



Association
of Colleges

Promoting. Representing. Supporting.

Guide for Governors and Senior Leaders on new structures -collaborations, federations and mergers

Version 1.0

February 2016

Comments and quotes

"As a Board Chair I have found it essential to think strategically, keep an open mind whilst being mindful of my role, engage and contribute at all stages and maintain effective lines of communication throughout".

Helena Stockford: Chair of Board, Solihull College and University Centre

"I don't want this college to just survive, I want it to succeed"

Atholl Stott: Chair, North Nottinghamshire College

"It works when governors and senior leaders have a clear, shared vision for their college going forward. When they know their college very well and when they are open to change and keen to build on strengths"

Carol Jones: Chair, and Sarah Robinson: CEO, Stoke on Trent College

"It's never "job done". Making the decision on what's the best thing for your community can be difficult. Seeing it through, to make sure you really achieve your objectives is the next challenge."

Carole Stott: Chair, Bath College, Chair of AoC

Contents

Foreword	4
Introduction.....	5
Context.....	6
Getting started	7
Key questions and answers.....	7
1 How to influence area reviews?	8
2 What evidence is necessary to inform decision-making?.....	10
3 What form of relationship is most appropriate for us?	12
4 What process should be adopted to ensure the most effective outcome?	20
5 Due diligence and when to Involve the financial and legal advisers?	22
Case studies.....	25
APPENDIX A	30
APPENDIX B	32
APPENDIX C.....	33

Foreword

The purpose of this guide is to provide practical support for college boards who are considering structural change, either because that is deemed necessary or because they have been prompted to by the area review process. The guide has been based mainly on the experience of several of the National Leaders of Governance (NLG), principals and chairs of merged colleges. We have also built on the lessons learnt in the higher education sector and in other countries such as Wales and Scotland.

Although many colleges were already considering the best option for the future sustainability of their services and programmes, area reviews have created circumstances where colleges have to evaluate whether their structure is the right one going forward. Coupled with the devolution agenda and the new role of the Combined Authorities (CA) in skills funding and commissioning, it is vital that colleges reconsider their response to student need, market position, existing structure, and whether there are more effective business models. Early appraisal of options coming out of the area reviews suggests the main solutions being offered up are around collaborations, federations and mergers. We commissioned this piece of work in response to requests from governors for supportive information on how best to undertake their role in reviews and the pitfalls and benefits of structural change.

We hope this paper will be the basis for further discussion and engagement with the sector. It builds on Julian Gravatt of AoC's Merger Tips paper and takes on board the guidance in the FE Commissioner's letters and the Department for Business, Innovation and Skills (BIS) documents on area reviews and structure and prospects appraisals. Although there has been a merger agenda for the last 20 years, there is little generally known about the sector's successes and difficulties in changing to new structures. There are many potential benefits, but there are also risks that colleges will make costly, disruptive and unnecessary mistakes. This guide aims to help the sector by setting out the lessons learnt from experience and other documented evidence, and by giving guidance on the processes involved.

We see this guide as a starting point for promoting good practice in the sector. We will continue to discuss with chairs, principals, clerks and senior leaders what further support they need - for example, in developing this guide with further detail and examples and providing more detailed briefing material on technical issues related to collaborations, federations and mergers as more proposals move towards implementation; as well as organising further workshops and seminars. We will revise this guide as more proposals move to implementation.

Introduction

Purpose of the guide

1. This guide builds on material already available on restructuring and early findings from area reviews; the links to these documents can be found in Appendix A.
2. It contains practical examples on how to manage a restructuring exercise and has been developed to support those colleges who have already started down the path of restructuring, those now considering the recommendations of an area review exercise, and those who have yet to get involved in structural change. It does not include discussion of sixth form colleges and academy status, further information is available on the AoC website.
3. It covers structural reform, area reviews (including evaluating options) and choosing the right partner. It also expands on when to engage legal advisers.
4. The guide has been developed through a review of past merger activity in the FE and HE sectors in England, an appraisal of the early work of the area review teams, and incorporates lessons learnt from recent structural reform experience in Wales and Scotland. The guide's aim is to support the likelihood of success of such ventures in the sector by presenting a range of good practice for colleges to consider. It is intended to be helpful and informative, and not directive or prescriptive.
5. The guide begins with setting the context and how to get started, and then proceeds by answering five questions posed by governors and senior leaders. These are:-
 - How to influence area reviews and/or a structural review?
 - What evidence is necessary to inform decision-making?
 - What form of new relationship is most appropriate?
 - What process should be adopted to ensure the most effective outcome?
 - Due diligence and when to involve financial and legal advisors?
6. For each topic we provide background information which expands on the issues being addressed, including a checklist for governors and senior leaders to consider. We also provide a set of case studies based on experience. The last section looks at lessons learnt and, at the end of guide, there is a reference sheet which gives hyperlinks to background policy and other guidance documents. To help with implementation, we have produced a separate Technical Appendix including draft documents and templates which can be tailored for college use.
7. The guide was drafted by a sector group including National Leaders of Governance many of whom are chairs of colleges or former principals with first-hand experience of mergers and AoC Governance staff. This guide does not constitute legal advice.
8. This is a working document which will be subject to regular review and, as new structures start to appear, new case studies will be added.

Context

9. The recent agenda for change outlined in the Government's Productivity Plan (coupled with the austerity budget) has created circumstances whereby many college boards have needed to review their structure. BIS 2014 Structural and Prospects Appraisals guide is still a very useful starting point for any board discussion on restructuring.
10. The restructuring agenda has been given a higher priority since the publication of the area review guidance *Reviewing Post-16 Education and Training Institutions*, which sets out the approach to facilitating a restructuring of the further education sector through a series of area based reviews of FE provision.
11. The BIS guidance sets a clear pathway for the reviews and this is not repeated here. However, it is worth restating why the reviews are said to be needed, because that rationale should feature in the intent of any review of structure. BIS expects the outcome of any review to produce:-
 - clear, high quality professional and technical routes to employment, alongside robust academic routes, which allow individuals to progress to high level skills valued by employers; and
 - better responsiveness to local employer needs and economic priorities, for instance through local commissioning of adult provision, which will help give the sector the agility to meet changing skills requirements in the years ahead, building on the devolution agreements.
12. BIS believes that these objectives can only be delivered by strong institutions, which have the high status and specialism required to deliver credible routes to employment, either directly or via further study.
13. The timescale for the reviews and membership of steering groups have now been published and the information and links can be found in Appendix A.

