

CABINET MEETING – 3 FEBRUARY 2010

EXECUTIVE SUMMARY SHEET – PART I

Title of Report:

16-19 Sub-regional Commissioning for learning provision

Author:

Executive Director of Children's Services

Purpose of Report:

To apprise Cabinet of the progress made in the transfer of responsibility for the commissioning of 16-19 education (16-25 learners with an identified learning disability) from the Learning and Skills Council (LSC) to Local Authority (LA). Approval is sought for Sunderland City Council to progress the necessary HR, legal and financial arrangements required statutorily to facilitate the transfer of the commissioning responsibilities.

Description of Decision:

Cabinet is requested to:

- agree to the establishment of a shared service to support sub-regional elements of planning, commissioning and quality assurance.
- note the arrangements, previously approved and validated by the Department for Children, Schools and Families, for North Tyneside Local Authority to act as the lead authority in matters that require the enactment of decisions taken by the Sub-regional Group in relation to planning, commissioning and quality assurance.
- approve the arrangements for managing the transfer of LSC staff into the LA.
- note the proposed funding mechanism to support the transfer and ongoing staffing and office costs created by the transfer of LSC staff into the LA.
- authorise the Executive Director of Children's Services, in consultation with the Director of Financial Resources and Chief Solicitor and appropriate senior LSC offices, to put in place all necessary arrangements for the transfer and management of funding contracts, agreed by the LSC with learning providers from 1 April 2010 to 31 July 2010, and from 1 August 2010 to 31 July 2011.
- authorise the Executive Director of Children's Services, in consultation with the Lead Member for Children's Services to develop a local and sub-regional Memorandum of Understanding with the regional representatives of the National Apprenticeship Service (NAS) which will facilitate appropriate planning and provision to meet the needs of learners in respect of apprenticeships.
- note the proposed arrangements for funding learning provision in schools and colleges as given in the National Commissioning Framework (consultation document published 16 November 2009, DCSF).
- agree that Cabinet will receive an annual report on 16-19 priorities and commissioning intentions.

Is the decision consistent with the Budget/Policy Framework? *Yes/No

If not, Council approval is required to change the Budget/Policy Framework

Suggested reason(s) for Decision:

The Apprenticeships, Skills, Children and Learning (ASCL) Act 2009 requires LA to put in place the arrangements described in this report and as such they represent statutory requirements.

Alternative options to be considered and recommended to be rejected:

The Machinery of Government (MOG) changes required LAs to prepare for the transfer of statutory responsibilities from the LSC in 2010 by agreeing regional and sub regional arrangements. This has now been statutorily required as part of the enactment of the ASCL Act. Therefore, as a statutory requirement there are no other viable alternatives.

Is this a “Key Decision” as defined in the Constitution? Yes

Relevant Scrutiny Committee:
Children, Young People and Learning

Is it included in the Forward Plan?
Yes

16-19 SUB-REGIONAL COMMISSIONING FOR LEARNING PROVISION REPORT OF THE EXECUTIVE DIRECTOR OF CHILDREN'S SERVICES

1. Purpose of the Report

- 1.1 The report is to apprise Cabinet of the progress made in the transfer of responsibility for the commissioning of 16-19 education (16-25 for learners with an identified learning disability) from the Learning and Skills Council (LSC) to Local Authorities (LA). Approval is sought for Sunderland City Council to progress the necessary HR, legal and financial arrangements required statutorily to facilitate the transfer of commissioning responsibilities.

