months before completion in a public body merger⁵.
 - Introduction of new computer systems or new names often needs to be carefully timetabled.
15. Mergers used to be timetabled for the start of the academic year or for the start of the term (i.e. 1 August, 1 April or 1 January). Although this may help produce a clean set of accounts, it is better to schedule a merger for a normal working day because this means that staff are available to handle any last minute hitches and also makes any transfer of cash and debts easier to arrange.

Merger documents

16. There used to be a standard merger process organised by the national funding agency (FEFC then LSC) involving a consultation document following a standard format and a “white file” presented to the Minister for final approval. Colleges now have more choice over how they conduct their merger but still need to follow a timetable with a number of stages:
- There needs to be a formal public consultation which explains the reasons for the merger, outlines plans for the new college and invites comments.
 - Each governing body needs to consider a report on the merger consultation.

⁵ Auditor General “Scotland’s Colleges 2015” April 2015, Page 8

- Each governing body also needs to review due diligence reports covering legal, financial and other issues on the other college⁶. This is necessary to work out the staffing, financial and contractual issues involved in the merger. Where either college has a bank loan, they can expect the bank to do its own due diligence before approving the continuation of the loan to the new college
 - Each governing body needs to make the formal decision to merge. This may involve the approval of a dissolution and transfer order or the approval of a decision to complete a merger on a Type B basis.
17. BIS expect FE colleges to carry out a Structures and Prospects Appraisal before going to public consultation⁷. There is detailed guidance on what an appraisal should involve and some colleges have published theirs. Appraisals are supposed to evaluate various options including the status quo and full merger. In cases where the Minister has placed an FE college in administered status on the advice of the FE Commissioner, the Commissioner will carry out the appraisal. Where an area review has started, this effectively replaces the structures and prospects appraisal. The guidance says that colleges should not start a new appraisal once an area review has started.

Anticipating other outcomes in advance

18. Some college mergers are planned but never take place. It is sensible to anticipate this from the outset and to limit the impact on each college by signing an appropriate confidentiality and non-disclosure agreements. AoC's guide for governors on new structures provides a model agreement.

Banks

19. If either college has a long-term loan, then their bank will need to be involved in the merger. There are more than 200 colleges with long-term loans of £1 million and total debt is about £1.6 billion (about 25% of income). More than 90% of loans by value are with Barclays or Lloyds. Santander and RBS account for most of the rest. The financial crisis in 2008 resulted in changes in lending practices away from long-term loans (for example, 25 years) covering the life of a new education building towards shorter terms (four-five years) but banks have continued to lend to the sector.

⁶ AoC's Guidance for Governors and Leaders (2016) has a due diligence checklist which may be helpful to identify the sorts of questions that governing bodies should be answering.

⁷ BIS Structures and Prospects Appraisals Guidance April 2014

20. Each bank has its own carefully guarded terms and conditions but all of them require their borrowers to abide by loan covenants. Generally colleges are required to make a surplus, maintain an adequate interest cover (cash flow at a certain level in relation to interest) and to produce unqualified accounts. In the past the banks used to accept covenant breaches but more recently have taken a tougher line and used the chance to negotiate new terms, a higher interest rate and/or more security for their loans (i.e. a mortgage). Covenants also require borrowers to fulfil certain conditions or require them to seek permission before taking certain decisions. Banks reserve the right to treat a merged college as a new organisation and to require a new loan application with new terms. If they do, this may require the college to pay costs associated with application and also break fees for their existing loan. The due diligence (carried out by a firm appointed by the bank but paid by the college) can take time to complete. Working out whether a merger will lead to higher or lower loan costs should be an early priority.
21. Banks generally look for certainty and clarity from their borrowers. In a merger situation, this could have implications for other aspects of implementation. The college's bank may require all the significant contracts to be transferred to the new college by the time that the merger takes place. If so, this will require a substantial amount of legal work to be completed before the merger. It is worth having early conversations with the bank and with the organisation carrying out due diligence on their expectations, on the documents they require and the extent to which they are prepared to leave some minor tasks uncompleted.
22. Banking issues will be significant in many mergers but are not universal. Many sixth form colleges do not carry any long-term debt while there are some FE colleges with healthy cash balances and either no debt or unused credit lines.