Getting started

14. Whatever the trigger to undertake a structural review - whether it be financial, change of demographics, or an area review - the starting point is the same. For structural change, BIS expects boards to undertake a full appraisal of strengths, weaknesses, opportunities and threats (akin to a structure and prospects appraisal). The first step is for boards to have clearly in mind what they want out of an area review, or any other structural exercise. For an area review, it is important to keep an open mind on the type of solutions being considered and a board should discuss and agree the issues they are trying to address, including any financial problems, and what they want for their current and future students and use that process to test each option.

Checklist for getting started:

- ✓ Agree and document objectives – what is the review trying to solve?
- ✓ Prepare a position paper – strengths and weaknesses.
- ✓ Consider setting up a 'Task and finish group', or steering group, or have a lead member other than the chair to take the strain.
- ✓ Determine the extra resource needed.
- ✓ Consider applying to the Charity Commission (CC) for permission to pay the chair for the extra work involved in reviews.
- ✓ Engage staff and student governors early on in the process.
- ✓ Determine with your clerk the role he/she will play.
- ✓ Ensure processes are transparent and keep good minutes of meetings.
- ✓ Undertake training and development.
- ✓ Seek advice.
- ✓ Revisit your instrument and articles and keep in mind the principles in the Code of Good Governance for English Colleges.
- ✓ Review the criteria for the new BIS restructuring facility and see whether it is applicable.

Key questions and answers

15. This guide has been organised around five main questions, which are most often asked by governors and senior leaders. Each section sets out a summary of the issues and provides a checklist of tips for governors and senior leaders. The five questions are:
 1. How to influence area reviews?
 2. What evidence is necessary to inform decision-making?
 3. What form of new relationship is most appropriate?
 4. What process should be adopted to ensure the most effective outcome?
 5. Due diligence and when to involve financial and legal advisers?

1 How to influence area reviews?

16. BIS has set out how each review should operate and it is important that governors and senior staff are prepared and ready to influence the outcomes. A review delivery team will be established for each review which will include FE and sixth form college commissioners, advisers and staff from the funding agencies. The delivery team will be supported by local (or combined) authorities, Local Enterprise Partnerships (LEPs) and Regional Schools Commissioners (RSCs), and will draw on any analytical resources or evidence they can make available. The analysis will follow a framework agreed by the FE/ sixth form college commissioners.
17. It is important that governors and principals are comfortable with this analysis and are prepared and confident to challenge if necessary. There will be different types of analysis - economic need, current provision, delivery arrangements and options analysis. Governors will need to be up to speed with this information and have the skills and ability to question relevance.
18. The local steering group will set out the options which should be considered as part of the review. Curriculum options may involve rationalisation of curriculum and opportunities for greater specialisation. Institutional options will include structural options such as formal mergers and looser forms of collaboration.
19. **In many cases it is likely that local steering groups will wish to consider options involving merging institutions. In such cases it will be important to recognise that a merger is not the objective, but is the process and that detailed assessment and planning is required to maximise benefits.**
20. Governing boards will be responsible for deciding whether to accept agreed recommendations in relation to their colleges. In considering the outcomes of reviews it is important that college governors give careful weight to the long term stability of their college. This will need to take account of their broader duty under charity law to comply with their legal obligations as charity trustees in exercising control and management of the administration of the college as a charity.
21. Boards should ensure that a wide range of views are sought, from internal and external stakeholders. Engaging and encouraging contributions from students, parents, employers, other providers indirectly affected and local communities should be evident throughout the review process in addition to committed engagement with other colleges in the review. It is important that disadvantaged and under-represented groups are actively involved in reviews and/or any consultation that results in a change of structure. Local steering groups will need to develop and implement a strategy for engaging with and managing local external stakeholders.
22. This engagement is central to the overall success of reviews, particularly as one of their key outputs is to ensure that the profile of provision meets the current needs and future priorities of students, employers and communities.
23. Governors should be prepared to influence the review process at each stage - checklist one sets out how to do that.

1) Checklist for influencing the review:

At each stage of the process:

Prepare, speak up, reflect, communicate, feed back

At individual board level:

- ✓ Write a position statement for all board members and senior leadership to use.
- ✓ The position statement should be short and cover the college's strengths and include what you want out of the review.
- ✓ Determine the key issues you want to discuss with the area review team during college site visits.
- ✓ Be ready to challenge the information and analysis provided by the area review team.
- ✓ Discuss which options and re-organisation models would be most acceptable/unacceptable.
- ✓ Put these forward to the review team and steering committee. Be ready to explain your rationale.
- ✓ Keep your stakeholders, including local MP, in the picture.
- ✓ Build alliances with other colleges, schools and universities, the local authority (LA), LEP, Charity Commission and the Shared Business Services .
- ✓ Ensure your staff are on board - involve them in your discussions.
- ✓ Take time to ensure students understand the process and how they influence it.

With prospective partners and or area steering group members:

- ✓ Spend time clarifying aims and objectives of the review.
- ✓ Work with partners on shared vision for the area.
- ✓ Determine together the type of offer your different student groups need and ask for underpinning data to be made available.
- ✓ Look at the whole market offer, including what the local private sector offer is.

2 What evidence is necessary to inform decision-making?

24. The Area Review Guidance sets out the information that the review team will use and it will ask colleges to send them a completed pro-forma in advance. However, the data often needs to be interpreted by those who know their educational landscape best and the college board should be ready to explain why it offers what it does. From the reviews that have already started, it is clear that evidence and data are needed throughout the process.
25. Initial retrospective data is required to demonstrate the level of success of the existing offer. Forecasting data is required to show the expected future needs of an area, and financial data is required to inform any review of options.
26. The evidence to support decision-making should reflect the nature of the options being considered. **Colleges should avoid seeing the case for a particular proposal as being self-evident.** A rigorous options review, prepared objectively and subject to consultation, should precede any agreement in principle, and it is important to engage with dissenting views. Where a proposal affects students, their interests and needs will be a major priority.
27. The various options should be tested for affordability and the possible sources of funding investigated. In future, public funding is less likely to be available than in the recent past and in the case of apprenticeships, for example, will need to be 'earned' through relationships between colleges and employers. Colleges will need to take a particularly rigorous approach to costing and financing.
28. **Merger costs are often underestimated**, particularly in areas such as harmonising pay, pensions and benefits structures, ICT systems and administrative processes. These costs can be substantial, particularly where the merger is between HE and FE colleges. In general, there is a tendency to emphasise renewing the estate, which can easily be presented as a clear outcome from merger. Other costs, including opportunity costs, may be more difficult to estimate, but they should not be overlooked.
29. Colleges may see the potential for economies of scale, especially in 'back office' operations and over the longer term. Where it is essential to reduce cost, this should be done promptly and openly in consultation with staff and other interested parties; and the effect on students should be assessed and managed carefully so as to safeguard their experience.
30. Given the tendency to underestimate costs and risks, particular attention needs to be paid to due diligence. It should not be done so late in the process that its results cannot be properly taken into account and the proposal reconsidered or renegotiated if necessary.
31. As well as the analytical data, the board should consider other types of information. Checklist two sets out the type of information a board will need.

