

Select Committee on Children's Service – 27 January 2009

Report of the Director of Children's Services

16-19 funding transfer – transfer arrangements and risks

Purpose of Report

1. To provide information about the arrangements for and risks associated with 16-19 funding transfer.

Background

2. Apprenticeship, Skills, Children and Learning Act came into being on 12 November 2009 and gave the Local Authority responsibility for commissioning and funding 16-19 education and training from 1 April 2010.
3. The Apprenticeship, Skills Children and Learning Act uses the same definition of 'children' as the 2004 Children Act, and therefore young people with learning difficulties up to the age of 25 will also be covered by the commissioning duties of local authorities.
4. On 31 March 2010, the Learning and Skills Council will be abolished, and on 1 April 2010 all functions previously carried out by the Learning and Skills Council with respect to 16-19 education and training will transfer either to local authorities or the Young People's Learning Agency (YPLA). A number of brand-new duties and powers for local authorities will also be created.
5. Local authorities will have the central commissioning role for all education and training for young people aged 16-19 and up to 25 with learning difficulties. The role of the Young Person's Learning Agency will be to support local authorities in this new commissioning role.
6. Local authorities will be able:
 - to join-up commissioning of all services for all young people 0-19 (up to 25 with learning difficulties) without an artificial break at age16;

- to make better provision for young people with additional needs when there is a single assessment and provision regime to replace the separate arrangements for pre-16 (Special Educational Needs) and post-16 (LLDD), and will also be better able to integrate provision for young people with additional needs with provision for adults; and
- to integrate the education and training agenda with the economic development agenda.

Risk – Costs associated with staff transfer and delivery of the commissioning function

7. Local authorities have a long record of maximising efficiency and minimising costs, but leading and managing a programme in excess of £7 billion will have real costs. The transfer of Learning and Skills Council staff, and the associated funding, is a starting point, but long-term sustainable funding is required.
8. On 1 April 2010, following a period of shadowing, identified Learning and Skills Council staff will transfer to local authorities, the Young Person's Learning Agency and the Schools Funding Agency. The TUPE Regulations and the Cabinet Office Protocol will apply. 'A Framework for Shadowing' was published jointly by the Learning and Skills Council and the React Programme on 11 September 2009.
9. Local authorities will need to ensure that transferred staff are appropriately dealt with under (TUPE) Transfer of undertakings Legislation.
10. Dudley Local Authority has received information from the Learning and Skills Council with regard to the eight members of staff who will be transferring. Staff have been formally greeted by the Chief Executive and Director of Children's Services. Officers are currently awaiting details from the Learning and Skills Council with regard to the current roles and expertise of these allocated staff.
11. It is expected Local authorities will receive a ring-fenced Special Purpose Grant (SPG) from the DCSF to enable them to carry out the new functions and, in particular, to cover the employment costs of the necessary staff. The total administrative budget of the LSC is being divided between the various successor organisations – local authorities, the Young Person's Learning Agency, the Schools Funding Agency and Government Offices – and the details of the total local authority quantum are being negotiated with the Local Government Association, with a resolution expected by early November 2009. Further information with regard to how the grant will be shared with Select Committee on Children's Services when it becomes available.

Risk - Successful delivery of the Commissioning Cycle

12. Each planning, commissioning and delivery cycle runs over a period in excess of two calendar years.
13. The National Commissioning Framework (NCF) will cover the commissioning, allocations and funding cycle for delivery in the 2011/12 academic year, which will be the first end-to-end commissioning cycle for which local authorities will be fully responsible. The planning process for this cycle starts in the summer of 2010, as set out below.

Commissioning Cycle 1

14. On 1 April 2010 local authorities will take responsibility for elements of three separate commissioning cycles:
15. 2009/10: Local authorities will become responsible for the final five months of the 2009/10 academic years, that is, for the period April 2010 to August 2010, in particular payments of participation funding to colleges, schools, and other providers. By the end of March 2010, the Learning and Skills Council will have made arrangements to inform local authorities of these payments, and will have transferred contractual responsibilities to local authorities for private and third sector providers.
16. General guidance on these payments is in preparation and will be published as soon as possible, following approval by Local Government Association finance colleagues and the CIPFA Education Panel. This guidance will include information on such issues as accounting conventions, audit, and payment timetables. In addition, each local authority will receive a schedule of payments to be made, including such information as contact details, and bank account details. A key activity for Sub-Regional Groupings will be to agree, for each provider, which local authority will be responsible for making payments.