Pensions

23. Colleges are required by law to offer Local Government Pension Scheme (LGPS) membership to staff who cannot access the Teachers' Pension Scheme (TPS). Teaching staff in colleges are entitled to join the TPS. The 231 FE colleges and 91 sixth form colleges are described in the regulations as scheduled employers in LGPS and are assigned to one of the 81 different LGPS funds. If a college merges with a college which is an employer in the same fund, the LGPS issues are simple. Membership is pooled and there needs to be a legal agreement on liabilities for the former college/s.
24. LGPS pension issues can be more complicated if the two colleges are assigned to different LGPS funds. This either requires a negotiated bulk

transfer of active members from one fund to another or a Directions Order signed by the Secretary of State for Communities and Local Government to transfer all members (active, deferred, pensioner and dependant) from one fund to the other. A bulk transfer involves the crystallisation of pensioner liabilities which would require a very large cash sum to be paid to the old fund to cover future liabilities. The normal approach in a cross-border merger is therefore to secure a Direction Order from the Department of Communities and Local Government (DCLG). Of the 120 college mergers in the last 20 years, about 15 have crossed LGPS borders. Four recent cross border mergers created Easton and Otley College and South Gloucestershire and Stroud College and the mergers between Cornwall College and Bicton College and between NCG and Kidderminster College.

25. The local government pension fund community wants to make progress in tackling scheme deficits⁸ but at the same time has become more nervous about the financial stability of the employers who participate in their funds. There have been several insolvencies among government-funded charities which has left LGPS funds with insufficient funds to cover the long-term pension debts associated with the charity staff. In response to these events and guidance from the Pension Regulator, a growing number of LGPS funds are assessing the financial strength of their employers and using these judgements to set higher contribution rates for organisations considered to be more risky. The next nationwide LGPS valuation takes place during 2016. All colleges (and especially those planning mergers) need to maintain good communication with their LGPS manager.

VAT

26. Some colleges own new buildings that are used mainly for 16 to 18 education and that were paid for on a zero-rated basis (i.e. without VAT needing to be paid). The rules surrounding construction zero-rating are complicated but require the building's owner (i.e. the college) to sign a certificate promising to use the building for a relevant purpose for 10 years⁹. For colleges, this has meant ensuring that business activities like fee-paid courses do not exceed 5% of usage. Where two colleges merge and the college with a zero-rated building is dissolved, it is possible that HMRC will consider that a disposal has happened and require VAT to be paid back. The rules were tightened up in 2011 and HMRC interpretation is unclear but this is an issue which needs to be considered in deciding the type of merger in order to minimise costs. VAT advice should be taken.

⁸ The valuations in 2010 and 2013 reported assets averaging 79% of liabilities

⁹ HMRC VAT notice 708/10 Buildings and construction
<https://www.gov.uk/government/publications/vat-notice-708-buildings-and-construction>

Competition regulation

27. Mergers involving companies are sometimes delayed by the need to satisfy competition regulators. This has not been an issue with colleges so far but could be an issue in future. The Competition and Markets Authority (CMA) has powers under UK competition law to intervene in cases where it judges that a merger will result in the lessening of competition within any market for goods and services within the UK. Case law confirms that education is considered a market. There have been no cases in the last 20 years where CMA or its predecessors has intervened to investigate a college (or a university) merger but the current guidance places an obligation on company boards (and therefore on college governing bodies) to notify them of a merger where the enterprise being acquired has a turnover above £70 million or where the market share of the combined entity is judged to exceed 25%¹⁰.

Due diligence

28. Due diligence is the investigation of another organisation or person prior to signing a contract. Colleges embarking on a merger need to carry out due diligence because the transaction is so significant and because, as trustees or a charity, their governing bodies have duties and responsibilities to ensure that the college is well-run, delivers its charitable outcomes and avoids activities that might put its funds, assets or reputation at undue risk.
29. Both sets of governing bodies will need to commission, pay for and review a due diligence report before making the final decision to dissolve. This involves upfront costs and will generally involve a competition to choose suitable external advisors.
30. Colleges generally commission external advisors for legal and financial due diligence but larger colleges or colleges who have recently carried out a previous merger may be able to use their own staff for some of the work. Due diligence should sensibly cover a full range of issues and risks including those relating to employment, supply and service contracts, estates, IT and quality. It is sensible to sign non-disclosure agreements before starting the process. AoC's guide on new structures has detailed guidance on due diligence plus a checklist.