2) Checklist of evidence to form a view on options:

The most effective 'options reviews' evaluate possible organisational forms, structures and relationships against a set of criteria agreed at the outset by all parties. The criteria should be set for each educational activity and other major services, including:

- ✓ College mission.
- ✓ Standards and quality.
- ✓ Range and breadth of provision.
- ✓ Finances and loans.
- ✓ Estates- usage and quality.
- ✓ Geography and distance to learning.
- ✓ Transport.
- ✓ Brand and reputation.
- ✓ Relationships with key funders and strategic partners.
- ✓ Impact on staff and students.
- ✓ Impact on equality and diversity.
- ✓ Impact on the continuity of operation.
- ✓ Legal issues and implications.
- ✓ Institutional flexibility.
- ✓ Degree of risk.
- ✓ Timescales to deliver key objectives.
- ✓ Efficiencies and economies of scale.
- ✓ Impact on the community, including schools and universities.
- ✓ Opportunity costs.

3 What form of relationship is most appropriate for us?

32. From the early area reviews, we see that the steering groups are considering many options but they seem to be focusing most on collaborations, federations and mergers. This guide therefore focuses on collaborations, federations and mergers and how to succeed, and on what type of relationship could give boards the best option for their college.
33. Looking at the evaluation of past mergers, the main reasons for colleges coming together were:-
 - responding to government policy,
 - responding to poor financial health,
 - gaining financial strength through sharing assets,
 - improving the scale and range of the course offer,
 - improving the range and quality of learning and teaching for students,
 - achieving economies of scale,
 - obtaining capacity and expertise,
34. Also, in the past, colleges' stated objectives for collaboration, federation and merger projects may not have been wholly realistic or mutually compatible, and they may not have known how to achieve them. An initially clear purpose may become clouded or complicated by the involvement of additional partners. The past shows us that external funders may have their own agenda, therefore there are challenges in dealing with potentially divergent aims. A theme coming out of past experiences is that strong leadership is required to maintain and pursue college objectives.
35. Collaborations, federations and merger projects can enable colleges to share risk with partners as they attempt to achieve their objectives. This can involve sharing cost (with other colleges or external funders), acquiring expertise or capacity, achieving critical mass or accelerating development. These potential advantages need to be balanced against the inherent risks of engaging in collaborations, alliances and mergers.
36. There are many possible types of relationship between colleges. The spectrum of relationships runs from 'softer' forms such as collaborations, associations or consortia, through shared services, different varieties of joint venture and federations, to full merger at the 'harder' end. Figure one describes the most common new relationships.

Figure 1: Spectrum of collaborations, federations and mergers



37. Structures at the 'harder' end of this spectrum are usually more difficult and costly to put in place than collaborations and federations, and therefore generally involve higher risk to colleges. However, in the right circumstances, they might yield greater benefits than simpler, more flexible arrangements that can be more easily unwound. These issues are explored in more detail throughout this guide.
38. There are differing definitions for collaboration, federation and merger, but for this guide we are using the following definitions:-
- **Collaboration:** two or more colleges working together in a particular area of business, which may involve combining existing operations, pooling areas of expertise or creating something entirely new. This type of initiative usually focuses on softer arrangements such as agreeing to work together on certain tasks or actions, examples include shared services or establishing a joint quality improvement unit where assessors are shared, which might have their own distinct brand.
 - **Federation:** a more systemic form of collaboration normally underpinned by a legal agreement between two or more partners, where the partners retain their separate identities and governance. Federations are a distinct form of co-operation between colleges, and sometimes they can be seen as a more flexible alternative to full merger. However, they may be less successful at achieving major rationalisation and integration, particularly of estates and curriculum. For the constituent colleges, they can raise significant issues about identity and branding. But they can also help maintain local focus and legal accountable identity for the partners.
 - **Merger:** two or more partners combining to create a single college, which may retain the name and legal status of one of them or be an entirely new legal entity. For colleges, this normally involves a merger A or B scenario.
 - Type A mergers (where all the existing corporations are dissolved and a new one created).
 - Type B mergers (where one corporation continues; the others are dissolved and the staff, assets and liabilities transfer into it).
39. In summary, the main differences between mergers and collaborations are set out below in Figure two:

Figure 2: Addressing issues of collaborations and mergers

Issue	Mergers	Collaborations
Range of activities considered	The whole college should be considered and a high degree of compatibility or complementarity is essential	Only specific or localised activities need be considered
Objectives	All objectives should be agreed	Specific (and possibly time-limited) objectives should be agreed
How achieved	Achieved through a single step – though mergers between more than two parties can be done either sequentially or as a ‘big bang’	Possibly developed incrementally, with the option of moving to a strategic alliance or merger later
Restructuring	Organisation-wide restructuring may be necessary	Wider restructuring is probably not necessary
Management and governance structures	Unified structures are required – though the ‘holding company’ model allows for some local autonomy	Local arrangements for the collaboration need to interface with existing structures
Momentum	Strong momentum	Need to take ‘unmistakeable steps’ to maintain momentum
Review	Post-merger evaluation of lessons learned	Collaboration agreement should be kept under review
Impact on staff and students	Higher and more widespread impact	Lower or localised impact

