

## **Discussion Paper - Commissioning and 16-19 Education**

This React discussion paper sets out some of the key issues to be considered during the development of the national and local commissioning process, and is designed to stimulate and inform debate on some key elements of system design.

The paper commences with a consideration of the breadth and complexity of the 16-19 provider sector. The paper then makes proposals with respect to the principles that might be adopted by the DCSF and the YPLA that will underpin the National Commissioning Framework, and with respect to the system design for performance management.

### **The Diversity of the 16-19 Provider Sector**

1. There are many categories of provider for 16-19 education that may be commissioned, now by the LSC, or in the future by local authorities. Each category of provider has its own statutory or contractual basis of operation. The following analysis above only touches on the complexity of the provider base. In any area, the balance of providers is a matter both of local history and local geography and there is no dominant pattern.
2. Providers of 16-19 education include:

#### **Local authority maintained provision**

- community secondary schools with sixth forms
- voluntary controlled secondary schools with sixth forms
- voluntary aided secondary schools with sixth forms
- foundation secondary schools with sixth forms
- trust secondary schools with sixth forms
- special schools with post-16 provision
- pupil referral units
- local authority provision funded as an 'external institution' or under contract:
  - mainstream provision including skills for life
  - entry to employment
  - apprenticeships

The governance and management of local authority maintained provision varies very considerably. For example, teaching staff working in community or voluntary controlled schools are employees of the local authority, while staff working in voluntary aided, foundation or trust schools are employees of the governing body.

### Independent schools funded through the DCSF

- academies with sixth forms

Academies are a relatively-new type of state-funded but independent school, most usually replacing existing secondary schools where failure has been endemic, and bringing in external sponsorship and significant new building. Academies are self-governed and are funded directly by the DCSF through contractual 'Funding Agreements' which set out in some detail the basis of operation. Education legislation as it relates to maintained schools does not apply to academies, and the Funding Agreement therefore has to include provision for any requirements to be placed on the academy, for example relating to admissions, exclusions, and the curriculum. Revenue funding levels are derived from the local LMS Formula but with an uplift as some services are not provided by local authorities.

### Independent corporations funded through the LSC

- sixth form colleges
- general further education colleges
- specialist further education colleges

General further education colleges will be sponsored through DIUS and the SFA; sixth form colleges will be sponsored through DCSF and local authorities.

### Independent colleges funded through the LSC and local authorities

- specialist independent colleges

### Independent businesses funded through contracts with local authorities

- independent learning providers:
  - large and small organisations
  - profit-making organisations and not-for-profit organisations

### Third sector providers funded through contracts with the LSC and local authorities

- third sector providers (charities)
  - large organisations with a regional or national presence
  - small local organisations

### Employers funded through the LSC

- employers of apprentices

- work-based learning
3. In addition to this diversity, each type of provider is able to commission other providers to make specific, usually specialist, provision. For example, some schools, colleges and local authorities commission independent or third sector providers to educate disengaged young people.
  4. The educational provision that is made by these providers is equally diverse, and by 2013 will extend to an entitlement for every young people including:
    - GCSEs and A levels
    - Diplomas
    - Apprenticeships and the associated training
    - Foundation Learning Tier

In order to ensure that there is appropriate provision for every young person, alternative curriculum arrangements may be put in place for those unable to benefit from the four main curricular strands. This may be agreed at an institutional level or commissioned by local authorities.

