

Technical and Further Education Bill

Evidence from the Association of School and College Leaders

- 1 The Association of School and College Leaders (ASCL) represents more than 18,500 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary phase. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.

Qualifications

- 2 ASCL broadly supports this part of the Bill and welcomes the government's new focus on technical qualifications as outlined in their Skills Plan which adopts the recommendations of the Sainsbury Review. However, ASCL is concerned about the transfer of responsibility for regulating the validity of vocational qualifications throughout their lifecycle from Ofqual to the newly formed Institute for Apprenticeships and Technical Education (IfATE).
- 3 In practice this would mean that technical qualifications for young people below the age of 19 would no longer be regulated by Ofqual but be regulated by IfATE. ASCL has concerns that this may mean that young people are awarded new, less rigorous and less consistent qualifications that may lack the credibility, currency and brand awareness of existing vocational qualifications (such as the BTEC Applied General). This could seriously hinder students' progression routes into employment and/or Higher Education. To some extent this happened with the ill-fated Diploma qualification which has resulted in approximately 40,000 young people, now in their 20s, having a qualification that the vast majority of present day employers do not understand or recognise.
- 4 ASCL's members are predominantly secondary school leaders who have the responsibility of advising young people on which paths to take. They need to have confidence in the new regulatory system and cannot be seen to be gambling with young people's futures by recommending qualifications that are regulated by inexperienced, employer-dominated boards which may not have the requisite educational experience in designing fit-for-purpose qualifications.

- 5 There is a risk of failing another generation of young people by treating them as “guinea pigs”. One way of preventing this from occurring is by ensuring that the IfATE has proper representation and guidance from Ofqual and other educational bodies. Provided that qualifications remain under the auspices of Ofqual, either directly or via IfATE, ASCL is able to support the qualification and curricular aspects of the Bill.

Insolvency regime

- 6 However, we have much greater concerns about Part 2 of the Bill, which creates an insolvency regime for FE and Sixth Form Colleges. It is worth noting that ASCL members include senior leaders in the great majority of sixth form colleges (SFCs) and, via the Principals’ Professional Council (PPC), Further Education Colleges (FECs).
- 7 ASCL/PPC remains unpersuaded that these proposals are necessary. The consultation took place over a short period of time during the summer vacation and many issues have not been adequately addressed.
- 8 FE and sixth form colleges were created as exempt charities by Act of Parliament [1992]. As such college corporations cannot resolve to remove their charitable status. ASCL/PPC is concerned that applying aspects of the Insolvency Act that applies to companies runs the risk of jeopardising that status. The Charities Commission does not appear on the list of those consulted.
- 9 The Secretary of State for BIS was designated the principal regulator for FE colleges following the Charities Act [2011]. It is assumed that following recent changes to departmental responsibilities this role will transfer to the Secretary of State for Education, who is already the principal regulator for SFCs. The Secretary of State already has the power to remove governors where there is mismanagement and ultimately to direct the dissolution of an FEC or SFC corporation and the transfer of its assets and liabilities to an approved body. It is therefore unclear why such an elaborate procedure is being proposed to deal with a highly improbable and avoidable situation.
- 10 The Skills Funding Agency (SFA) has introduced improved monitoring of Colleges’ financial health as reported to the Public Accounts Committee. Where a college has inadequate financial health and/or financial control a Notice to Improve is issued. This triggers an intervention by the FE Commissioner. Should the FE Commissioner consider the college does not have a viable future he will conduct an Options Appraisal. This would usually lead to dissolution of the corporation and the transfer of its assets and liabilities to another college. As we are witnessing following the Area Reviews, access to a restructuring facility is helping ensure that merged colleges will be robust. Such a facility will be required for a small minority of cases in the future. This reality has been acknowledged on the face of the bill by making provision for funding to the Education Administrator to enable the safeguarding of provision during the period of administration.
- 11 The primary duty of a corporation/governing body is to maintain the solvency of its college. Where it fails in that duty by negligence or worse, the Charities Commission has the power to investigate and bar governors/trustees from further service.
- 12 The final argument in favour of this mechanism is that in the absence of an insolvency regime a creditor may be able to pursue an action that might affect the educational provision. This is a hypothetical legal argument. The alternative view that has prevailed

since incorporation of colleges in 1993 is that the purposes for which assets are held by colleges, namely the provision of further, higher and secondary education, are paramount and cannot be overridden (Julian Gizzi; Beachcrofts – legal advisers to the Further Education Funding Council).

- 13 The proposed mechanism itself gives rise to numerous concerns and uncertainties. In particular, what powers transfer to the Education Administrator (EA) during the period of administration? Is the governing body automatically suspended? Can the EA dissolve a corporation established by Act of Parliament by exercising powers provided in respect of companies?
- 14 The EA will be a licensed insolvency practitioner; who might have no experience or expertise relevant to FE. Presumably there would still need to be a college principal to run the college. If the insolvent College is to be dissolved there would need to be a statutory notice period observed; in the nature of education there can be no quick fix or fire sale. It is very unclear what lines of responsibility there would be during that period over matters such as safeguarding. If that were found to be inadequate, who would then have oversight of, and if necessary be able to dismiss, the EA? The appointing court or the Secretary of State?
- 15 There are many other such problems that this measure fails to address. As noted above it appears to have been hastily drafted and there has not been proper consultation with those who could point out potential pitfalls.
- 16 It is clear to us that the Secretary of State already has sufficient powers to deal with the exceptional circumstances that may give rise to a college no longer being a “going concern”. Where this happens through mismanagement or worse there are also sufficient powers including as principal regulator of colleges as exempt charities to take the necessary steps.
- 17 Part Two of this Bill is the product of rushed consultation and a failure to think through the ramifications of applying companies’ legislation both analogously and actually to exempt charities.
- 18 I hope that this is of value to your consideration of the Bill. ASCL is willing to be further consulted and to assist in any way that it can.

Martin Ward
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Association of School and College Leaders
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