

## Mergers in the further education sector

Mergers between further education colleges are becoming increasingly common.



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Caraline has particular expertise on school issues and the complexities of education in general. She has worked all over the country advising on a full range of state education issues including policy initiatives, building programmes, funding and grants, projects, shared use, SEN, admissions and exclusions, tribunal work, appeals, child protection and safety issues.

### Education specialist **Caraline Johnson** explains what can help make a merger successful

This is a time of great activity in the further education world. The sector is suffering like many others with funding cuts and, as responsible multimillion pound businesses, colleges are considering the challenges and opportunities that the future may hold. The economic climate and the impetus of the government's policy of consolidation led by the Area Reviews conducted by the FE Commissioner is stimulating collaboration in the sector. This can be by informal partnership working, formal federations or, increasingly, full merger.

Outside of the FE world it is not commonly known that there are several different types of college delivering further level education. There are three main state-funded institutions: general FE colleges, sixth form colleges and Special Designated Institutions (SDIs). The general and sixth form colleges are statutory corporations under the Further and Higher Education Act 1992, but while SDIs achieve their designation to be funded to deliver further education through the 1992 Act, they can take a variety of legal forms. There are only a small number of SDIs nationally and BWB is fortunate to act for three such clients, including one currently contemplating a merger.

The majority of mergers are effected by a process known as 'Type B', in which one college dissolves and all of its assets, property and liabilities transfer into the second college, which becomes the new merged entity. This is a quicker and slightly simpler process than 'Type A' in which both colleges dissolve and come together in a newly-created entity.

What is very often unknown or overlooked is that FE colleges are also exempt charities – the clients we are working with have appreciated our knowledge and experience of both specialist education law and charity law, enabling full consideration of the public benefit aspects of merger arrangements as well as the educational and commercial considerations. This is particularly important in due diligence and land transfers. The primary consideration is ensuring that the boards of both colleges are confident that the new

merged college will continue to meet both colleges' public benefit duties and provide quality education to the student beneficiaries and local community.

There needs to be careful project management and regulatory oversight of the process as there are governance and statutory requirements that need to take place in the correct timeframe and at the correct points in the project's critical path. A particularly important date is the launch of the required statutory consultation on the proposal to dissolve one of the colleges to achieve the merger. There must be four months between the start of the consultation and the completion of the merger.

To help make a merger successful, we suggest:

- recognise at the outset the coincidence of interest between the colleges and adopt a joint approach to everything, including appointment of advisers;
- be open and honest about potential 'show stopper' issues and how the colleges might resolve them together;
- set up transitional governance arrangements with clear reporting lines early in the process;
- be pragmatic about the levels of due diligence the colleges undertake on one another, focusing on the most important things and making sure there is resource inside the colleges to gather all the information professional advisers will need to review;
- the legal process is only the beginning – the year after the completion date is when the main work takes place to embed the new college's ethos and avoid silos developing; and
- choose your merger partner(s) carefully – shared culture will be vital for the merged college's future.

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