5. In order to develop and deliver the full breadth of educational entitlement by 2013, education providers are forming into local consortia that will, together, ensure that the entitlement can be delivered to all young people in the area. No school or college, however large, will be able to deliver the whole of the 2013 entitlement. Academies and colleges are being given a 'duty to cooperate' under the provisions of the Apprenticeships, Skills, Children and Learning Bill.
6. Some of these consortia are flexible and informal groupings, but there is an increasing tendency for them to be formalised in various ways, including hard and soft federations, group trusts, and companies.
7. A major benefit of consortium arrangements is that, while individual institutions will continue to be strongly motivated to continue to improve, it will be in all the partner institutions' interests to ensure that all members of the consortium are successful, and thus to support each other to secure success.
8. While this discussion paper relates to 16-19 education, the 14-19 curriculum is becoming more unified, and the diversity characteristic of the 16-19 phase will increasingly apply from 14-19. Many schools are already commissioning 14-16 provision from colleges and training providers, often through consortium arrangements.
9. This diversity of provision provides opportunities for local authorities and providers to secure and commission effective, high-quality and flexible provision to meet learners' needs, and poses challenges around such areas as performance management and accountability, and funding allocations.

## **Commissioning the provider sector**

10. The National Commissioning Framework (NCF) will set the basis for the commissioning plans developed by Sub-Regional Groupings and local authorities. The NCF will set out a wide range of information that will be available to local authorities, and the processes that will need to be followed in order to ensure that commissioning and contracting decisions are taken in a timely way.
11. Underpinning the NCF there will need to be a series of high-level principles against which local and sub-regional commissioning plans can be assessed by Regional Planning Forums, the YPLA and local stakeholders.
12. Local authority commissioners will need to make their decisions independently, taking into account but not being unduly influenced by the operations of the various sponsoring agencies (local authorities, the YPLA and the SFA) and providers. There needs to be a dialogue between local authority commissioners and the sponsoring agencies so that strategic commissioning can take account of strategic planning and vice versa. However, there needs to be a clear separation of functions, so that commissioning decisions are not influenced by the agency delivering improvement services.
13. The commissioning principles might be summarised as "***Local authorities should commission whichever provider is best placed to deliver sustainable high quality outcomes for the young people for whom provision is being commissioned, regardless of governance.***".
14. The principles might include, for example, statements that commissioning decisions should:
  - ensure the best quality provision for each young person;
  - meet both learner demand and economic need;
  - ensure the future delivery of, and access to, the universal 2013 entitlement.
  - be impartial with respect to the type of provider;
  - be independent of the local authority of residence of the learner;and will be informed by:
  - the quality of provision;

- considerations of value-for-money;
  - the access arrangements for disadvantaged and disengaged young people;
  - the need to secure financially and educationally sustainable provision;
  - the need, or otherwise, of home-to-learning transport, and the arrangements for such provision, including both the financial cost and the carbon footprint;
  - considerations of the need to balance provider stability with incentives to develop and improve;
  - the implications of not commissioning a provider with respect to TUPE or other contractual issues;
  - the impact of commissioning decisions on the wider local community;
  - local delivery partnership arrangements;
  - the commitment of providers to the broader outcomes of 'Every Child Matters'.
15. The application of principles such as these will vary according to the type of provider. For example, commissioning decisions for 16-19 provision in GFE colleges will need to be informed by the sustainability of their post-19 provision; for independent learning providers, the contractual issues; and for sixth forms in schools, 14-19 progression issues.
16. However, commissioning decisions should not be taken on the basis of the governance or statutory basis of the provider, except in so far as these factors impact on the commissioning principles, and the underpinning arrangements for the YPLA and for local authorities should ensure 'Chinese walls' between the commissioning process and the sponsoring rôle, where these are managed by the same agency, be that a local authority (for schools), the YPLA (as proposed for academies), or the SFA (for GFE colleges).
17. These commissioning principles will need to be set out at national level and interpreted locally within local and sub-regional strategic commissioning plans, which will set out, openly and transparently, the basis for local authority commissioning.
18. Beyond the articulation of commissioning principles such as those set out above, there will need to be a mechanism whereby a provider which feels that a commissioning decision has been taken improperly can seek a review of the

decision. The tests to be applied will be : *'Does the sub-regional strategic commissioning plan properly reflect the national and local commissioning principles?'* and *'Was the commissioning decision causing concern a reasonable decision to take in the light of the sub-regional strategic commissioning plan?'*. The most appropriate location to deal with such concerns would be the Regional Planning Forum, which has the benefit of knowing the local area but acting beyond the sub-regional group concerned.

