

React Key Issues Paper

One of a series of papers to stimulate debate and influence policy and delivery

Learners with a learning difficulty or disability

November 2009



Meeting the needs of young people with learning difficulties and disabilities from April 2010

The Apprenticeships, Skills, Children and Learning Act 2009 ('the Act') will transfer responsibility for the commissioning of 16-19 education and training to local authorities in April 2010. Local authorities will then be responsible both for Special Educational Needs (SEN) and for learners with a learning difficulty or disability (LLDD), as well as children's and adults' social care funding, and so will be well-placed to use budgets to maximum effect to benefit learners. Through the machinery of Children's Trusts, local authorities will be able to meet a young person's needs, including health, holistically, and more creatively and cost-effectively. Making this work in practice will be a key challenge for local authorities. This React Key Issues Paper by Donald Rae sets out some of the issues that local authorities will need to address in improving outcomes for young people and makes proposals for their resolution. The Paper looks forward to local authorities being better able to integrate provision for young people with additional learning needs, a description we suggest should replace 'SEN' and 'LLDD', as is happening in Scotland and Wales.

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Background

- 1) By increasing the age to which young people must remain in some form of learning to 18, the government is setting a significant challenge to those responsible for planning or delivering education or training. Together we must ensure that every young person, including those with a learning difficulty or disability, is able to access an appropriate course, maximising their potential, and achieving the best possible outcome.
- 2) Information, advice and guidance (IAG) duties were relocated with local authorities in 2007, and the transfer of responsibility for the commissioning of learning for young people aged 16-19, and up to the age of 25 for young people with learning difficulties, is the next development in the integration of services for children and young people.
- 3) Since 1992, various legislation has reduced the involvement of local authorities in post-16 learning, including careers guidance. The responsibility for assessing the additional learning needs of young people aged over 16, and deciding the most appropriate placements to meet those needs, has been separated from the process for allocating funding. Initially, specialist staff in

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careers or Connexions services were responsible for assessments and placements, with the FEFC, and later the LSC, under an obligation to fund learning based on the outcomes of the assessment. The processes of assessment, placement and funding for post-16 have been decoupled from the parallel processes for children and young people pre-16. This model has made it very hard to ensure appropriate provision at a reasonable cost.

- 4) The proposals in the ASCL Act seek to bring together the strengths and experience of nationally-commissioned provision with the local knowledge and insight of what works best for each area. The new arrangements will maintain the benefits of national frameworks, ensuring an equitable resource distribution and a similar learner entitlement across England. But by placing assessment and commissioning decisions at a local level, the way in which national budgets are allocated will be influenced much more strongly by local areas than in the past.
- 5) The ASCL Act presents a powerful model where the duty to secure provision rests with local authorities, and to fund the provision lies with the Young People's Learning Agency (YPLA). Local authorities cannot carry out their duties without the funding from the YPLA, as they have no access to other funding for post-16 learning. And the YPLA cannot carry out its resourcing function – including managing the budget the Government provides it with - without working in close partnership with local authorities. So the ASCL Act requires partnership working between local authorities and the YPLA, in a way not seen in other areas of public policy, where the norm is that those with the duty to provide a service are given a budget by a government department to deliver the service.
- 6) It is in the interests of young people with learning difficulties and disabilities (LDD) that placement and funding decisions are taken so as to ensure that placements meet young people's needs and that the funding follows the learner. Only by local authorities and the YPLA working closely together will we be able to ensure that the funding provided to local authorities properly reflects each local authority's plans to meet the identified needs of their residents.
- 7) Provision for young people with LDD is at the forefront of this new way of working and this is a sensitive and important policy development. The solution to the budgetary challenge set out above is to find a better way of linking placements, particularly those in high cost provision, with budget decisions,

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and at the same time to make placement decisions against clear criteria for expected outcomes.

- 8) One model would be that the Government provides budgets for post-16 learning directly to local authorities, with each local authority setting its own priorities, paying its own rates to providers, so as to ensure that placements and budgets stay in line. However, operating on this basis would remove the benefits of a national framework and could lead to the development of a 'post code lottery' for our most vulnerable young people.
- 9) So, the LLDD commissioning model must ensure that the final budgets allocated by the YPLA match the placement proposals that local authorities make, and remain within the national budget; and that placement decisions are made in the light of the overall budget available. This will require an iterative way of working, involving parents, young people, local authorities and the YPLA which allows for adjustments to be made during the process.
- 10) What can we learn from local authorities and their approach to SEN provision?
 - a) Local authorities are responsible for determining and commissioning the education for young people with a special educational need or a disability aged up to 16, and to 19 for those with statements in mainstream or special schools. The legal basis for this provision is different to that for further education, but there are many operational similarities. The key driver for local authorities are Statements of Special Educational Needs ('Statements') which are expensive and time-consuming to produce, and which are sometimes subject to legal challenge.
 - b) Since 2004, when the Government published "Removing Barriers to Achievement" , local authorities have been focusing on reaching agreement with the parents of children with special educational needs about the provision they will make, without the need for a Statement. However, Statements are usually required for young people with more complex needs. Not having a Statement does not mean that there is no assessment, nor that provision is not made, just that the assessment has not led to a Statement being produced. Where additional support is required it is provided either through 'school action', 'school action plus', or defined in a Statement.

