

London 14-19 Operational Sub-Group

Disputes Panel

Item No: 4

Author: Jonathan Rallings **Job title:** Principal Policy and Project Officer
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Contact: Jonathan Rallings
Telephone: 020 7934 9524 **Email:** jonathan.rallings@londoncouncils.gov.uk

Summary This paper sets out a proposed process for the London 14-19 Regional Planning Group (RPG) to resolve any disputes which may arise during the commissioning process
Recommendations It is recommended that the OSG recommends the proposed process outlined in the paper to RPG.

Background

From 1 April 2010 local authorities have assumed responsibility for commissioning of 16-19 education and training. London's RPG has already established regional structures to aid this process – including the Regional Allocations Group (RAG) – which have been successfully tested during the transition year. However, there is at present no formal mechanism for arbitrating over inter-borough disputes which may arise during the commissioning process.

The case for a formal process to handle commissioning disputes was made within the London 14-19 Manual, which was agreed by the DCSF as a part of London's Gateway 2 submission in March 2009. The underlying rationale and principles contained in the Manual has been used as a base on which to build this proposed formal disputes procedure. An extract from the appropriate annexe from the London 14-19 manual is attached as Appendix 3

In addition, guidance issued by the DCSF in January 2010 (Appendix 2) outlined the role RPGs should play in dispute resolution between local authorities and learning providers, and this proposal is consistent with that guidance. Furthermore, the recently published National Commissioning Framework (Appendix 4) states that:

“There will... be clear routes for the escalation of complaints. In all instance (apart from in the case of academies) this should be to the RPG, which, working with the YPLA, should convene a sub-committee to hear those complaints and to make recommendations.”

Proposed Disputes Panel

It is expected that in London disputes between boroughs or between a borough and a provider will be resolved informally – through direct inter-borough/borough-provider dialogue. This has been the case during the transition year, where RAG has proved an effective forum for managing smooth inter-borough commissioning.

However, there may be a very few instances where local negotiation is unable to secure agreement between parties. Ultimate responsibility for signing off London's 14-19 commissioning plan rests with London Councils Leaders Committee and the highest tier of appeal should also rest here. However, it is unlikely that leaders will wish to preside over technical decisions without appropriate expert advice from the RPG.

It is therefore proposed that, in line with the guidance from the DCSF, the RPG establishes a disputes panel which can arbitrate over commissioning decisions and make recommendations to Leaders Committee on such matters if necessary.

The disputes panel would comprise four members of RPG including the London Regional Director of the Young People's Learning Agency (YPLA), at least one Director of Children's Services and one Provider, and a chair nominated by the chair of the RPG.

Disputes between Local Authorities

The process for resolving disputes between local authorities – expected to be largely over the allocation of growth and displacement funding – will escalate through the following stages:

Stage 1 – Inter-borough dialogue at local level, which may be supported by officers of the RPG if invited by both or all the parties in dispute

Stage 2 – RPG via Disputes Panel

Stage 3 – London Councils Leaders Committee

The commissioning process runs to tight deadlines and any arbitration will need to be resolved quickly and with a minimum of bureaucracy. To be effective the disputes panel will most likely sit – if it needs to meet – during February after the final RAG meeting and before the Leaders Committee meeting. However, the panel may also be required to convene periodically at other points in the year according to demand.

Complaints made by providers about a Local Authority

The process for resolving complaints made by learning or training providers about local authorities will be slightly different. These complaints will escalate as follows:

Stage 1 – Borough-provider dialogue at local level

Stage 2 – RPG via Disputes Panel

This process falls in line with the national guidance. It is likely to represent a conflict of interest for Leaders' Committee to arbitrate over disputes between a local authority and a provider.

If a provider is unhappy with the decision of the disputes panel they could appeal to national YPLA or the Secretary of State. However, provided the local authority and RPG has followed its own clearly understood and published guidelines, it is expected the only substance for any appeal in this way would be judicial review for abuse of process.