Forms of relationship

40. A clear case, based on the core purposes of the college – teaching, skills and knowledge exchange – should be at the heart of all collaborations, federations and merger projects. This implies a strong focus on students, employers, parents and the wider community. Boards should consider the ‘public good’ as well as business needs. Economic issues should not be ignored. Economies of scale can be important in advancing college aims - for example, achieving critical staff/student mass improves the viability of courses.
The most successful projects have had a strong educational purpose that is underpinned by a sound economic rationale.
41. All the forms of relationship on the ‘collaborations, federations and merger spectrum’ shown in Figure one present opportunities, but one clear message from the review of past mergers is that they can be a ‘point of discontinuity’ with the past. This can provide the occasion and rationale for making a whole series of changes (to governance and management arrangements, academic strategy and structure, operational processes and so on) that would be much more difficult to achieve piecemeal during ‘business as usual’. Indeed, some colleges have taken the opportunity provided by a merger to reconsider almost everything they do, ‘capitalising on the process of change’. This may be best for the future, but it will add to the burden of merger. The merger process itself is resource heavy and boards and senior leaders may need to think about how they manage the merger project and ensure they have sufficient capacity.
42. Colleges are now finding they need to consider mergers and collaborations at times not of their choosing. In some of the early area reviews, the policy and funding environment is driving the agenda and timescale. The timetable may be set by other parties - for example, devolved authorities will have their own timetable which may have different needs and deadlines. Area reviews are driving the merger agenda but decision making still needs to be given time and involve careful, measured evaluation of all the evidence and alternatives. College boards must ensure their role as trustees is implemented and due care is taken.
43. Any new entity or venture should aim to achieve more than could be delivered by the individual parties separately. The proposal should reflect a clear strategic need, and the parties should agree a ‘strategic narrative’ based on a simple, forward-looking idea that can be easily understood and communicated. This will clarify the purpose, underpin the argument for change, provide direction and help make sense of the various actions being taken.
44. Collaborations, federations and merger projects can enable colleges to share risk with partners in achieving their objectives. This can involve sharing costs, acquiring expertise or capacity, achieving critical mass or accelerating development. These possible advantages need to be balanced against the inherent risk of the projects themselves.
45. There are many different types of relationship across the ‘collaborations, federations and merger spectrum’: from associations and purchasing consortia at the ‘softer’ end (lower risk, easily unwound), through various forms of institutional collaboration and joint ventures, to full merger at the ‘harder’ end (higher risk, not easily unwound). In some cases, collaboration (possibly leading to a strategic alliance) can bring many of the benefits of merger without the same cost or level of disruption. On the other hand, merger can bring more commitment from the parties and might achieve deeper and more extensive change.

46. In presenting collaboration as an alternative to merger, colleges should note that it may be harder to identify gains and then pursue them to a clear timetable. Mergers tend to have more of a momentum than collaborations, so the parties will need to take 'unmistakeable steps' to demonstrate that something new is happening.
47. Any collaboration will need to be kept under review, the partners will learn from their experience of working together and should remain open to renegotiation as needs and circumstances change.
48. Mergers are more likely to be successful where, through a careful analysis of objectives and activities, most of the colleges' major operations are compatible or complementary. Where such alignment is not possible, more selective forms of joint working would be more appropriate. Mergers require a high level of commitment from the parties precisely because they involve all activities.
49. The opportunities presented by mergers may sometimes result in organisational and operational difficulties that can take years to resolve and, unless thought through in terms of capacity at leadership and project management level, can distract attention from the core business. On the other hand, creating new forms of collaboration between colleges that otherwise remain unchanged brings risks associated with increased complexity in management, governance and operation. The interface with existing structures and processes will need to be considered carefully. This might be resolved by moving from local collaboration to a strategic alliance, where structures and processes become gradually and more systemically aligned.
50. Whether to retain an existing brand or develop a new one is an important issue. This reflects the growing significance of name recognition, linked to institutional identity and differentiation, to prospective students, employees, employers and other partners. This raises the question of whether collaboration or a strategic alliance is best seen as a step toward, or an alternative to, full merger between two or more parties. Where collaboration is considered a route toward eventual merger, should colleges be explicit about this? There are risks either way. Staff will quite reasonably want to know the longer-term intention and its implications, but this debate might disrupt short-term objectives.

Size of institution

51. Issues about the size and scale of colleges are complex and inadequately researched but size in and of itself is rarely a good argument for merger. Collaborations, federations and especially merger activity are often justified on the basis of needing to reach a sustainable scale of operation. Some operations may be too small to be economically or academically viable, but beyond a certain size they may become more difficult to manage or change. It is worth noting that many highly successful colleges are also relatively small.
52. There is no clear evidence for a minimum or maximum size for viability or efficiency. This is not surprising given the wide range of the sector's activities and the diversity of its providers, which mean that colleges can have very different sources of income and cost structures. The relative size of the partners can be a significant consideration.
53. Increased size may provide opportunities for greater efficiency in the delivery of services and 'back office' operations, such as MIS, finance, HR, marketing, ICT and estates management. Shared services agreements may be the best means of achieving this, though there should always be a full evaluation of their potential impact.

54. The desire for synergies is often part of the rationale for merger or collaboration. Synergies are likely to come through new ways of working and over the long term. Geography and distance sometimes constrain the effectiveness of mergers, so selective collaboration might be a more viable alternative. It is important to consider the impact on students and staff of any rationalisation of multi-site operations.
55. Geography is a factor frequently mentioned by colleges and students. Activities will usually need to be co-located to deliver significant synergy or efficiency, and even short distances and travel times can be a constraint, especially around below Level 2 activities, where students generally do not want to travel. Co-location itself can be costly to achieve and take many years to establish. In any post-merger rationalisation of multi-site operations, there will be a tension between functional and territorial structures, for example, there may be logic in reorganising around young people or adults or by vocational sector, but this may disconnect the new structure from its local community, adversely affecting students and weakening demand for places.

Process and criteria

56. The process and criteria for choosing a new partner should be transparent. This can be done through open advertisement setting out what the board is looking for or through joint discussion before or as part of the area review process.
57. Once parties have reached agreement this should be quickly followed by a MoU (Memorandum of Understanding) and action plan with milestones which should be monitored by the boards. As mentioned earlier, the parties should set up a steering group and implementation team to take forward implementation. The existing boards must closely monitor the progress and keep a close eye on the usual business of running the college. Templates of a MoU can be found in the Technical Appendix.
58. One of the topics causing much discussion is debt and the role of the banks. Banks are there to lend money and as such they are able to close one loan agreement down and open another with the new college. However, they are entitled to do their own due diligence and charge for it. But you are also able to negotiate and may be able to change banks if necessary. This is commercial negotiation and you should negotiate hard to get the best interest rates and charges. BIS will be producing further advice on this and have discussed the situation with the banks at a national level.
59. When determining a partner, boards need to review their original motives for structural change and evaluate whether the candidates for merging will support the original intent. Checklist three suggests the areas that need to be reviewed.
60. Through this exercise you may find that you are not a complete match, or there are large logistical and financial problems. That does not necessarily mean you should not merge or collaborate, but merely points to the issues that would need to be evaluated, mitigated and/or addressed.