Commissioning Cycle 2

17. 2010/11: This is the transitional commissioning cycle during which local authorities will become responsible for delivering the plans and allocations made by the LSC up to 31 March 2010 for delivery in the academic year August 2010 to July 2011.

18. The Secretary of State will write to the Learning and Skills Council with the annual grant letter, 'Priorities for Success 5'. The Learning and Skills Council Young People's Learning Agency Committee will then agree the Annual Statement of Priorities ('ASOP') in response to this grant letter.
19. The activity to be taken on by local authorities from April 2010 will include setting up contracts with private and third sector providers, and, from August 2010, managing the delivery cycle, including making payments of participation funding to colleges, schools and other providers. This commissioning cycle will be active during the shadowing year, and the Learning and Skills Council has published guidance on the business processes running through to 31 March 2010. The Learning and Skills Council and the React Programme are working on the business processes that will have to run from 1 April 2010 to July 2011.

Commissioning Cycle 3

20. 2011/12: This will be the first cycle of the end-to-end National Commissioning Framework (NCF), starting in the summer of 2010, with the Annual Statement of Priorities published in October 2010, leading to allocations to providers in March 2011, for delivery in the academic year August 2011 to July 2012. Following trialling with local authorities and providers, the National Commissioning Framework is to be published before the end of the year.
21. Beyond 2010, there are two further commissioning cycles which will incorporate key changes:
 - 2013/14: This will be the first commissioning cycle in which local authorities will need to make statutory provision for ensuring that every young person is engaged in education or training, or work with training, to age 17.
 - 2015/16: This will be the first commissioning cycle in which local authorities will need to make statutory provision for ensuring that every young person is engaged in education or training, or work with training, to age 18.
22. Local authorities support the raising of the participation age, and welcome the challenge; every young person aged 16-19 ought to be engaged in an appropriate course of education and training, or to be in employment with training through an apprenticeship or otherwise, but again there will be significant costs, as the population of young people at risk of not engaging is over-represented with additional needs and behavioural difficulties, and this group will require personalised and more costly provision, including both specialist provision and personal advice, guidance and support.

Finance

23. From 1st April 2010 the funding for the education and training of young people, defined as 'children over the age of 16 and under the age of 19, or under 25 where they have a learning difficulty' will transfer to the Local Authority who will be responsible for its distribution. Details of the financial transfer remain to be finalised and are unlikely to become clear on current plans until March 2010.

Legal

24. Under the Education and Skills Act 2008, the age of participation in education or training will increase to 17 years by 2013, and to 18 years by 2015. Subject to parliamentary passage of the Apprenticeships, Skills, Children and Learning Bill, unitary and county councils will take over responsibility for commissioning education and training for 16-19 year olds on 1 April 2010. The Apprenticeship, Skills, Children and Learning Bill uses the same definition of 'children' as the 2004 Children Act, and therefore young people with learning difficulties up to the age of 25 will also be covered by the commissioning duties of local authorities.
25. The main provisions concerning the transfer of staff from one undertaking to another are contained in the Transfer of Undertakings (Protection of Employment) Regulations 2006.
26. The Council may establish and maintain schools under the Education and Children Acts and can do anything incidental thereto, conducive thereto, or which facilitates the discharge of this function under section 111 of the Local Government Act 1972

Equality Impact

27. The report takes into account the Council's Equality and Diversity Policy.

Recommendation

28. Select Committee on Children's Services members note the new duties that are being passed the Local Authority in April 2010. Cabinet is aware of the risks associated with these duties in terms of operational delivery of the commissioning role and the challenges provided to commissioning through the raising of the participation age.

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