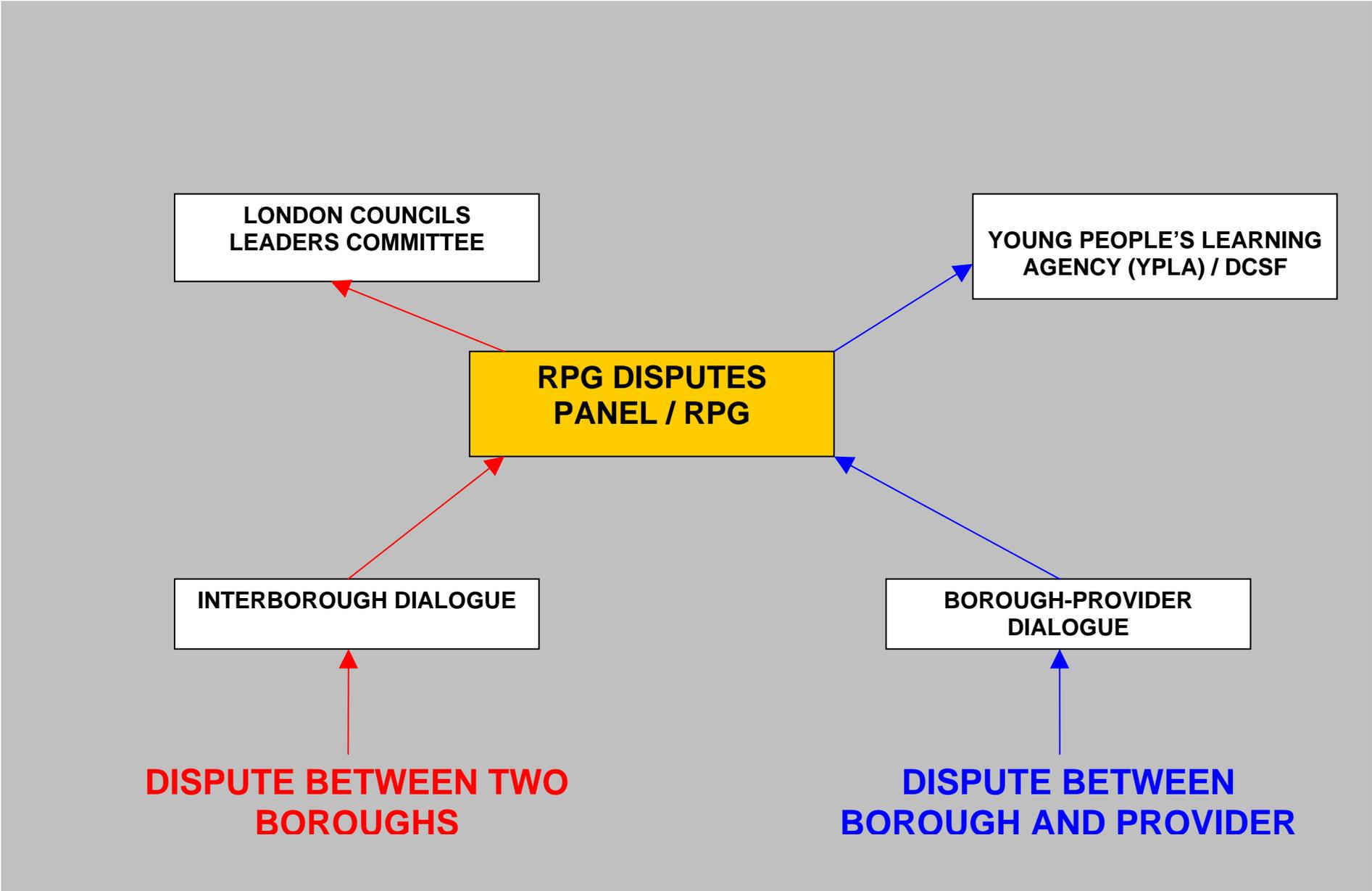
Capital Funding

The RPG will not be directly allocating capital funding. Inter-borough disputes regarding this issue will be directed to the appropriate funding body and not be subject to RPG's disputes process.

