

Operational Sub-Group

Local Authority Commissioning – Shaping 16-18 Provision from 2011/12

Item No: 5

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Summary The attached document *Local Authority Commissioning – Shaping 16-18 Provision from 2011/12* provides practical advice to local authority colleagues on the actions they need to take to meet their statutory duties in relation to 16-18 education.

Recommendations OSG members are asked to comment on the document and consider the merits of distributing it widely to 14-19 colleagues in London.

1 Background and Introduction

- 1.1 Since April 2010 local authorities have been responsible for securing sufficient, suitable education and training for all young people aged 16-18 and those young people aged 19-25 with a learning difficulty assessment. To assist local authorities to undertake their new duties the Young People's Learning Agency (YPLA) produced and published the National Commissioning Framework (NCF), which provided detailed guidance to councils in their role in the commissioning of 16-18 learning.
- 1.2 Following the formation of the new Coalition Government in May 2010 the NCF was removed and new simplified statutory guidance was published in December 2010 - *Statutory Guidance: Funding Arrangements for 16-19 Education and Training*¹ - for the academic year 2011/2012.
- 1.3 Whilst the guidance is clear on local authority statutory duties, it does not offer - nor should it - a definitive steer on the actions local authorities need to take to ensure that they discharge those duties effectively.
- 1.4 The attached document has been written to support local authorities in identifying what, in practice, colleagues need to **do** to discharge their duties in relation to 16-18 education.

2 Recommendations

- 2.1 OSG members are asked to comment on the document and consider the merits of distributing it widely to 14-19 colleagues in London.

¹ YPLA December 2010 http://readingroom.ypla.gov.uk/ypla/statutory_guidance-funding_16-19.pdf

INTRODUCTION

Since April 2010 local authorities have been responsible for securing sufficient, suitable education and training for all young people aged 16-18 and those young people aged 19-25 with a learning difficulty assessment. To assist local authorities to undertake their new duties the Young People's Learning Agency (YPLA) produced and published the National Commissioning Framework (NCF), which provided detailed guidance to councils in their role in the commissioning of 16-18 learning.

Following the formation of the new Coalition Government in May 2010 the NCF was removed and new simplified statutory guidance was published in December 2010 - *Statutory Guidance: Funding Arrangements for 16-19 Education and Training*² - for the academic year 2011/2012.

The guidance sets out the key areas of responsibility for local authorities with regard to 16-19 education and training. As champions of young people, local authorities will:

- work with providers, employers and neighbouring authorities to secure sufficient suitable provision for all young people in their area, challenge poor and inadequate performance, and tackle inequality in choice and achievement;
 - in ensuring suitable provision for all young people make certain that there are sufficient suitable education and training opportunities for vulnerable young learners, particularly young people subject to a learning difficulty assessment (up to the age of 25) and young people subject to youth detention;
- work with the National Apprenticeship Service to identify the requirements for Apprenticeship places for both young people and employers in their area;
- influence and shape provision by identifying gaps, enabling new provision and developing the market to meet the needs of young people and employers;
- challenge and support schools, academies, FE colleges and other providers (including charitable and third sector providers), as autonomous organisations, to respond appropriately to the needs of individuals, employers and the local authority strategic overview when designing and delivering their learning offer.

Whilst the guidance is clear on local authority statutory duties, it does not offer - nor should it - a definitive steer on the actions local authorities need to take to ensure they discharge those duties effectively in a system that is driven principally by a rigid formula for funding (lagged learner numbers) and provider autonomy over curriculum development and performance.

This document has been written to support local authorities in identifying what, in practice, colleagues need to **do** to discharge their duties in relation to 16-18 education and, more importantly, in the best interests of the capital's young learners; this is why we have, on occasion, unapologetically stated the obvious.