2. Description of Decision (Recommendations)

- 2.1 Cabinet are requested to:

- agree to the establishment of a shared service to support sub-regional elements of planning, commissioning and quality assurance.
- note the arrangements, previously approved and validated by the Department for Children, Schools and Families, for North Tyneside Local Authority to act as the lead authority in matters that require the enactment of decisions taken by the Sub-regional Group in relation to planning, commissioning and quality assurance.
- approve the arrangements for managing the transfer of LSC staff into the LA.
- note the proposed funding mechanism to support the transfer and ongoing staffing and office costs created by the transfer of LSC staff into the LA.
- authorise the Executive Director of Children's Services, in consultation with the Director of Financial Resources and Chief Solicitor and appropriate senior LSC offices, to put in place all necessary arrangements for the transfer and management of funding contracts, agreed by the LSC with learning providers from 1 April 2010 to 31 July 2010, and from 1 August 2010 to 31 July 2011.
- authorise the Executive Director of Children's Services, in consultation with the Lead Member for Children's Services to develop a local and sub-regional Memorandum of Understanding with the regional representatives of the National Apprenticeship Service (NAS) which will facilitate appropriate planning and provision to meet the needs of learners in respect of apprenticeships.
- note the proposed arrangements for funding learning provision in schools and colleges as given in the National Commissioning Framework (consultation document published 16 November 2009, DCSF).
- agree that Cabinet will receive an annual report on 16-19 priorities and commissioning intentions.

3. Background

- 3.1 The White Paper, *Raising Expectations: Enabling the system to deliver*, produced jointly by the Department for Children, Schools and Families (DCSF) and the Department for Innovation, Universities and Skills (DIUS) identified detailed proposed changes to the machinery of government with regard to skills training for adults; and the creation of an effective system to deliver the learning entitlement to 16-19 year olds. The entitlement concept relates to a range of curriculum and guidance initiatives and services that should be available to all 16-19 learners regardless of where they study. The reforms were designed to give councils the strategic lead for 14-19 education and training, enabling integration of provision

between schools, colleges and employers as they jointly offer the new range of Diplomas and Apprenticeships, alongside GCSE and other qualifications. The reforms aim to restore to local authorities a significant relationship with general further education colleges.

- 3.2 Earlier in 2009, local authorities were asked to consider the best way of grouping together to meet the learning needs of 16-19 year olds, informed by a detailed analysis of travel to learn patterns. This is basically a review of the choices that learners make in respect of their post-16 learning provider and the extent to which they stay within or move beyond their 'home' local authority. This analysis informed the creation of sub-regional clusters of local authorities to work together to create a commissioning plan for 16-19 learning in their geographical area. The local authorities in Tyne and Wear and Northumberland submitted a joint response – the SRG Stage 2 Submission – proposing a sub-regional group (SRG) of these local authorities. The SRG Stage 2 submission was outlined in the report to Cabinet in March 2009.

4. Current Position

4.1 16-19 Commissioning and the transfer of responsibilities

- 4.1.1 The ASCL Act 2009 is the legislative framework that confirms the changes first outlined in the Raising Expectations White Paper. The Act is wide-ranging and encompasses a number of areas in addition to the changes to the machinery of government of the 16-19 phase.
- 4.1.2 From 1 April 2010, all unitary and county councils will take over responsibility for 16 - 19 education from the LSC. This is a huge shift in responsibility and funding, involving the transfer of £7 billion of public money and nearly 1,000 LSC staff. The key features of the new system are:
- local authorities to identify demand and plan provision to meet the needs of young people;
 - local authorities to commission the provision that is needed;
 - a funding model which ensures that money reaches providers appropriately.
- 4.1.3 Local authorities will be responsible and accountable for securing the provision of education and training for 16-19 year olds, and for 19-25 year olds subject to a learning difficulty assessment, and for those young people in youth custody aged 16-18. LAs will be supported by a small non-departmental public body – the Young People's Learning Agency (YPLA) – that is meant to ensure coherence of planning and budgetary control.
- 4.1.4 Local Authorities will be responsible for the commissioning of learning provided in their area on behalf of all Authorities. This is meant to respond to the travel to learn patterns evident across the sub-regional groups and will ensure that providers, particularly FE Colleges, are not required to have multiple dialogues with a number of LAs. Due regard will be given, through the SRG and Regional Planning Group (RPG), to ensuring appropriate learning is available to meet the needs of residents of their area within the constraints of the funding agreement reached with the YPLA.
- 4.1.5 A new agency, the Skills Funding Agency (SFA) will take on responsibility for all other learners over the age of 19, not subject to a learning difficulty assessment. It will also, through the National Apprenticeships Service (NAS), be responsible for

securing apprenticeships for 16-18 year olds and all adults. The Skills Funding Agency will help employers and individuals obtain the education and skills they need through a new demand-led system which will respond to their needs. It will be an agency of the Department of Business, Innovation and Skills (BIS), and will manage a budget of approximately £4 billion.