3) Checklist on choosing an initial partner - what to look for:

Strategic fit:

- ✓ Vision and mission.
- ✓ Development priorities.
- ✓ Culture.
- ✓ Local identity.
- ✓ Community benefit.

Quality

- ✓ What is the performance like?
- ✓ Are the problems manageable?
- ✓ Will you be able to maintain Ofsted/Quality Assurance Agency (QAA) ratings?
- ✓ Is their attitude to quality the same as yours?

Financial stability and growth

- ✓ Are they in debt?
- ✓ Is it manageable?
- ✓ What do the banks say?
- ✓ Do you have the same attitude to risk?
- ✓ Do they have a reserve?
- ✓ What is the land stock worth?

Values, culture and behaviours

- ✓ Have they adopted the Code of Good Governance?
- ✓ Do they have a strong equalities policy?
- ✓ Do they have open governance?
- ✓ Are they transparent with data and information and decision making?

Students

- ✓ What do they say?
- ✓ Are there good progression routes and career advice?

Staff

- ✓ What do they say?
- ✓ What do staff surveys tell you?
- ✓ How qualified are they?
- ✓ What is staff morale like?

4 What process should be adopted to ensure the most effective outcome?

61. It can be seen from past evaluations and experience that leadership from the outset is vital. Leaders (governors and the principal) must drive the whole process, including overcoming obstacles and negotiating with stakeholders.
62. **The best results are when colleges and their potential partners develop a shared vision before acting, as clarity about objectives will energise the parties and avoid wasted effort.** Communication and dialogue with stakeholders, especially staff and students, is essential throughout the process. Support will be developed and resistance reduced if there is a concerted effort to explain the vision and address fears. Expectations need to be managed and kept realistic.
63. The senior management structure and governance arrangements in the new institution or venture need to be agreed at an early stage, perhaps as part of a memorandum of understanding. If these issues are not resolved, ambiguity may undermine trust, or senior managers and governors who have a strong commitment to existing structures could be an obstacle to change. Appendix B sets out an example of a process and the stages that need to be managed.
64. There needs to be adequate oversight of the project, often in the form of a joint working group and/or shadow board. Project management would normally be devolved to a separate task force or project team, which needs adequate resources to manage the whole process. At the same time, it is vital to ensure the continuity of existing business operations.
65. **Almost all colleges say their collaboration, federation and merger projects required more time, effort and money than they originally expected.** This observation accords with private sector experience, where the benefits are often overestimated and the costs and degree of difficulty underestimated. General optimism about what can be achieved can help to overcome obstacles along the way, but there may also be a lack of understanding of the demands of mergers and collaborations and their consequences.
66. The change process is dynamic, often messy and subject to the influence of unexpected events; individual colleges should therefore agree 'break points' to mitigate the risk of being swept along and missing warning signs. An implementation plan is an essential part of the process, and it should be kept under review and modified as necessary.
67. Investment and restructuring are often necessary to deliver real benefits and the advantages and disadvantages of doing this sooner or later should be carefully weighed.

4) Checklist for agreeing a 'deal':

- ✓ Reason for the deal being sought (quality, financial, political)?
- ✓ Who will be involved in the discussions/negotiations? (In the first instance, the smaller this initial group the more realistic the chances of making progress in the early stages. (chair, principal)
- ✓ Ensure at this stage that appropriate authority is delegated.
- ✓ Scope of discussions. Identify which are the key areas being identified, discussed and reported back to the board and in what format outcomes will be reported. It is also important that the same format is reported back to all parties and at the same time to avoid any misunderstanding or potential ambiguity.
- ✓ Timetable of discussions/schedule of meetings to be arranged to ensure no unnecessary delays. Meetings can always be cancelled at short notice but are more difficult to arrange at short notice. (clerk to arrange)
- ✓ Nominated representatives for possible smaller project groups. (chair, principal, vice chair, chair of committee, business representative governor etc.)

Collaboration and merger structures

- ✓ Reason for the relationship, internally driven, externally driven?
- ✓ Urgency for outcomes?
- ✓ Is this a project or part of a process?
- ✓ Is the reason cost saving?
- ✓ Is more time needed to establish an effective relationship?
- ✓ Collaborate, federate or merge (different levels of engagement driven by culture, finance, trust and politics)?

Powers of a Shadow Board

- ✓ Some of these are driven by statute and the degree of trust and authority that is agreed by the outgoing boards.
- ✓ Independent authority still lies with the independent boards until at least the day of dissolution and formation of the entities.
- ✓ Certain legal responsibilities lay with all board members after the merger takes place.
- ✓ Clarity and guidance should be sought from professional services, both legal and financial.

5 Due diligence and when to Involve the financial and legal advisers?

68. The due diligence process covering financial, legal, commercial and academic issues should be considered an essential part of any proposed merger or collaboration. This includes the transfer of employee contracts and liabilities under TUPE and other relevant legislation. However, looking at past mergers, the sector's experience in conducting due diligence is varied. In some cases, this was not carried out or was done so late in the process that the parties were already almost irrevocably committed to the venture and could not easily withdraw or renegotiate, whatever the results. There are also examples where the process was flawed and failed to identify difficult and costly issues, which emerged only much later once the decision had been taken. In at least one case, significant issues were properly identified, but these were not taken into consideration as part of the merger process.
69. Quite apart from trying to ensure a rigorous and professional due diligence process, there is an argument for splitting the process in two: conducting initial enquiries at the options review stage to see if there are any fundamental concerns that might alter the assessment of the options; and only then commissioning fuller investigations as part of the implementation plan. Even at this stage, however, the parties should recognise the possibility of abandoning the venture if materially adverse information comes to light. Checklist 5 contains the areas that a board might need external assurance on. A more detailed list can be found in the Technical Appendix.

5) Due diligence checklist

You need to know your prospective partners:

Ask to see their risk register. Check content. Probe and agree mitigations. There are solutions for most issues but you need to know what they are.

These are the areas that may need to be reviewed in detail by accounting and legal advisers. A more detailed list can be found in the separate Technical Appendix.