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² YPLA December 2010 http://readingroom.ypla.gov.uk/ypla/statutory_guidance-funding_16-19.pdf

Local Authority Elements of the 2011/12 Process

Timeline	
May – August	<p>The YPLA publishes data to local authorities (available to all parties) who use this and other local data to develop a strategic overview for education and training provision for their residents.</p> <p>Informed by this data, local authorities engage with neighbouring local authorities and with schools, Academies, colleges and other providers to establish key changes to priorities and infrastructure, gaps in provision and the need for new providers where required.</p>
September – November	<p>Local authorities will inform all providers and the YPLA of the needs identified in their area.</p> <p>Local authorities will inform all providers and the YPLA of potential new provision, infrastructure changes and agreed re-distribution of learner numbers.</p> <p>Review of Minimum Levels of Performance (MLP) by YPLA and local authorities.</p>
December	The YPLA issues a funding statement confirming budget.
December – February	<p>The YPLA uses data alongside information provided by local authorities to calculate provisional provider allocations. The first step will be an allocation of learner numbers and the final funding rate will be set later in the process.</p> <p>The YPLA exchanges information with providers. Local authorities receive information on provisional allocations to providers.</p>
March	The YPLA confirms the final funding rate and final allocations to providers.
May – August	The YPLA issues funding agreements/contracts to organisations either directly or through the lead contact, which are required to be signed and returned by the funded organisation.
August	Payment commences for the academic year through the lead contact organisation where applicable.

Statutory Responsibilities

The Statutory Guidance states:

Under Sections 15ZA and 18A of the Education Act 1996³ (as inserted by the Apprenticeships, Skills, Children and Learning (ASCL) Act 2009⁴), **local authorities have a duty to secure sufficient suitable education and training opportunities to meet the reasonable needs of all young people in their area.** Young people are those who are over compulsory school age but under 19, or are aged 19 to 25 and subject to a learning difficulty assessment. Local authorities also have a duty to secure sufficient suitable education and training for young people subject to youth detention. In deciding whether education or training is suitable, the **local authority must have regard to, amongst other things, the quality of the education and training and may challenge where this is poor or inadequate.**

What does this mean in practice? Regardless of market forces – the choice of the consumer and the responsiveness of education providers – it is local authorities that will be held to account where there are insufficient suitable education and training opportunities to meet the reasonable needs of all young people in their area.

Whilst the commissioning landscape has changed with a greater emphasis on a formula approach to funding (through lagged learner numbers), it remains for local authorities to set out the current post-16 education and skills scene in their area and to influence existing and potentially new providers to meet the needs of local young people.

The statutory responsibility to secure sufficient suitable provision is in some ways a logical extension of other duties that are relevant to young people's education e.g. the duty to:

- promote participation in education and training;
- ensure relevant support services are available, such as the provision of advice;
- arrange for the assessment of young people (and relevant young adults) with special educational needs and the identification of appropriate post-16 education and support.

In addition to a continuing role in targeted support for those at risk of not engaging and assessing the needs of vulnerable learners entering post-16 education, a strong local authority steer on the provision that is required to meet local needs will be critical in preparing for full participation in 2013 (to age 17) and 2015 (to age 18).

Actions:

- Ensure that the responsibility for ensuring sufficient suitable education and training opportunities is clearly established in an appropriate officers' job role, and that this officer (or officers) is fully aware of:
 - the current local provider landscape;
 - the targeted services that are available to young people to promote and support participation in education and training;
 - the local authority arrangements for ensuring that learning difficulty assessments are conducted for all persons in respect of whom the authority maintains a statement of Special Educational Needs and whom they expect to leave school to receive post-16 education, training or higher education;
 - the procedures and responsibilities for placing of learners with learning difficulties and/or disabilities with Independent Specialist Providers (where appropriate);
 - the local authority arrangements for securing provision for young people subject to youth detention.

³ © Crown copyright 1996 <http://www.legislation.gov.uk/ukpga/1996/56>

⁴ © Crown copyright 2009 <http://www.legislation.gov.uk/ukpga/2009/22/contents>

Analysing Needs and Identifying Gaps

The Statutory Guidance states:

In fulfilling their statutory duties, local authorities will champion the education and training needs of young people in their area by:

- securing local provision which meets the needs of young people and employers;
- influencing and shaping the provision on offer and helping to develop and improve the education and training market;
- promoting any necessary structural change in the local education and training system;
- supporting the improvement of the quality of the education and training of young people aged 16-19; and
- supporting employer needs, economic growth and community development.

