## Consultation on Developing an Insolvency Regime for the Sector Response Form

The consultation is available at: <https://www.gov.uk/government/consultations/developing-an-insolvency-regime-for-the-further-education-and-sixth-form-sector>

The closing date for responses is 05/08/2016.

Please return completed forms to:

Benjamin Dance

Department of Business, Innovation and Skills

Vocational Education Directorate

Orchard 1

2nd Floor

1 Victoria Street

London

SW1H 0ET

Tel: 0207 215 4839

Email: FEconsultation@bis.gsi.gov.uk

Please be aware that we intend to publish all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see page 8 of the consultation for further information.

If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential [ ]

Comments: Click here to enter text.

**Questions**

**Name:** Jamie Saddler
**Organisation (if applicable):** London Councils
**Address:** 59½ Southwark Street, London SE1 0AL

|  | **Respondent type** |
| --- | --- |
| [ ]  | Business representative organisation/trade body |
|[ ]  Central government |
|[ ]  Charity or social enterprise |
|[ ]  Individual |
|[ ]  Large business (over 250 staff) |
|[ ]  Legal representative |
|[x]  Local government |
|[ ]  Medium business (50 to 250 staff) |
|[ ]  Micro business (up to 9 staff) |
|[ ]  Small business (10 to 49 staff) |
|[ ]  Trade union or staff association |
|[ ]  Other (please describe) |

**Question 1:** **Do you agree that only the SAR element of this regime should be applied only to Designated Institutions that are companies? Please give reasons for your answer.**

**Comments:** London Councils agrees with this approach. However, Government should consider what steps may be more appropriate, instead of the application of this insolvency regime, to ensure that learners are assured of the continuity of their course should one of these Designated Institutions become insolvent – even if this is highly unlikely.

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

**Comments:** London Councils does not have a view on this question.

**Question 3:** **Does the proposed special objective sufficiently reflect the needs of learners and creditors? Please explain your answer.**

**Comments:** While London Councils supports the ambition to better protect the needs of learners, we do not believe that the proposed special objective sufficiently does this as it is currently drafted.

Paragraph 70 notes that statutory duties towards 16-18 learners would be protected. This protection should be explicitly stated in the Special Objective, with the following italicised wording added to the Objective:

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

1. avoid or minimise disruption to the studies of the existing students of the further education body as a whole,
2. *ensure that statutory duties towards 16-18 learners are protected*
3. ensure that it becomes unnecessary for the body to remain in education administration for that purpose.

The potential winding up of a further education or sixth form college would have significant ramifications on local government in discharging their statutory responsibilities towards 16 to 18 year old learners, particularly in respect of very large general further education colleges with a predominantly vocational/technical focus.

As a consequence we feel that it is necessary for the statutory duty to be explicit in the Special Objective.

We would also welcome greater clarity from the Government as to the extent of student protection under their proposals. It is not clear whether this protection extends to cover students on courses provided by subsidiary companies or to those that are being educated via sub-contractual arrangements. London Councils would support protection being extended to cover these students as well.

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

**Comments:** London Councils welcomes the commitment for the administrator appointed as part of the SAR process to work with the relevant local authority in reviewing and identifying any potential gaps and action needed to maintain the local offer. However, there is a case for local authorities to have a clearly defined role much earlier in the process.

The Area Review process and skills devolution deals will significantly change the skills commissioning landscape, by giving local areas much more scope to commission the skills provision that they need to support their local economy. In London, this will result in a more strategic approach that looks at skills provision not just within a local authority, but across sub-regions and at a pan-London level. Given that London government will be funding and commissioning skills training following the completion of this devolution process, and the responsibilities that local authorities have towards 16-18 year olds, it is important that local government’s role in this process is not limited to being consulted once an SAR has been initiated.

There should be a clear statutory requirement for local government to be consulted before an SAR is initiated and be an active partner in developing a solution that is appropriate for local circumstances and attempts to avoid the implementation of the “tool of last resort” that the SAR represents.

Where the Secretary of State uses the statutory period to decide whether to initiate an SAR and apply for an SAR order due to a college or creditor petition to the court, the Secretary of State should be required to consult with that college’s home local authority to determine the needs of 16 to 18 year old learners. In the case of an area where control over the Adult Education Budget and other skills policy has been devolved, the Secretary of State should also be required during this statutory period to consult with other appropriate regional or local bodies (in London’s case the GLA and sub-regional partnerships) to determine the needs of adult learners to assist in the determination to apply to the court for an SAR. This process of consultation should be followed in all cases where the Secretary of State is considering applying to the court for an SAR.

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

**Comments:** London Councils does not have a view on this question

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

**Comments:** London Councils is concerned that the proposals on directors and governors liabilities will make it harder to recruit and retain governors. The introduction of principles of fraudulent and wrongful trading could increase the risk of governors being held personally liable. Governors’ current principle duties are to deliver the organisation’s charitable purpose and to ensure the financial viability of a college. By applying the wrongful trading provisions, these duties will alter, as governors will have a duty to act in the interests of the creditors, which will be a higher priority than the duty to deliver the charitable purpose.

Under the Learning and Skills Act 2000, a Governor is able to apply to the courts to be relieved of liability where any act or omission is honest and reasonable. The Insolvency Act’s duty to “take all steps to minimise the loss to creditors” is harder to satisfy and could reduce the ability of governors to justify their conduct.

It would be helpful for the government to clarify the circumstances where it thinks wrongful trading may exist and explore what other measures are available to help colleges maintain high governance standards.

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

**Comments:** London Councils does not have a view on this question

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

**Comments:** London Councils does not have a view on this question

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

**Comments:** More legal certainty around the insolvency processes for further education and sixth form colleges and the ambition to provide protection for students is welcome. However, it is important to recognise that this change in policy will have a number of knock-on effects for the sector. Colleges may be forced to aim for bigger surpluses, and be more inclined to conserve cash, control staffing costs and cut capital spending. London Councils is concerned that this may lead colleges away from expanding and investing at a time when there will likely be greater demand from learners and from businesses needing skilled staff, given the capital’s significant projected population growth. It may also make it harder for London government to commission the full range of services needed to tackle skills gaps in the capital, following the devolution of the Adult Education Budget and other areas of skills policy.

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

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

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

London Councils has no further comments.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply [x]

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

[ ] Yes [ ] No