Recommendations

It is recommended that the RPG agrees the proposed process outlined in the paper.

APPENDIX 1 – DISPUTES PROCESS



APPENDIX 2

This appendix contains the specific paragraphs from the Additional guidance for RPGs around dispute resolution.

The RPG role in resolving dispute resolution between local authorities and learning provider

Section 2.2- 12 of the draft NCF explains the process for complaints resolution – including the RPG role (where that is appropriate). The draft NCF sets out the expectation that in the vast majority of cases concerns about local commissioning will be resolved at local level, through informal discussion between the decision making body (usually the local authority) and the provider of training. When this initial informal discussion fails to resolve the dispute it should be escalated to a higher level within the local authority than where the original decision was taken (or, if appropriate within the sub-regional group).

There may however, be a very few instances when this local resolution process fails to result in agreement. In these circumstances the complaint may then be escalated to the RPG – by the local authority or provider. The RPG should be given all relevant data and information relating to the dispute. When an RPG receives such a complaint a "complaints panel" should be set up. Panel membership should include, at least, the YPLA Regional Director, a local authority and a provider representative (the membership might be larger than this and also may need to be reviewed, in a particular instance, to avoid any potential conflict of interest).

This panel will consider the evidence presented, taking into account the context and impact on the overall commissioning plan. Once this has been reviewed the panel will inform the local authority and provider of the agreed decision, together with (where appropriate) any appropriate recommended action. This process must be transparent, impartial, rigorous and rapid - with proper records kept. The RPG will also keep the national YPLA informed of the complaint and any recommendation it has made.

Appendix 3

Extract from National Commissioning Framework: Annexe A

Complaints and issues resolution

90 Commissioning decisions will be reached by local authorities, SRGs, RPGs and lead commissioning bodies (almost invariably a local authority) through dialogue with providers and other key stakeholders, taking into account crossboundary travel-to-learn patterns. The preparation of local authorities' local commissioning statements, and discussion about how these strategic plans can be implemented and delivered should support the development of a mature and collaborative relationship. This will ensure that stakeholders understand the wide range of considerations that influence fair, diverse and transparent commissioning decisions.

91 The principles underpinning the resolution of complaints or concerns about commissioning decisions include the following.

- There should be recognition of local authorities' statutory obligations.
- Local authorities should seek to resolve all issues to do with their proposed commissioning plans before there is any need for a formal complaint.
- Processes to resolve issues and complaints should reflect good practice and must be transparent, simple, speedy and reasonable.
- Providers must have their concerns listened to in a fair and equitable manner and should be able to present their views and evidence to support their position.
- Complaints resolution should be as close as possible to the point of the original decision-making, in order to reinforce democratic accountability.
- Those people who hear complaints must be different from those who took the initial decision – and preferably be at a higher level.
- Information that assesses provider quality will need to be available to support any issue resolution or complaints procedure, and
- The interdependencies with performance management and commissioning processes should be made explicit.
- There should be clear routes by which to escalate complaints. Apart from in the case of academies, in all instances this should be to the RPG, which, working closely with the YPLA, should convene a sub-committee to hear the complaints and make recommendations. Complaints that involve academies will be escalated to the YPLA, as the funder of academy provision, on behalf of the Secretary of State for Children, Schools and Families.

92 The YPLA will be proactive in supporting and, where necessary, facilitating discussions on commissioning, in order to obviate the need for complaints.

- Lead commissioning local authority procurement decisions will be reviewed and aggregated by the SRG and the RPG in relation to wider local and regional considerations, and be agreed by the YPLA. Local authorities also have a number of statutory obligations and duties to meet or comply with, and must have the right to exercise their judgement, in conjunction with the SRG and RPG, to ensure that these are discharged.