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- c) The number of Statements in England was 264,000 in 2002; by 2009 this had reduced to 229,000, a reduction of 13% and is expected to decrease by a further 3,500 by 2014. This decline has occurred during a period when there was a general increase in the identification of SEN in schools. The proportion of pupils with SEN in secondary schools has risen from 16.6% in 2005 to 19.7% in 2008 and is expected to increase to 25.5% by 2014.
 - d) Not all local authorities have reduced the number of Statements since 2002 but two thirds have done so, with the greatest reduction being over 60%. As a consequence, these local authorities have been able to focus more resources on service delivery, including increasing the delegation of budgets to schools, as opposed to the formal process for producing a Statement.
 - e) This reduction in the number of young people with statements is expected to continue and will have an impact on the number of post-16 section 139a assessments (Learning Difficulty Assessments) which local authorities need to carry out, reducing them in line with pre-16 work. The DCSF will issue new guidance on section 139a assessments in due course. It is expected to reflect these changes in assessments pre-16 and encourage local authorities to make placement decisions in partnership with other agencies, including the YPLA and Primary Care Trusts (PCTs).
 - f) Since 2005, local authorities have worked in SEN regional partnerships to secure provision for those in the special educational needs system from independent providers, introducing a model national contract to secure greater consistency with providers and to lower costs. As is anticipated in the ASCL Bill, local authorities are already acting as the 'host' authority for those independent providers in their area, engaging on behalf of other local authorities when needed. Whilst not identical to what is proposed for post-16, it is clear that operating in this way is familiar to local authorities.
- 11) How could the new system work to the benefit of young people?
- a) In planning post-16 provision for young people with LLDD, local authorities will take into account the needs of those young people, the vast majority of whom are already known to them pre-16 from their person centred reviews. From at least the age of 14 (if not earlier)

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assessment and transition to adulthood reviews with young people will consider their needs and aspirations and what provision the young person should progress to when they reach the age of 16. Where a young person wants to progress to a college (or other FE provider), the local authority, in its commissioning discussion with the college, will seek to ensure that the college is able to make the provision needed and identify that funding from the college's Additional Learner Support (ALS) allocation. The local authority and the college will need to identify the overall expected demand on ALS funding, and, if this changes, discuss the issue with the YPLA within sub-regional or regional groups. Local authorities will need to work closely together to ensure that the needs of young people with a disability who learn outside of their 'home' authority are met.

- b) Not all learners will attend colleges. There will be a separate discussion with the National Apprenticeship Service about how best to secure access to apprenticeships for young people with a disability. Local authorities will have a role to play beyond identifying the demand for apprenticeships from young people with a disability; through their partnership activities and as employers in their own right, local authorities should be working to increase the number of apprenticeships they and their partner organisations (such as PCTs) provide.
- c) Learners with the most complex and extensive needs, whether pre- or post-16, are likely to be placed in the most specialist provision, sometimes on a residential basis and with Independent Specialist Providers (ISPs). Since these placements are both high cost and meet the needs of the most vulnerable young people, local authorities need to consider them very carefully in partnership with parents and young people, and taking into account funding decisions. Local authorities welcome the opportunity to bring together the planning and commissioning of provision for young people with complex needs, thus ensuring a more coherent assessment of each individual's requirements from birth to and beyond the age of 25 which maintains and develops sustainable local links and relationships.
- d) For an interim period, ISPs will be contracted by the YPLA, but by 2012/13 (before in some areas) all ISPs will be directly commissioned by a 'host' local authority acting on behalf of all LAs which send young people to the provider. Host local authorities, acting as lead

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commissioners, will seek to establish strong relationships with ISPs, broadening the use and experience of such providers with good links to 14-19 partnerships and other policy developments such as 'Aiming High for Disabled Children'.