- 4.1.6 The proposed local, sub-regional and regional structures and planning processes are underpinned by the principle of subsidiarity, recognising the primacy of local authorities and their collective working at the SRG level, which will drive the regional agenda. They also reflect the key relationships being developed at the SRG level with Multi-Area Agreements (MAAs) and sub-regional governance structures (not least Employment and Skills Boards), which provide the opportunity to support the 16-19 'asks' within MAAs.
- 4.1.7 Members will be involved at this crucial strategic level and will oversee the employment and skills arrangements in their respective city-region/sub-regional areas as well as directly, within their locality, working with the Executive Director of Children's Services.
- 4.1.8 The role and structure of the RPG is based upon the tripartite structure briefly described below, which was developed through a process of consultation with stakeholders:
- **DCS Network** – regional decision making. Reflecting that it is local authorities who (along with the YPLA) will be statutorily accountable for the discharge of 16-19 commissioning functions, within their overarching statutory responsibilities for children and young people, and that within local authorities DCS's are accountable for local authority functions relating to the education of children and young people. It is proposed that when considering 16-19 Commissioning the DCS Network – or their designated representative Directors of Children's Services - are joined by YPLA, SFA, NAS, GONE and ONE colleagues to form a clearly defined RPG Executive Group through which the region can formally interact with the YPLA.
 - **Revised 14-19 Commission** – provision of strategic advice and partner engagement. The Commission has reviewed and amended its terms of reference to take on the regional stakeholder engagement function.
 - **Officer/Operational Group** (current IRPG) – operational support. This group would work under delegated authority from DCS's to undertake the detailed work required to support the 16-19 commissioning cycle; ensure that the Regional Statement of Priorities (RSoP) is met; and identify and manage regional issues within the broader 14-19 agenda in support of the RSoP.

4.2 Local and sub-regional; commissioning arrangements

- 4.2.1 The ASCL Act requires the dissolution of the LSC and the transfer of designated LSC staff to support the most appropriate element of the new system – the YPLA, the SFA, the NAS or the Local Authority partnership team. As part of the establishment of the new arrangements, current LSC staff have been through a “matching” process. The matching process reflects the duties and responsibilities that are transferring to each part of the new system from the existing LSC arrangements. Staff most closely aligned with the discharge of those responsibilities in respect of Local Authority areas have been identified to transfer to the LA teams. There will be six posts transferring into Sunderland LA, one of which is currently vacant. Transition plans are in place for the five staff members currently matched to Sunderland. This is consistent with local and regional arrangements around phased transfer of partnership staff from the LSC.
- 4.2.2 The formal transfer of staff will be governed by Transfer of Undertakings (Protection of Employment) – TUPE – regulations. A local authority and sub-regional group has been established to oversee the transfer, in line with best practice guidelines for TUPE transfers.
- 4.2.3 For staff transferring, the actual staffing cost including on-costs will also transfer. Where a vacancy transfers, the average cost of the vacancy will be transferred. The transferring staff will be embedded within Local Authority teams and their Children’s Trust commissioning arrangements.
- 4.2.4 The Authority will receive, annually up to 2012/13, a ring-fenced Special Purpose Grant from DCSF to cover the additional costs associated with taking on these additional responsibilities.
- 4.2.5 In addition to the LA team, a sub-regional shared service was approved as part of the Stage 2 submission. This will be made up of one post from each of the six LA teams in the sub-region. They will be co-located in North Tyneside and will undertake those activities that are best completed once on behalf of all local authority partners. The shared service will lead on any agreed sub-regional planning and commissioning activities and North Tyneside Council will act as the accountable body for the sub-regional group under those circumstances.
- 4.2.6 Each LA will take on the responsibility for administering the funding agreements with schools and colleges (and Work Based Learning/third sector providers for Foundation Learning Tier). Funding for Academies will be administered by the YPLA who will assume responsibility for all open academies in April 2010. Academies will be considered within the commissioning process, however the YPLA will be responsible for deciding on the number of sixth form places to be funded in each academy, taking account of the views of the local authority and the academy as well as its own local intelligence.
- 4.2.7 The funding agreements will cover the periods April 2010 – July 2010 (the current funding agreement) and August 2010 – July 2011. These agreements are already, or will be, in place before the formal transfer of responsibilities and as such they will transfer, along with the agreed funding allocations on April 2010. It will be for the LA team to administer rather than negotiate and agree these allocations.