Challenges to commissioning decisions will arise where the lead commissioning authority has failed to perform its statutory duties or has acted unreasonably in the performance of its functions.

93 Where challenges to commissioning decisions arise, initial resolution will be sought firstly direct with the decision-making body, through an impartial and transparent process. For most providers, this would be through their lead commissioning local authority. Such complaints will be considered by a different person (preferably at a higher level) from the person who took the original decision. The resolution process will require evidence from both the provider and the decision-maker, will be rigorous, rapid and transparent to the provider, and will be copied to the SRG, RPG and YPLA, so that they are aware of the complaint and of how it is being resolved.

94 Should this initial resolution process not reach some agreement, the complaint will be escalated to the RPG. The RPG will consider such complaints through a 'complaints panel' drawn from a national pool of members. The panel membership should include, at least, a YPLA regional director, a representative from a local authority and someone from a provider (the membership must avoid any potential conflict of interest).

95 The panel will consider the evidence presented, taking account of the context and the impact on the overall commissioning plan. Once this has been reviewed, the panel will, if appropriate, agree recommendations with the YPLA on any proposed changes to commissioning decisions.

96 In the case of academies, the escalation route will be direct to the YPLA, as academies will be funded directly by the YPLA (which, in this instance, is acting as the agent of the Secretary of State).

97 For 2011/12, the YPLA will review all complaints and their resolution, in order to build up a picture of how well commissioning is being conducted in and across local authorities. This will form part of its annual report, and will also inform future commissioning processes. Where it identifies issues of concern, the YPLA will work with and support the local authority to improve its processes, and will provide advice to RPGs or SRGs.

98 The YPLA will provide detailed guidance on the procedures by which providers should raise complaints about allocations for 2011/12. This guidance will be drawn up prior to the launch of the 2011/12 commissioning process, from April 2010.

APPENDIX 4

This appendix contains an extract from annex 9 of the London 14-19 Manual which refers to proposals for dealing with interborough planning and dispute resolution. With the support of all DCS in London, the manual was submitted to the DCSF with the Gateway 2 document in March 2009 and received approval.

Annex 9

Interborough Planning and Dispute Resolution - EXTRACT

Purpose

1. This annex sets out:
 - the framework for interborough planning in London
 - assumptions about the bottom-up process for proposals to vary historic volumes
 - the processes in place to minimise interborough dispute
 - the process for managing any regional allocations above historic volumes
 - a simple two stage regional dispute resolution process: optional peer review followed by RPG adjudication
2. It suggests that there are two principal stress points in the process where disputes are most likely to arise:
 - interborough planning agreements
 - allocation of any additional regional resource
3. It suggests that there are key elements of the London framework which will facilitate interborough agreement and minimise dispute:
 - interborough consultation around local 14-19 plans
 - shared principles which underpin local and regional arrangements
 - shared protocols which frame the local commissioning process
 - shared strategic priorities for 16-19 learning
 - shared planning tools and processes
 - shared criteria which inform decisions about new commissioning and decommissioning decisions
 - a shared commitment to resolve interborough issues before these escalate and require regional resolution
4. It suggests that a criteria-led process will also require commissioners to exercise judgement and to balance competing priorities. Where this cannot be resolved locally, the final judgement must rest with RPG.

Background

5. The London regional framework is designed to support local decision-making and enable local commissioners to make planning agreements with those partner LAs whose residents attend in-borough providers. Where boroughs

are unable to arrive at planning agreements to underpin local commissioning plans, the RPG will support a resolution.

6. The level of engagement with the commissioning process in neighbouring boroughs will be uniquely high in London. RPG will need a robust process for resolving those disputes which are not effectively managed at local level. Proposals for the commissioning of new provision or the decommissioning of existing provision are the most likely trigger for dispute.
7. In developing its dispute resolution procedure, RPG is seeking a process which is
 - driven by learner needs;
 - mindful of local and regional employment trends and skill needs;
 - evidence-based;
 - a light touch process with minimal intervention from the centre;
 - timely, with no risk of delay in the allocation of resource to providers;
 - focused on local decision making with minimal regional intervention.