To make information on needs and gaps transparent and capable of being responded to, local authorities, either individually or jointly, may then develop with their partners and share with the YPLA, a statement outlining their **strategic overview**. Schools, colleges and other providers are expected to be involved in the development of those statements and to respond to the priorities identified, whilst respecting learner choice. The style, timing and content of the statement is for the local authority to determine. For example, it may reflect a period of 2-3 years and provide a broad indication of whether the current mix and balance of provision is appropriate, and what changes might be needed, in light of emerging local employer and economic needs. These statements may cover, for example the overall position and trends on participation, attainment, and provider quality; significant gaps in provision in relation to meeting the needs of all young people; proposals for specific changes in overall provision; and needs of local employers and the economy.

What does this mean in practice? Developing a well-evidenced and robust strategic overview for education and training provision for residents remains an essential component in shaping future local provision.

Although providers, as autonomous organisations, have responsibility for designing and delivering learning programmes which meet the needs of the young people in their area an individual institutions response to local needs must be informed by more than its current offer and its own student intake.

Providers are responsible for ensuring that decisions on the curriculum offer and mix of provision adequately respond to the needs of individuals and employers and take account of the **local authority strategic overview**. It is therefore essential that providers are appropriately engaged with and adequately inform the local authorities' strategic overview of provision and needs in their area.

Whilst the input of delivery partners will be vital to a robust overview, other branches of the local authority, such as regeneration/employment, and other partners (e.g. employers in respect of Apprenticeships) should be encouraged to contribute and add depth to the strategic overview.

In an environment where data becomes increasingly more accessible, it is important that local authorities include in their overview information on the relative performance of schools, colleges and Academies in their area and to use this information to underpin the process of challenge and support, but more importantly to discuss and agree the changes necessary to bring about improvements.

Actions:

- Analyse need and identify gaps with local providers and other relevant partners to inform a local area strategic overview
- *“All schools, Academies, colleges and other providers (including charitable and third sector providers), as autonomous and independent bodies, will inform the local authorities’ strategic overview of provision and needs in their area”* - ensure this happens
- Promote the local area strategic overview through the 14-19 Partnership and use the overview to enter into strategic discussions with local providers to inform and shape provision
- Promote the local area strategic overview to elected members – provide them with the information they need to undertake their *“strategic role as champions for parents and families, for vulnerable young people and of educational excellence”*

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Partners and Partnership

The Statutory Guidance states:

Local authorities working with their partners may shape provision in their area by identifying gaps, enabling new provision and developing the market. They may wish to set this out formally in a ***strategic overview of provision and needs in their area***. This is part of their wider leadership of education up to the age of 19 and their place-shaping and economic development roles beyond 19.

The needs of young people are much more likely to be met where there are ***strong partnerships*** with those who provide education and training. There is no prescription about how this should be done but, in developing their overview, local authorities will want to work with their key partners, including schools, colleges and other providers, to identify the learning needs of young people in their area, the needs of employers, and the extent to which those demands and needs are being met overall. Local authorities would also work with the National Apprenticeship Service (NAS) to identify the requirement for 16-18 Apprenticeships. ***Local Authorities are also required under the ASCL Act 2009 to work with other local authorities to ensure that needs are met across travel to learn areas.*** The way that local authorities do this is no longer prescribed, and where local authorities have chosen to work together, the YPLA will support them in doing so, so that they can collectively deliver their statutory duties.

Meeting the needs and aspirations of all young people will only be achieved by providers working together and with local authorities. As champions of all young people, ***local authorities will be working*** with providers, employers and neighbouring authorities ***to raise achievement, secure access to high quality provision, raise participation and tackle educational inequality.***

What does this mean in practice? Local authorities, as champions of all young people in their area, have a key leadership role in ensuring that the system serves the best interests of young people and is as transparent and equitable as possible.