¹⁰ CMA "Mergers: guidance on the CMA's jurisdiction and procedures" January 2014

College names

31. College mergers often involve a change of name. The merger may involve the change to the legal name for the college (or a new name if there is a Type A merger and a new corporation) but this does not automatically require a change in the name used for the courses at a specific campus.
32. Whether they are merging or not, colleges need to apply for permission to the Secretary of State if they wish to change their name. The BIS guidance on FE college name changes was last updated in 2010 but may be revised soon¹¹. The DfE guidance on sixth form college name changes was last updated in 2014¹².
33. There have been more than 50 name changes in the last 20 years and there are some reasonably well-tested procedures which involve taking the views of neighbouring institutions (colleges, schools and universities) and consultation with councils and MPs.
34. Both colleges clearly need to think about the college name in advance to avoid unhelpful arguments or delay late in the day. It is normal practice to explain the proposal in the merger consultation document or to consult on a selection of options.
35. Some names are legally protected (for example anything with university or institute in it)¹³. There have been cases where a preferred name has been blocked because of the intervention of a well-connected stakeholder.
36. The decision on the college name has implications for the college's brand, its internet domain name, the headed paper used in employment contracts, directory listings (including those used by emergency services) and local signs. Names matter a great deal to students, staff, suppliers, alumni and local residents so this issue needs careful communication. Name changes may require the new college to re-apply for certain awards or licences.

¹¹ "Further education corporation names; guidance for existing corporations on changing college names or developing new names" 2010 is available on the BIS website here https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32309/10-1141-further-education-corporation-college-names-guidance.pdf

¹² Guidance on sixth form college name changes is available on the DfE website <https://www.gov.uk/guidance/sixth-form-colleges-apply-to-change-name>

¹³ Companies House "Incorporation and Names" March 2015 has more information on protected words https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418150/GP1_Incorporation_names_v5_4-ver0.29-4.pdf

Costs

37. All mergers involve one-off costs which are incurred in the expectation of future savings or benefits. Costs can easily mount up but vary with each merger. Here are some general points from recent mergers:
- The largest items of expenditure typically occur on completion – either in the form of repayment of short-term loans or where there are large scale redundancies. There have been several mergers in the last 10 years where the combined costs of redundancies, IT investment, loan repayment and capital investment associated with course transfers have cost £3-5 million in the first year. Carried out correctly, there may well be a substantial payback from this investment over a 5 year time horizon.
 - Funding for mergers needs to come from the college's own resources, from additional borrowing (which will be difficult for most colleges to arrange in the current climate) or from the government's new restructuring fund. Updated area review guidance published in March 2016 explains the process for obtaining support from the restructuring fund¹⁴.
 - There are various costs before a merger takes place including project management, legal costs (due diligence, merger documentation), communication/stakeholder engagement costs and other professional costs. Some mergers have involved costs of less than £50,000 but this is generally where there is no debt and no obstacles, or where a larger college has staff that can be deployed to do the work (i.e. involving opportunity costs). Up-front costs can easily exceed £150,000 which can be a challenge in cases where one college is financially weak. The government has promised to make Transition Grants of up to £100,000 available to colleges to assist with area review implementation but there are tight conditions on who can apply and what they can be used for.¹⁵
 - Colleges are self-governing organisations and can make their own decisions on redundancy costs but they operate in an increasingly transparent environment so governing bodies need to act with care when making arrangements with senior staff.

¹⁴ DFE/BIS Updated area review guidance published on 1 March 2016 contains detailed guidance on the restructuring fund plus a flowchart explaining the process
<https://www.gov.uk/government/publications/post-16-education-and-training-institutions-area-based-reviews>

¹⁵ DFE/BIS Transition Grants for area reviews published on 11 April 2016
<https://www.gov.uk/government/publications/post-16-education-and-training-institutions-transition-grants-for-area-reviews>

Appointment of chief executive/principal

38. The decision on who should lead the new college is one of the most important that will be made in the merger process. The decision can also be legally tricky because of the employment law implications. There are a number of issues which governing bodies need to think through:

- Governing bodies have the responsibility for the appointment of the principal or chief executive of the newly merged college. The FE Commissioner letter sent in June 2015 notes that “leadership of large organisations may require a different skill set to leadership of smaller organisations” and that “the choice of principal and the senior management team should not automatically be limited to internal candidates”¹⁶.
- In most college mergers that have taken place in the last 15 years, there has been continuity in terms of the principal/chief executive role. In cases where there are two people in post and willing to continue, a common practice has been to ring-fence the recruitment. In some cases posts have been externally advertised. In just 2 cases out of more than 80 mergers in the last 12 years has the governing body of a newly merged college in England selected an external appointment for the principal/CEO role in preference to internal applicants.
- Most colleges state in their instruments and articles that they will externally advertise the principal/CEO role and most mergers are Type B mergers. If a governing body wishes to ensure continuity either by ringfencing the position to the current incumbents (ie the two principals in the two colleges) or simply to continue the term of the existing principal, then it may be necessary to revise the instruments and articles first to ensure that the decision is compatible with these rules.
- Most colleges do not work well if there is a vacuum. Once a decision has been made to merge, it is best to act quickly to get a chair designate and a principal designate. The auditor general in Scotland reported in 2012 that, ideally, the chair and chief executive should be in post six months before completion in a public body merger¹⁷.

¹⁶ FE Commissioner letter to chairs and principals/CEOs, June 2015 available on BIS website
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435433/Current_Models_of_Collaboration_-_FE_Commissioner_letter_to_the_sector.pdf

¹⁷ Auditor General “Scotland’s Colleges 2015” April 2015, Page 8

- Mergers sometimes involve one college which is financially weak or have an inadequate Ofsted rating linking to a college in a stronger position. In these cases, the obvious choice is often for the postholder in the stronger college to continue in post. Even where this happens, there may be a need to update roles and job descriptions.

Governance of the merger process

39. The way in which colleges tackle governance issues depends on their approach but there are a number of useful lessons from recent experience:

- A merger steering group is generally a good idea, comprising key governors from each college. Membership needs to be decided with a view to who might be planning to stand down and who would like to continue. This needs to be chaired and minuted so there is effective communication to each Corporation using the same reports and minutes. It may be sensible to constitute this group as a formal joint committee of both colleges using the college federation powers contained in the Education and Inspections Act 2006.
- An early decision will be needed on how to involve the principals and senior staff in each college which, in turn, depends on what decision is made on senior appointments. Some colleges say that having a single person designated as project manager makes a big difference to success.
- It is a good practice to use a merger to review board membership, to ensure that governors have the right skills for a new environment and to make the board more diverse in terms of background. Typically there is also a case for providing continuity in the short-term with the constituent colleges. These factors often lead to merged college boards being larger than average so there may be a case for planned departures.
- Mergers between geographically separate colleges may also involve the creation of local advisory groups reporting to the full governing body. This can be a way to maintain expertise without making the governing body too large to be effective.
- In the run-up to a merger, there is the need to formally appoint the shadow board. The process for selection needs to be defined well in advance. Powers and duties remain with the constituent colleges until they are formally dissolved but the shadow board can either have powers to make its own decisions or can act as a communication channel until dissolution happens.

Staff

40. Mergers have a big impact on the people who work in the colleges affected. When merger plans are published, statements about reducing duplication between courses or making savings inevitably raise concerns from staff because they are directly affected. Colleges typically spend more than 60% of their income on staff costs so getting things right is important. Any savings from a merger process will generally involve restructuring, job changes, redundancies and removal of vacancies. Once a merger has taken place, there will inevitably be pressures to harmonise HR policies and terms and conditions. This does not have to happen but if differentials remain between similar groups of staff, then they will need to be properly justified. There is a long list of HR tasks in a merger. These include:

- Sharing information about current organisation structures, staffing levels, contracts and HR policies. There will involve a detailed discussion of issues like pay, hours, holidays, sickness absence, expenses, appraisal and other issues.
- Designing new structures for the new college.
- Communicating with staff and consulting with recognised trade unions on changes.
- Working through the costs and employment law issues (including TUPE) or any planned changes.
- Working to ensure “business as usual” for the two colleges up until the merger date which needs decisions about what to do where there are vacancies caused by early departures.
- Deciding where to leave contracts and policies as they are. Differing terms and conditions can have a negative impact on morale once a merger has happened but there may be good reasons for keeping some things separate.
- Decisions on various policies affecting staff, for example those concerned with managing stress, work-life balance and travel. If multi-site travel is the norm for more than 24 months and for more than 40% of the time, the travel paid becomes taxable.

Students, parents, employers and other stakeholders

41. Students, parents and employers may be relatively unaffected by a planned merger because it does not directly affect the course, campus or service that

they use. Nevertheless it is important for people to feel involved and to have the chance for give their views in the consultation and during merger implementation. The process could be disrupted by late objections and because engagement is likely to produce longer-term success. Merger planning needs to cover communications; there need to be consistent messages from both colleges and consultation needs to address the issues raised.