Minimising Disputes

8. The need to plan, as far as possible, within indicative local allocations will mean that changes in the mix and balance of provision will only rarely be managed through growth in overall volumes.
9. Local commissioners will seek to offset new development against contraction in underperforming programmes.
10. Providers will have early notice of any potential contraction in their offer through:
 - the local 14-19 plan
 - decommissioning criteria related to floor standards- and this is likely to inform their proposals for responsive change
11. Variations in the level of demand and quality of supply across boroughs means that there may also be opportunities to move resource between LAs through interborough planning agreements. These opportunities will have been identified through interborough consultation around 14-19 plans.
12. All interborough planning agreements will have full regard to the shared principles and protocols that underpin the London approach and ensure that local decisions are
 - demand-led and driven by the needs of learners and employers
 - designed to deliver a high-quality, responsive learning offer
 - transparent and provider-neutral
13. The allocation of resource through new commissioning and decommissioning of provision will operate within the shared criteria set out in the London

guidance to local commissioners and trialled through the 08/09 Dry Run. These criteria prioritise learner demand and floor standards for learner success.

14. Where local commissioners are unable to arrive at interborough planning agreements, resolution will initially be supported through the wider resources of the authorities directly involved. This process will also draw on the shared framework developed through the RPG.
15. Any dispute escalated to the RPG for regional intervention will be referred directly by the relevant DCS(s) only when all local strategies for resolution have been exhausted.

Process for Resolving Disputes

31. A transparent and provider-neutral process requires commissioning or decommissioning decisions to be criteria-led and evidence-based.
32. Shared criteria and a common evidence-base to support local decision-making are being trialled through the Dry Run. These provide continuity from the LSC process and will be refined and improved through to 2010.
33. It is recognised, however, that commissioning cannot be reduced to a formulaic process and will also require commissioners to exercise judgement and to balance competing priorities. Where this cannot be resolved locally, the final judgement must rest with RPG.
34. Each London authority will agree to be bound by the dispute resolution process and any adjudication decision of the RPG as a signatory to the London commissioning protocols.
35. Stage one is optional and can be triggered by any one of the authorities that is party to a dispute. This optional process requires a peer review of:
 - the relevant strategic intelligence
 - the proposals in dispute
 - the outcomes of interborough consultation
36. This review will be undertaken by a third party authority. It will result in a report that will evaluate competing proposals in relation to:
 - evidence of learner demand;
 - provider success rates and value added indicators at L3;

- other external quality indicators including Ofsted judgements;
 - record of providers' delivery to plan;
 - evidence of providers' capacity to innovate while maintaining or improving standards;
 - relevant value for money indicators;
- and of the opportunity presented by competing proposals to
- progress regional strategic objectives and meet skills needs;
 - deliver the 2013 Entitlement;
 - raise participation through provision targeted at under-represented or vulnerable groups;
 - contribute to the achievement of PSA targets.
37. The evaluation report will recommend a way forward to planning agreement and will be submitted to the DCSs of the boroughs in dispute. The DCSs will decide whether to act on the recommendations or escalate to adjudication.
38. DCSs may instead choose to proceed directly to stage two. Stage two refers the issue in dispute directly to an adjudication panel, nominated by the RPG, to reach an agreement to which the parties in dispute would be bound in order to arrive at a regional plan.
39. The adjudication panel will receive a report from each of the DCSs of the boroughs in dispute that will set out the competing proposals as in section 41 above.
40. The adjudication panel will meet to receive direct representations from each DSC or their nominee within two weeks of receipt of the report.
41. The adjudication panel will make their recommendations to the chair and vice-chairs of the RPG within a week of this meeting.
42. The decisions of the adjudication panel, as approved by the chair and vice-chairs of the RPG, will be binding on all parties to the dispute.