#### Commissioning and delivery consortia

19. As discussed above, and with respect to the school and college sector, including academies, every institution will be part of a local delivery partnership that will have the capacity to deliver the full 2013 universal entitlement.
20. The non-statutory sector of independent learning providers and third sector providers will not be required to deliver the full 2013 universal entitlement but will, where commissioned, be an integral part of the pattern of provision. For example, a school, college or local authority may commission an independent learning provider or a third sector provider to deliver specialist support to young people at danger of exclusion or who have been excluded.

#### Information, advice and guidance

21. Effective information, advice and guidance services have a vital rôle to play in ensuring that learner demand is properly informed by local, regional and national economic circumstances. This will help ensure the best match between the skills of young people entering the workforce and the needs of the economy. Young people entering higher education also benefit from being well-informed about future employment prospects in their chosen field of study.

#### Strategic commissioning

22. When significant changes are proposed to public provision, this can become contentious within both the provider sector and local communities. For example, school and college closures and mergers, creation of foundation and trust schools, and the creation of academies are all, properly, the subject of local debate.
23. This paper is not concerned either with the complexities of the management of such changes, or with the decision-making processes through which local authorities, school governing bodies, or college corporations make proposals. It is worth observing, however, that while there are significant sensitivities about any proposals for change, the intention of all the agencies concerned is to improve outcomes for young people through developing a strong, effective, efficient and sustainable provider sector.

24. The YPLA will have a statutory rôle as a consultee when changes to local provision are being proposed, and will exercise this rôle by assessing the proposals against the local strategic commissioning plan and the principles in the National Commissioning Framework.
25. The YPLA will also keep local provision under a more general review so as to ensure that, should a local authority not be bringing forward any proposals necessary to secure the delivery of the local strategic commissioning plan, the YPLA can engage in strategic dialogue with the local authority, with the possibility of strategic intervention as a final step.
26. Structures and processes will need to be developed to ensure that capital programmes for 16-19 (whether funded through DCSF or DIUS) are properly aligned and coordinated with local authority and Sub-Regional Grouping strategic commissioning plans. The YPLA, SFA and local authorities will need to engage to ensure that plans are aligned and consistent.
27. As stated previously, there needs to be a dialogue between local authority commissioners and the sponsoring agencies so that strategic commissioning can take account of strategic planning and vice versa.

### **Performance management**

28. Local authority commissioners of 16-19 education provision need to know that the provision being commissioned is of the highest quality possible. Commissioners need to be assured that providers are committed to continual development and improvement, and that where quality of provision is less than adequate, rapid steps will be taken to make improvements, if necessary, by externally-imposed action.
29. The key agency for driving improvement is the provider itself, supported where appropriate by other providers working in local delivery consortia. Support and challenge are also delivered by the sponsoring agency; where this is not effective, the sponsoring agency will have duties to secure improvement.
30. For schools, the sponsoring agency is the local authority, with support and challenge delivered through the local authority school improvement service, which may be internal or externally contracted, and through school improvement partners. For academies, the proposal is that the YPLA provides the service. For sixth form colleges, the sponsoring agency will be the local authority, with support and challenge delivered through the local authority school improvement service, which may be internal or externally contracted, and through school improvement partners. For GFE colleges, the SFA will be the sponsoring agency and will work with local authorities and the YPLA to identify underperformance, commissioning the Learning and Skills Improvement Service as needed. Only if quality remained at an unacceptable

level despite strategic intervention would commissioners consider decommissioning provision.