4.2.8 For the delivery year August 2011 – July 2012, Local Authorities will lead all elements of the planning, commissioning, administrative and quality assurance process. A consultation document has been produced by the DCSF – The National Commissioning Framework – that describes the potential processes and lead responsibilities for 2011/12. There is a 12 week consultation period and local authorities, both individually and as a sub-regional group, will formally respond.

5. Reasons for the Decision

5.1 The Apprenticeships, Skills, Children and Learning (ASCL) Act 2009 requires LA to put in place the arrangements described in this report and as such they represent statutory requirements. Cabinet is requested to approve the recommendations as outlined above.

6. Alternative Options

6.1 The Machinery of Government (MOG) changes required LA's to prepare for the transfer of statutory responsibility from the LSC in 2010 by agreeing regional and sub regional arrangements. This has now been statutorily required as part of the enactment of the ASCL Act. Therefore, as a statutory requirement there are no other viable alternatives.

7. Relevant Considerations / Consultations

7.1 Financial Implications / Sunderland Way of Working

It is the intention of Government to fund fully the transferring LSC staff (that is, staff, NI, pensions and any other contractual allowances), to fund transferring vacancies at the average of top and bottom of the relevant pay band, and to make an allocation for IT, premises and other costs. The intention is to make the payments as a specific element within Area Based Grant for 2010/2011 and the following two years.

Funding agreements and associated contracts are already in place for all eligible learning providers for the delivery year 1 August 2009 to 31 July 2010. These contracts will be novated to LAs to administer for the learning providers based in their geographical area. Similarly, the funding agreements and associated contracts for the delivery year 2010/2011 will be agreed by the LSC with all learning providers by 31 March 2010 and will also be novated to LAs for their management. Both novations will be effective from 1 April 2010.

The finance and administrative capacity to service these contracts is part of the transferring staff resource from the LSC.

7.2 Risk Analysis

A risk register has been developed and is given due consideration at the Sunderland 16-19 Machinery of Government Project Board.

7.3 Employee Implications

As outlined in paragraphs 4.2.1, 4.2.2 and 4.2.3.

7.4 Legal Implications

The TUPE transfer of LSC staff into the LA will be conducted according to the agreed TUPE best practice guidelines. Similarly, it will be important that appropriate governance arrangements are put in place to secure the Council's position as lead/accountable body within the arrangement. All commissioning proposed to be undertaken will be required to comply with the EU/UK procurement framework.

7.7 The Public, Other Organisations and Stakeholders

A range of briefing events and consultations were arranged for external partners and associated organisation and agencies, including the 14-19 Learning Partnership and the Interim City Region Employment and Skills Advisory Board. The Children's Trust has received regular briefings and updates.

Outline briefings have been provided for Cabinet Members and the Lead Member for Children's Services.

8. Glossary

Apprenticeships, Skills, Children and Learning (ASCL)
Department for Children, Schools and Families (DCSF)
Department for Innovation, Universities and Skills (DUIS)
Learning and Skills Council (LSC)
Local Authority (LA)
Machinery of Government (MOG)

9. Background Papers

Apprenticeships, Skills, Children and Learning Act 2009
REACT Briefings
Cabinet Report 3 December, 2008
Cabinet Report 11 March, 2009