- ✓ Quality & curriculum
- ✓ Finance, including debt
- ✓ Student numbers and satisfaction
- ✓ Policies / governance / corporation
- ✓ Estates / assets
- ✓ Legal, including pensions
- ✓ Infrastructure / IT
- ✓ Staffing
- ✓ Partnerships / communications / stakeholders
- ✓ General

Key lessons learnt

70. When governors have been reviewing structures, the most common solutions have been collaborations, federations and mergers; although new and more innovative structures are now being considered, which include setting up umbrella companies, joint ventures, hub and spoke, partnerships with universities and trusts. Although most of the evaluation material in the college sector, both in the UK and in other countries, has focused on mergers rather than collaborations and federations, there are still lessons to be learnt. There are no reliable estimates of long term success in collaboration, federation and merger projects in the college sector and the only full evaluation report done in 2010 showed very little evidence to support “big is best”. However, it did say there was an expectation that bigger colleges would be more resilient.
71. The evidence from the private (commercial) sector also notes that a high percentage of mergers fail outright or do not achieve the expected benefits in terms of increased shareholder value or efficiency gains. However, there are lessons to learn and pitfalls to avoid.
72. The main reasons given for this poor success in private sector are:-
 - lack of a clear vision or strategic objectives
 - inadequate planning
 - insufficient due diligence work
 - poorly managed integration in the face of organisational complexity
 - directors failing to provide leadership
 - poor communication
 - low priority given to cultural issues and the impact of change on staff.
73. It also needs to be said that although a high proportion of mergers in the private sector fail to meet expectations, organisations are still coming forward with proposals.
74. Early lessons learnt from area review Joint Unit are:-
 - Early engagement between colleges on options helps to move the process on.
 - Progress to options is quicker where LEPs and LAs have clearly articulated their vision.
 - The need for effective stakeholder engagement.
 - Having the right skills, resources and support in place.
75. The AoC governance resource bank and team can provide support and signpost to further advice including support from National Leaders of Governance (with funding available from the Education & Training Foundation). The following list details the elements that lead to success. The process is not fool-proof, but if followed there is a greater chance of long term success.

Key points to consider

- ✓ Key individuals (principal and/or chair) make a difference and drive the whole process.
- ✓ Develop a shared vision first, then act.
- ✓ Keep focused on the reason why you wanted to change structure.
- ✓ Be student centred.
- ✓ Set up a joint working group comprising representatives from all the parties to oversee the process; consider having an independent chair.
- ✓ Set up a separate task force or project team, and provide sufficient resources.
- ✓ Create a Memorandum of Understanding to ensure clarity between the parties.
- ✓ Don't keep harping back to past structures - move on quickly.
- ✓ Ensure all the governing bodies receive consistent information and at the same time.
- ✓ Actively manage the change process, but recognise that the process is dynamic, often messy, and may involve major surprises.
- ✓ Prepare an implementation plan, set key milestones and monitor its delivery.
- ✓ Invest upfront to deliver benefits.
- ✓ Identify and deliver 'big wins', because they change people's perceptions.
- ✓ Consider carefully the timing of any restructuring.
- ✓ Consider the importance of organisational culture in achieving change, but note that an over-emphasis on it might create obstacles to the effective and timely delivery of the project. Set up a change programme early.
- ✓ Manage expectations and keep them realistic.
- ✓ Don't over promise on savings.
- ✓ Note that transition usually involves friction for both staff and students - take action to minimise it.
- ✓ Develop a communication and stakeholder plan.

For mergers specifically:

- ✓ Set up a shadow board to plan for the new institution and oversee the transition, and to form the core of the new governing body.
- ✓ Ensure the Board of the new institution has the right balance of skills and diversity.
- ✓ Whilst it can be helpful to retain a core of experienced governors from both boards, consider carefully whether this will aid progress. It is worth considering the option of a neutral Chair.
- ✓ Note the pitfalls of sharing power, even during the transition period.
- ✓ Agree the new senior management structure at an early stage including a new chief executive/principal.
- ✓ Consider how the new chief executive/principal will be appointed and timescale
- ✓ Make key appointments on merit.
- ✓ Assess the level of any redundancies and the cost. Think through any media attention.
- ✓ Consider using external project management support.

Don't forget

To concentrate on keeping the business going through merger and restructuring.

Case studies

This section presents four case studies. They were selected to illustrate a broad range of experience, including mergers, system-wide restructuring, collaborations and partnerships.

Case study one: preparing for an area review

Description: Stoke on Trent College, a general further education (GFE) college and the largest provider of post-16 provision in the sub-region.

Background and process

A FE pre-Area Review Steering Group was set up. Supported by an independent co-ordinator, the principals and chairs of all the FE and sixth form colleges were encouraged and invited to meet to establish the terms of reference for the group and to start to plan for a forthcoming area review. The LA and the LEP were keen to play their part in the process and to work with FE colleges. A group was established to bring together the LEP, LAs and FE college representation.

Outcomes and evaluation (improvements):

- As part of the work with the LEP and LA's, a communication plan and lead spokespeople were agreed.
- An area review Q&A session based on the BIS guidance was organised, which enabled everyone to meet before the start of any formal proceedings.
- Chairs were advised of the importance of the area review stages and meetings.
- The co-ordinator delivered an area review information session for individual governing bodies on request.
- Information sharing protocols were drawn up between the colleges, LA and LEP in order to enable data and finance information to be shared in advance of the area review.
- An external organisation was commissioned to collate area review information and data from all the colleges to enable solutions and options to be considered in advance of the area review commencing.
- The findings from this group were presented to members of both FE and LEP led groups collectively with a written report of the overall findings. Each individual college also received a written area review profile based on data and information submitted.

Lessons learnt:

- **Communication** – fundamental – but has to be planned and co-ordinated.
- **Trust** – we anticipated from the start that our meetings would be uncomfortable at times however we worked our way through that.
- **Knowledge** – important for all parties to have as good an understanding as possible about supply and demand in the geographical location; particularly important for governors, who are being asked to consider options that benefit the whole area, not just their own college, students and community.
- **Partnership working** – important to work with the LEP and local authority from an early stage to get a shared understanding and be clear on views regarding external communication (we were keen to have this very low key before and during the key work of the area review). Also good to meet with the LEP and LA colleagues who will be on the Steering Group, prior to the formal process.

Case study two: Federation

Description

The South Leicestershire College and North Warwickshire College Federation

South Leicestershire College wished to create a new organisational model in 2012 to help ensure long-term financial sustainability and maintain its range of provision to a good standard. Following an independent review and wide consultation the governing body considered several alternative partners, with models which included merger and federation. The decision was taken to create a federation with North Warwickshire & Hinckley College which had proposed itself as a partner during consultation. The two colleges had managed a successful shared services project the previous year and had identified similarities in mission and values. The federation was intended to enable the distinctive communities of each college to be served, for the period foreseeable at that time, by independent corporations which would gain the benefits of co-working and shared leadership.