With a greater focus on autonomy and accountability, and a system that is predicated on market forces, engaging with partners to establish and agree the key changes to priorities and the infrastructure necessary to meet the needs of young people in an area will require continued strong, strategic leadership from local authorities.

14-19 Partnerships have been an effective mechanism for bringing relevant partners together to inform and shape the 14-19 landscape in local areas. Strong partnerships, with partners that are prepared to support others autonomy and accept appropriate challenge of their own accountabilities will be the platform from which local authorities can influence and shape local provision. A fit-for-purpose membership will be essential and, with a changing education landscape (e.g. existing providers exiting the market, more Academies, the introduction of Free Schools, developing University Technical Colleges etc.), membership may be more fluid than in previous years.

Co-operating with other local authorities to ensure that learner's needs are met across travel-to-learn areas will always be a priority for London simply due to its geography. The travel-to-learn patterns of young people across London create a pronounced inter-dependence across boroughs, which in turn offer a richer and more diverse learning environment from which young people (and their families) can exercise learner choice. Cross-border cooperation and cross-borough leadership of 14-19 education, particularly with regard to strong challenge of poor or inadequate performance, raises the bar for the whole of London and provides an

important mechanism for eroding inequalities in access and achievement for London's young people. London has developed a robust network of 'cluster groups' over the past year; it is vital that local authority colleagues continue to prioritise membership and attendance of their relevant groups.

Actions:

- Review the membership and constitution of the local 14-19 Partnership to ensure it supports the local authority in discharging its statutory duties in regard to young people over compulsory school age but under 19, or aged 19 to 25 and subject to a learning difficulty assessment.
- Ensure that your local authority continues to be represented in relevant cluster groups and that:
 - curriculum and performance information for home institutions is shared within clusters and regionally;
 - gaps in provision, particularly specialist provision, that impact on a cluster area nor the region are managed and addressed collectively;
 - employer needs and labour market changes are considered cross-border, particularly in relation to influencing and shaping Apprenticeship provision;
 - the impact of provider failure (e.g. closure due to financial or performance inadequacy) is managed and addressed taking into account the effect on cluster(s)/the region) to ensure suitable alternative places are found for existing learners;
 - poor and inadequate performance is robustly challenged and good practice in partnership support is shared.

Shaping Provision

The Statutory Guidance states:

Local authorities and providers may agree to re-shape provision in an area by re-allocating numbers from one provider to another where that best meets the needs and demand of students and addresses local or regional priorities for improvement and participation. The automatic allocation of learner numbers by the lagged process may be changed by agreement of the local authority and all providers concerned, as long as there is no overall increase in places or funding and the YPLA is notified.

There may be circumstances where further action is needed. Local authorities and their partners will identify these circumstances - these changes may arise from, for example:

- infrastructure changes e.g. new and closing institutions;
- re-distribution of provision which falls below national MLP and Ofsted minimum standards and where insufficient improvement is in hand; or
- re-distribution of provision where the local authority and all partners consider it best meets the needs of students.
- the need for new provision which will help support young people who would otherwise not be in education, employment or training; or
- the need to support employer needs, economic growth and community development.

For the majority of cases these needs will be met by providers within the allocation of funding generated by lagged learner numbers, and in anticipation of funding the next year for any growth in numbers generated. In the specific and exceptional circumstances where this is not possible because the scale of the additional requirements is of such significance, ***the local authority or authorities will be able to encourage the market to fill the gaps***. This may include ***consideration of innovative proposals such as University Technical Colleges, a new sixth form college, a Free School or a response to support young people not in education, employment or training***. Local authorities and their partners should also consider responses to need based on Big Society principles. Such action would not displace learner numbers from existing providers in that year, although provision is likely to move over time as and when students exercise their choices.

Where provision falls below minimum levels of performance and fails to improve, ***it will not be funded***. If there are significant, formally notified issues relating to an institution's performance against MLPs and Ofsted inspection outcomes, the allocation of learner numbers will need to be changed. Proposals will be discussed with the provider, the local authority and the YPLA, ***taking account of*** the nature of the under-performance and ***the local authority's strategic overview of provision in the area***.