42. In addition to communications, there are some policies and processes relating to students and members of the public that need to be right from day one. The newly merged college needs to be physically secure and to have full protection for its IT systems. Safeguarding policies and procedures must be in place from day one. Disclosure and barring arrangements and lists need to be resolved. Health and safety arrangements including incident reporting needs to be clear. The constituent colleges will have all these systems and processes in place but there is a small risk that things could get missed in the transition, particularly where there are staff departures. Although there are good financial reasons to timetable mergers for a weekday (avoiding public holidays), there may also be a case for timing it for a day when the colleges are quieter (for example half-terms or the Easter break).

Ofsted

43. Ofsted inspections and government performance data (school league tables, BIS success rate publications) have a big influence on college reputation, influence student/employer choice and also act as a trigger for government intervention. As a result, inspection and performance data shape decisions on merger and on federation. The rules and processes are not currently all written down, resulting in uncertainty for colleges contemplating merger. There are several issues to consider:
 - The unit of inspection for Ofsted is the legal entity. Up to now, a college that has diversified in a significant way or that has been created by merging two or more geographically distant operations is assessed as a single aggregate entity in DFE performance tables; BIS data reports and in their Ofsted inspections.
 - Newly merged colleges are normally inspected on the same cycle as new providers. This means an inspection within three years unless Ofsted's risk assessment suggests the need for an earlier visit. In normal circumstances Ofsted will expect colleges to provide a single data set for the merged colleges. This implies swift action to consolidated data.

- Work is underway to allow colleges that meet specified criteria to have separate results in DfE and BIS reports. This work may be applied retrospectively (ie to already completed mergers). Ofsted plans to consult on a parallel approach which would involve inspecting component colleges or campuses as well as the corporation.
44. The rules on inspection and performance reporting are in flux. In some cases the existing rules have encouraged colleges to maintain a legal separation (either via a federation or via a parent/subsidiary relationship) partly because this protects a good inspection grade or a strong league table record. The new rules may ensure that inspection and performance reporting no longer acts as an obstacle to mergers.
45. Whatever the legal and regulatory technicalities, mergers create an additional pressure to maintain or improve performance. There are a number of practical implications:
- Ofsted rightly emphasises the importance of students having a high quality of experience no matter which campus they study at or what the history of the organisation. This implies quick action to tackle underperformance.
 - The management team in the merged college needs to be able to analyse data in a consistent way across the institution. This does not necessarily require a new student record system but it does imply investment in harmonising and extracting data so that it can be reviewed on a common basis. At the same time it will be necessary to analyse trends in comparison to the constituent colleges.

Business systems (e.g. IT, MIS, Finance, HR and Payroll)

46. Colleges work in a regulatory and funding environment which is dominated by data. Decisions on systems and data collection are incredibly important. Like it or not, a college with excellent teachers and bad data is likely to have more problems than a college with average teachers and excellent data. Just as colleges need to have full and early discussions about staffing issues so that plans can be put in place, so it is necessary to create a road map which clarifies which systems will be in operation from Day 1 and which will be changed later. It is obviously important to work out how and when to combine finance, HR and student record systems to ensure that normal business is unaffected (and hopefully enhanced) in the merger process.
47. Mergers will generally bring together colleges at different stages of development in terms of their systems. This may be an opportunity to extend one college's system to the merged entity or to start afresh with a

new investment. A fresh start may be best in terms of achieving longer term gains but implementing several new systems at once is high risk and has a high staff impact. Care will be needed to ensure adequate resourcing until the new system is fully operational and documented. There are also risks associated with imposing the systems from one college onto another because it could breed staff resentment. Best results and long term harmony are likely to involve combined team working to identify the "best of both" systems for each area and use it as both a business reengineering and teambuilding opportunity.

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This document has been assembled from intelligence gathered by Association of Colleges (AoC) staff in the course of our work and with the help of a number of people in variety of roles including Matt Atkinson (Bath College), Jean Inker, Chris Payne, Liz Phillip, Christina Sadler, Education Funding Agency (EFA), Skills Funding Agency (SFA), BIS and FE advisers. **The document does not replace the need for legal advice and it represents the situation at the end of April 2016.** Policies and processes may change. If you think there are errors or have suggestions for improvement, please contact Julian Gravatt (Julian_gravatt@aac.co.uk).



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