31. Independent and third sector providers are responsible for their own improvement, and are subject to a range of contractual provisions should the quality of their work not be appropriate.
32. Proposals for the future performance management for 16-19 education are disparate and complex. They include the School Report Card, the Data Dashboard, a variety of Ofsted inspection frameworks, the Framework for Excellence, Comprehensive Area Assessments, Self-Regulation, and Performance Tables, together with potential intervention by a variety of sponsoring bodies. Unless these are brought together into a single integrated system there is likely to be both public and professional confusion, and inefficient use of resources.
33. The performance management system for 16-19 education and training needs to fulfil several requirements:
  - The system needs to provide the public with confidence in the quality of provision, and that improvement activity is being undertaken when necessary.
  - The system needs to provide local authorities, as the commissioners of 16-19 education, with the information needed to commission and assure the quality of the provision being commissioned, including comparative information between different types of provider.
  - The system needs to ensure that providers of information, advice and guidance offer learners and their parents the information necessary properly to inform their choice of provider.
  - The system needs to ensure that the sponsoring agency of the provider has the information necessary to intervene effectively, to provide support and challenge, and to secure rapid and sustainable improvement where performance is not satisfactory.
  - The system needs to provide the information necessary to enable providers to secure their own improvement.
  - The system needs to be able to contextualise outcomes intelligently, so that, for example, specialist provision for young offenders is not evaluated on the same basis as sixth form colleges.
  - The system needs to be as simple as possible, and require as little resource as is consistent with the other requirements. In particular, the

system should not provide a variety of judgements and scores but a unified and consistent judgments and scores.

- The system needs effectively to integrate with other systems for performance management that operate with the institutions concerned, notably DCSF and Ofsted systems for schools pre-16, and DIUS systems for general further education colleges post-19.
- The system needs to encompass the broader outcomes of 'Every Child Matters, including health outcomes, safeguarding and welfare, and learner participation.
- The 16-19 performance management system needs to interface effectively with schools systems pre-16 (to minimise complexities for schools with sixth forms) and with college systems post-19 (to minimise complexities for FE colleges which serve 16-19 and 19+).

34. The Framework for Excellence is intended to form the basis for an integrated and simplified performance management system. There are several elements of such a system:

- the provision of standardised performance information, enabling comparative judgements to be made between providers of the same and different types, including:
  - success rates;
  - non-completion rates;
  - value added;
  - the views of learners;
  - progression routes of learners;
  - the views of those agencies with a direct interest in the effectiveness of the learning, notably employers and higher education providers;
  - cost and value for money;
- self-evaluation by the learning provider, interpreting and contextualising the standardised performance information, and including the broader outcomes of 'Every Child Matters';
- moderation of the learning provider self-evaluation by the sponsoring agency;
- inspection of the learning provider carried out on a proportionate and risk-based approach, designed to validate self-evaluation;
- support and challenge, and intervention where performance is less than satisfactory, should be undertaken or commissioned by the sponsoring agency.

All of these elements should be capable of being published in forms that meet the requirements of the various users set out above. And the individual elements should be published and used in a way that does not provide perverse incentives to providers, for example to recruit 'able, stable' learners rather than potential NEET or otherwise hard-to-reach young people.

35. It is important that each of the elements of that system interact effectively and are seen as part of the integrated system for performance management. So, for example, Ofsted inspections, and institutional self-evaluation, must be an integral part of the performance management system, not added and separate activity.
36. In order both to secure simplicity and cost-effectiveness, the elements of the performance management system should be carried through once by the agency best placed to deliver the function :
  - performance information should be collated and published in a standardised way across the 16-19 sector (and ideally across 14-19); this should be a YPLA function;
  - the self-evaluation process should be built up from existing systems, including the processes already used by schools pre-16 and by colleges; developing and maintaining the framework should be an Ofsted function;
  - moderating self-evaluations should be a function of the sponsoring or commissioning agency; for example, the SFA for general further education colleges, the local authority for school sixth forms and for sixth form colleges, and the YPLA proposed for academies;
  - inspection should remain an Ofsted function;
  - support and challenge, and intervention where necessary, should be provided or commissioned by the sponsoring agency, for example, the SFA for general further education colleges, the local authority for school sixth forms and sixth form colleges, and the YPLA proposed for academies.

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