What does this mean in practice? Under a lagged learner numbers system local authorities will not engage in the minutia of provider allocations but will need to respond to and appropriately influence partners (and emerging partners) to respond to identified gaps and 'market failures'. This will require a continued balancing of tension between being both champion (for young people) and leader (for partners). Whilst the need to promote and lead the partnership agenda will be essential in shaping future provision, holding partners appropriately to account as champions of young people will always be paramount.

Sufficiency (Volume)

All schools, Academies, colleges and other providers (including charitable and third sector providers), as autonomous and independent bodies, are responsible for deciding on their

curriculum offer and mix of provision; the offer and mix should however respond to the needs of individuals and employers *and to the local authority strategic overview*.

Where significant changes are being considered, providers have specific obligations to keep their local authority informed. For example, where a provider wishes to adjust the balance of provision between local authorities significantly then the provider is *obliged to inform and discuss this with each local authority affected*.

The statutory guidance states:

“Where a local authority and providers identify a gap in provision which cannot be met by changing existing provision, and is therefore outside the lagged approach and procurement of new education and training will be required, the local authority will decide with partners the best way of procuring the provision. This includes working with other local authorities where necessary. Local authorities are expected to encourage and identify new and innovative providers in line with the principles of the local authority commissioning role set out in the Schools White Paper – *The Importance of Teaching* (November 2010).”

There are published procedures for establishing new Academies, Free Schools, Studio Schools and University Technical Colleges. The recently published Education Bill also paves the way for the introduction of 16-19 Academies and Alternative Academies.

In the case of independent private providers the Statutory Guidance makes reference to:

“a separate central, non-bureaucratic approval process, based upon fitness for funding, will apply, to ensure that there are no significant barriers to entry to the market for delivery of new provision”.

The details of this process have yet to be determined.

Suitability (Quality)

Under the statutory duties a local authority **must** have regard to the quality of education and training and may challenge where this is poor or inadequate.

Schools, colleges and other providers are responsible for their own improvement, within a context of structures and processes which will challenge and support them to improve. The processes to challenge significant and/or persistent under-performance and/or failure to improve, including formal intervention, involve a number of players.

Currently local authorities and the YPLA share statutory powers of intervention in respect of sixth form colleges. The YPLA issues a statement of the policy to be followed by the YPLA and local authorities with respect to the exercise of their intervention powers and local authorities must have regard to the statement of policy in exercising, or deciding whether to exercise, any of their intervention powers.

The Chief Executive of Skills Funding has statutory intervention powers in relation to general further education colleges, but must involve the local authority (and the YPLA) with respect to the exercise of its intervention powers.

Local authorities have intervention powers in relation to schools, and the Secretary of State has the responsibility for Academies and Free Schools.

The recently published Education Bill proposes a number of significant changes to the intervention powers of all the above organisations and proposes the removal of the duty on

the YPLA to produce and publish an intervention policy. The Bill does not however propose the removal of the duty upon local authorities to have regard to the quality of the education and training nor does it prohibit local authorities from 'challenging' poor or inadequate provision.

Challenging poor performance clearly requires a different approach to the procedures that were available under formal powers of intervention. Developing an approach that elicits a mature and open response to challenge, particularly in a highly contestable market, will not be easy, but it will be necessary to ensure that the local authority actively delivers on its leadership role in respect of championing educational excellence.

Actions:

- Agree a partnership approach (through the 14-19 Partnership) for challenging poor, inadequate or unsuitable provision
- Agree a partnership approach to addressing gaps in provision that may arise because:
 - a need has been established, but no suitable provision is available;
 - a future need has been anticipated and no existing provider has expressed an intention to move into that area of provision;
 - an existing provider proposes to withdraw, in whole or part, from a strategically important area of provision (either by design or because provision has been deemed inadequate by Ofsted or through the Minimum Levels of Performance process)
- Take advantage of the legislative changes that enable greater freedoms in the delivery landscape:
 - review alternative provision in the area (including provision made available through local authority services such as the Pupil Referral Unit) and develop proposals for improvements and diversification