Background and process

A joint Steering Group of governors from each college developed the federation plan and agreed to the creation of a single principal post as the starting point. The principal of North Warwickshire & Hinckley College, became principal, chief executive and accounting officer for both corporations early in 2013. A matrix model was then established for senior management posts serving both colleges.

Outcomes and evaluation

Some of the intended goals of the federation were well-served and significant improvements in quality were confirmed in the strong grade 2 awarded by Ofsted to South Leicestershire College in autumn 2014. Significant cost savings were achieved but the continuing financial constraints for the FE sector as a whole mean there is further to go in making savings and this has led to a decision for a full merger during 2016.

Lessons learnt

The joint working arrangements and knowledge gained during the period of federation should enable a smooth path to a full merger in due course.

Case Study three: Implementing an area reviews

Description: Norfolk and Suffolk area review led by FE Commissioner

Background

The process started before the formal area review process was announced and took place over the Spring and Summer of 2015. Colleges had started work on possible areas for collaboration in 2014, under aegis of ACER/AoC Eastern Region, they then invited the commissioner to review options (so this was not the first area review, but a model for it).

Five colleges were in the scope of the review (two GFEs, three sixth form colleges (SFCs)), in an area with a population of 175,000.

There was an existing recognition that current arrangements were not sustainable in the long term, and some participants were prepared to consider merger/other arrangements.

Outcomes

The area review process considered existing educational provision, curriculum, estates, travel to work patterns and funding.

The FE Commissioner's team facilitated a consultative process with all participants, and recommendations grew out of discussions. Seven recommendations produced by the FE Commissioner's Team ranged from a merger of all five institutions to no change.

Recommendation five was the agreed outcome, emphasising the autonomy of college boards in making the final decision on the proposed recommendations. As a result, three participants - two FE colleges, one SFC - have begun process of merger and with a shadow board in place. Two sixth form colleges have opted for a partnership arrangement.

Lessons learnt

Too early to know whether the review process was successful, however, the process led to a greater understanding of the area's needs.

Case study four: Merger

Description

Two neighbouring colleges 15 miles apart, both rated Ofsted *Good* with ambitions to be *outstanding*, and both well managed and in strong financial health - North Nottinghamshire College (NNC) in Worksop with a number of satellite centres and Rotherham College also with a number of satellite centres.

Background and process

Both organisations had weathered the challenges of reduced funding in recent years and taken differing approaches to maintaining financial stability.

NNC had pursued a number of options including developing a viable commercial subsidiary delivering full cost training and working in strategic partnership with a number of other organisations. The policy of the board was, where possible, to reduce the dependency on direct funding and to achieve a position of being resilient against changes and the politics of the day. The turnover in the organisation grew by 50% over a five-year period. However, the challenging sector conditions had necessitated a number of restructuring exercises in the same period across the whole organisation and the number of senior managers had also been reduced by 30%.

Rotherham had steadily maintained a thriving offer of curriculum subjects and the volume of funding programmes for 16 to 19-year-olds was significantly larger than that delivered by NNC. They had also developed a thriving HE offer with ambitious but deliverable plans to grow this. They had also been significantly challenged by the reduction in funding in the sector, and competition from the schools for 16 to 18's.

Both boards had clearly stated in their strategic plan that the main priority of the organisations was to serve the needs of their community. In response to this strategic aim, a number of meetings took place between the principals and chairs of the respective organisations to explore the potential for collaboration, including potential merger.

A discreet round of exploratory discussions took place with a number of other colleges who had gone through the merger process to identify the challenges, costs and benefits which might result. The findings were positive and, after exploring the potential, both boards agreed to proceed to the next stage which was to undertake a Strategic Prospects Appraisal (SPA). Tenders were sought and KPMG were chosen to undertake the exercise.

The results reported back to the respective boards were positive and there was a clear recommendation to go ahead with a full merger. The decision to merge was approved by both boards and the necessary due diligence and consultation was carried out.

Outcomes and evaluation

The whole process took approximately 20 months and cost somewhere in the region of £200k. A group structure has been created and the two colleges have kept their own identities in their respective communities.

The decision to dissolve one entity and create a combined legal entity was taken collectively with neither organisation demanding a preference, only a collective desire to deliver the service to the community and do it well.

A sense of balance has been maintained as the Principal and Chief Executive of one college has been appointed as Chief Executive of the group and the chair of the other college has been appointed Chair of the Group. Both appointments were as a result of discussion and necessary process taking place using representation from both boards.

The board is made up of 12 governors, six from each board and staff members. A new company secretary has been appointed to the group.

The exercise has been time consuming, and the work of integrating the two organisations is not an easy one and will take a great deal of time and effort throughout the organisation. However, the result is a financially secure Institution which has created a platform to develop and improve in the future to best serve the needs of the collective communities.

APPENDIX A

Chapter	Documents and Links
Introduction	<p>Structure and appraisals</p> <p>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305583/bis-14-703-structure-and-prospects-appraisals-guidance-for-colleges.pdf</p> <p>Julian Gravatt Merger Tips</p> <p>https://www.aoc.co.uk/sites/default/files/Merger%20Tips%20Document%20November%202015.pdf?dm_i=26BG,3SE7W,FUGKWV,DNCUP,1</p> <p>Sixth form colleges and academy status</p> <p>https://www.aoc.co.uk/sites/default/files/Academy%20Conversion%20-%20advice%20for%20sixth%20form%20colleges%20Feb%202016.pdf</p>
Context	<p>Productivity plan</p> <p>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443898/Productivity_Plan_web.pdf</p>
Getting Started	<p>FE Commissioner letters</p> <p>https://www.gov.uk/government/publications/area-reviews-and-reshaping-the-college-sector-fe-commissioner-letter</p> <p>Code of Code governance for English Colleges</p> <p>https://www.aoc.co.uk/funding-and-corporate-services/governance/governance-resources/code-good-governance-english-colleges</p>
How to influence an area review?	<p>Reviewing post-16 education and training institutions</p> <p>www.gov.uk/government/publications/post-16-education-and-training-institutions-review</p> <p>Guidance on area reviews</p> <p>https://www.gov.uk/government/publications/post-16-education-and-training-institutions-area-based-reviews</p>
What evidence is necessary to inform decision-making?	<p>Using Labour Market Intelligence in a College Context</p> <p>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/440558/Using_Labour_Market_Intelligence_in_a_college_context_1.pdf</p>

What form of new relationship is most appropriate?