- e) Young people attending ISPs will have had both an SEN Statement pre-16 and a section 139a Learning Difficulty Assessment. In making their placement decisions, local authorities will work in partnership with the YPLA to secure the best of provision for that young person, ensuring effective links with their home if the placement is residential and away from their local area. Local authorities will work to reach agreement with the parents and young person about the proposed provision.
- f) Whilst the cost of placements will be governed by the national rates, the system needs to ensure that placement decisions are made in ways which are within the national budget.
- g) The proposed process is as follows:

May to September : local authorities, 14-19 partnerships and sub-regional Groupings of local authorities (SRGs) review and estimate the demand for LLDD provision in their area, including provision made by ISPs. LAs acting as lead commissioners will also need to identify the demand for LLDD provision from outside of their area and the likely impact on providers commissioned by the host LA.

September onwards : local authorities undertake section 139a Learning Difficulty Assessments (LDAs) and make *provisional* placement decisions working with parents and young people.

October : The YPLA provides *indicative* allocations, based on historical allocations, to local authorities, through Regional Planning Groups.

December onwards : local authorities, sometimes through SRGs, negotiate directly with schools, colleges and ISPs for all LLDD provision, including provision based on LDAs. Projected demand for placements with ISPs is discussed between local authorities and in sub regional and regional groups.

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February/ March : The YPLA brings together local authority plans for LLDD, moderating budget allocations if required, confirming the budgets for LLDD provision in colleges and school sixth forms to local authorities. The YPLA will provide *indicative* budgets to local authorities for ISP provision, allowing for placements already agreed to be confirmed, but leaving room for any additional placements changes to be incorporated in the final allocation.

March : provider contracts agreed for LLDD in colleges and sixth forms and until 2012 the YPLA will contract with ISPs based on the indicative allocations; after 2012 local authorities will contract individually.

March to July : For ISP provision, this period will allow for minor adjustments to the allocations taking into account any changes in placement decisions (to a different ISP for example) and the outcome of any review decisions.

July/August : final allocations for ISPs issued to local authorities and ISP contracts finalised.

Through this process, local authorities and the YPLA will seek to secure a close match between the costs of placement decisions and the national budget. If local authorities operate outside of this process, they will be at risk of having to cover the costs of such placements from their own resources, which will be hard to identify.

12) Learner Choice

Learners with LLDD should have a choice in the learning provision that is made available to them and wherever possible the system should allow an individual's preferences to be met. However, as with other learners, choice is constrained both by the availability and cost, both of learning and additional support. Through the assessment process pre- and post-16, the system should encourage agreement to be reached between young people and their parents and the local authority. This will not always happen, and parents or the young person may wish to challenge the decisions of the local authority. How this will happen will vary according to the circumstance:

- a) If the local authority decides not to carry out a section 139a LDA, the parent could appeal using the local authority's complaints procedure.

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- b) Where a parent does not agree with the placement decision of the local authority, following a section 139a LDA, the local authority should undertake an initial review of the decision, most usually by a senior officer not involved in the original consideration. This initial review needs to be undertaken in a timely manner to enable later stages of the challenge process to be undertaken. Where the local authority upholds the original decision the young person or parent would have the right to ask the national review panel to consider the LA's decision.
- c) The YPLA will establish an independent review panel (IRP), chaired by a barrister and including other members drawn from local authority staff. The IRP will consider whether the decision of the local authority has been taken in line with national guidance. The IRP could support the original decision or recommend that the local authority reviews its decision. In the latter case, the IRP will also recommend that the YPLA provides the funds to the local authority to cover the additional cost. For this system to work, LAs and the YPLA need to establish a good working relationship. If an LA works outside of the agreed procedures or makes perverse decisions, it cannot reasonably expect the YPLA to cover the associated costs.
- d) Having complained to a local authority, residents are able, if they remain dissatisfied, to raise the issue with the Local Government Ombudsman or to seek a judicial review.

Local authorities are best placed to make the right decisions about the most vulnerable young people in their area. They are experienced in getting the best outcomes for young people aged under 16 and working with tight budgets to do so. In time, local authorities will wish to have greater freedom over post-16 budgets to maximise value-for-money, ensuring as much of the available budget as possible is focussed on individual learners. Local authorities look forward to working closely with the YPLA as we devise innovative approaches to get the best for every young person with learning difficulties in England at an affordable cost. The challenges include :

- Transforming information advice and guidance services, ensuring that every young person with a disability or special need receives high quality and independent advice
- Integrating assessment services, reviewing who should undertake learning difficulty assessments and ensuring they are undertaken in a timely manner

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- Developing more local provision, including working with third sector and independent providers to offer courses linked with other FE providers
- Through the Children's Trust, ensuring that funding from a wide range of sources, including health and social care, is used to support learners with a disability or learning difficulty
- In partnership with adult social care and PCTs managing ensuring transition at 25 so that it is seamless and, where appropriate, supports continuation in learning, funded by the Skills Funding Agency.
- Working with colleagues at sub regional and regional levels to widen the range of opportunities available for young people with a disability and to make best use of public resources.

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