Current models

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437848/bis_15_324_current_models_of_collaboration_-_post_14_Further_Education_2.pdf

LSIS emerging models of delivery

<http://webarchive.nationalarchives.gov.uk/20130802100617/http://lsis.org.uk/news/emerging-models-delivery-across-fe-and-skills-sector>

Evaluation of models of success

<https://drive.google.com/file/d/0B6psyHRq0wqPZmQyZTBIOTUtNzgZNC00NmNkLTgwY2YtNzNhYzI0ZTQ0MTAy/view>

What process should be adopted to ensure the most effective outcome?

FE

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305583/bis-14-703-structure-and-prospects-appraisals-guidance-for-colleges.pdf

HE

<http://www.hefce.ac.uk/media/hefce/content/pubs/2012/201221/Collaborations%20alliances%20and%20mergers%20in%20HE.pdf>

Due diligence and when to involve legal advisors?

Scotland NAO evaluation of mergers

http://www.audit-scotland.gov.uk/docs/central/2012/nr_120614_public_body_mergers.pdf

Learning from past experience

Summary of evaluation reports

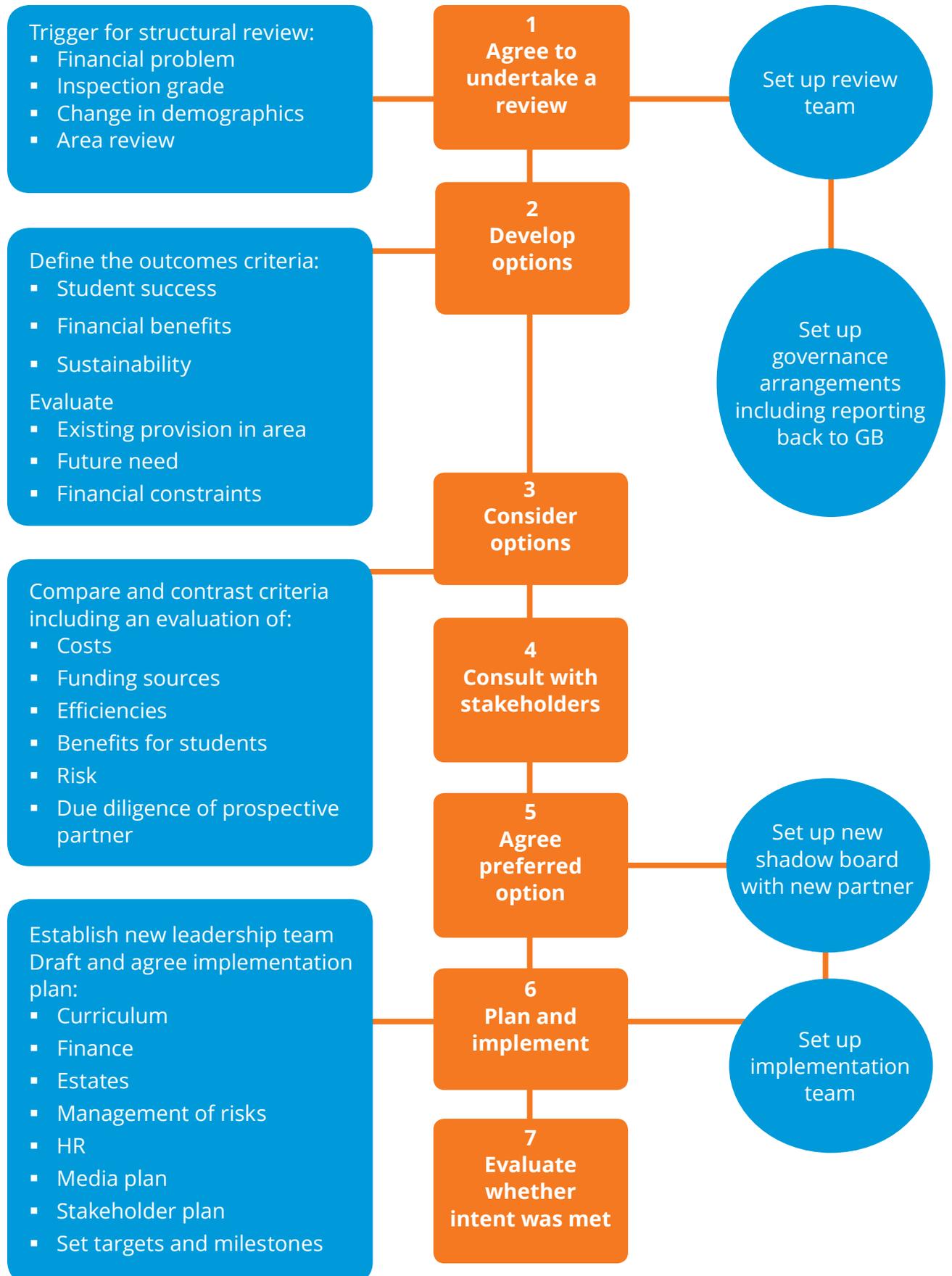
<https://www.lfhe.ac.uk/en/research-resources/knowledge-resources/mergers-in-higher-education/merger-evaluation-reports.cfm>

Does size matter?

http://dera.ioe.ac.uk/8721/2/DIUS_RR_08_19.pdf

APPENDIX B

Governing body work programme for undertaking a structural review



APPENDIX C

Development group membership

- Helena Stockford, Chair of Board, Solihull College and University Centre, NLG
- Atholl Stott, Chair, North Nottinghamshire College, NLG
- Nick Martin Chair, City of Westminster Corporation, NLG
- Carol Jones, Chair, Stoke on Trent College, NLG
- James Aleander, Vice Chair, Portland College, NLG
- David Walker, Director of Governance, AoC
- Gill Clipson, Deputy Chief Executive, AoC
- Julian Gravatt, Assistant Chief Executive, AoC
- Fiona Telford, Recruitment Manager (Governance), AoC
- Susan Pember, Governance Advisor, AoC



Association of Colleges

Promoting. Representing. Supporting.

www.aoc.co.uk/governance

© Association of Colleges 2016

2-5 Stedham Place

London WC1A 1HU

Tel: 020 7034 9900

Email: governance@aac.co.uk

 AoC_info  Association-of-Colleges

Supported by The
Education
& Training
Foundation