

Circular 02/06

For Information

Quality Improvement

Intervention to Improve the Performance of Providers

Summary

This circular sets out, in the context of the Learning and Skills Council's overall approach to performance improvement, how it will work with providers which cause concern, in particular where major intervention is required and rapid improvements in the quality of provision are necessary.

The policies, principles and overall approach set out in the circular apply equally to all providers that receive funds from the Learning and Skills Council. The sections on specific powers of intervention focus in particular on colleges in the further education sector and work-based learning providers.

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Learning+Skills Council

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Further information

For further information, please contact the appropriate local Learning and Skills Council office.

Executive Summary

This circular sets out, in the context of the Learning and Skills Council's (the Council's) overall approach to performance improvement, how it will work with colleges and providers which cause concern, in particular where major intervention is required and rapid improvements in the quality of provision are necessary.

The policies, principles and overall approach set out in the circular apply equally to all providers that receive funds from the Council. The sections on specific powers of intervention focus in particular on colleges in the further education sector and work-based learning providers¹.

¹*Throughout the document the term work-based learning provider is used to include all providers of work-based learning with a contract with the Council. Some are colleges, some are in the public or voluntary sectors and others are in the private sector.*

Intervention to Improve the Performance of Providers

Introduction

1 This circular sets out, in the context of the Learning and Skills Council's (the Council's) overall approach to performance improvement, how it will work with colleges and providers which cause concern, in particular where major intervention is required and rapid improvements in the quality of provision are necessary.

Background

2 A key role for the Council is the development and implementation of effective strategies to improve all aspects of the performance of colleges and other providers so that all learners receive high quality learning experiences that lead to success and achievement. This role is set out in the *Learning and Skills Act 2000* and in the Secretary of State's remit letter of November 2000. It forms a key part of the Council's vision and mission in its first corporate plan. The Council and the inspectorates are committed by a concordat to support each other so that each can contribute successfully to their shared objective of raising standards in Council-funded provision. The concordat is available on the Council's website at (www.lscdata.gov.uk/quality).

The Partnership Approach to Performance Improvement

3 The Council recognises that its relationships with the organisations which it funds or with which it has contracts are crucial

to the delivery of local and national strategic plans and targets to meet the needs of learners. The Council has therefore committed itself to 'Getting the Best from Each Other' a government initiative led by the Department for Education and Skills (DfES) which sets out a framework for relationships with programme providers.

4 Within this context the guiding principles of the Council's approach to performance improvement can be summarised as follows:

- the Council's over-riding responsibility is to the learner
- the college or provider is responsible for performance improvement
- all colleges and providers have the capacity to improve and to plan for continuous improvement in quality
- procedures developed to monitor key aspects of college and provider performance on a regular basis are designed to identify actual or potential weaknesses at the earliest possible stage, and these findings should be used as the basis for improving performance
- early steps will be taken to deal with weaknesses or areas of concern, with the Council providing appropriate support and guidance as needed
- where this approach does not secure improvement, the Council will intervene to secure the necessary improvements

- intervention will be timely, effective and in inverse proportion to success
- should intervention not succeed, the Council and the Secretary of State have statutory powers allowing major intervention.
- the performance review category is 'serious' concerns
- the college or provider does not recognise or acknowledge the problems it faces or its weaknesses
- inspection grades show unsatisfactory performance in a number of areas, or provision is inadequate overall

Performance Review

5 As part of their work in monitoring and improving the performance of colleges and other providers, local Learning and Skills Councils (local Councils) carry out regular and comprehensive reviews of their performance. A broad range of up-to-date information is gathered together including the most recent inspection findings where available and an overall assessment reached. This assessment is communicated to each college and provider. The process ensures that vital pieces of evidence about an individual provider's performance are brought together and progress assessed. Action to secure improvements in performance may then be taken by the Council, the college or provider as appropriate. *Circular 02/05 Reviewing Performance: For Colleges and Other Providers* includes proposals for refining the arrangements for performance review.

6 In the majority of cases early identification of potential concerns, action by colleges and providers and support from the Council will bring about the necessary improvements. However, the performance review process is also the key platform for identifying the circumstances in which the threshold between the final stage of the normal partnership approach and the initial stage of the intervention approach has been reached.

The Threshold for Intervention

7 The key indicators that the threshold for major intervention have been reached are one or more of the following:

- the college or provider requires re-inspection and has failed to produce a post-inspection action plan which the Council and the inspectorates consider adequate
- the college or provider is unable to take action to address weaknesses satisfactorily
- there is little prospect that the existing managers of the college or other provider will bring about improvement within reasonable timescales
- guidance and support from the Council has failed to bring about improvement
- guidance and support from the Council has been ignored and/or rejected.

In these cases major intervention by the Council will be considered.

Formal Communication and Dialogue

8 The first step in intervention is clear, formal, written communication with the college or provider. This will set out:

- the decision that the provider is categorised as having serious concerns
- the reasons why any previous plans or responses by the college or provider are not considered to be sufficient
- clear specification of all key weaknesses
- the evidence for the identified weaknesses

- the specific action plan that is now required
 - a proposed timetable for the preparation of the plan
 - the support and guidance available from or accessible through the Council, the inspectorates and DfES
 - the opportunity for further discussion and clarification
 - the key contact within the local Council
 - the potential for further stages of intervention if required actions are not taken and what those stages are.
- set a timescale within which action is to be carried out
 - identify responsibilities for taking action and the resources required
 - state how the outcomes are to be judged and/or measured
 - set out plans for monitoring actions
 - be consistent with any related plans covering other aspects of the college's or provider's development.

Planning for Improvement

9 Weaknesses may arise in one or more aspects of a college's or provider's performance and may have been identified, for example, through inspection, development plans, analysis of statistical and/or financial returns, auditors' reports, complaints or referrals from other agencies. In all cases the Council will expect the college or provider to draw up a plan to address the weaknesses. Where the range and scale of the problems identified are significant and/or complex and where previous plans have been judged inadequate, or their implementation has been insufficient, a separate plan will be needed.

Characteristics of Acceptable and Successful Plans

10 To be acceptable to the Council, successful plans should:

- be comprehensive, rigorous and clearly structured
- specify the problem(s) to be addressed
- set out the remedial actions
- set goals and targets for action

Support

11 The Council wishes to work closely with colleges and other providers in the development and monitoring of their plans, to make sure that the actions proposed to address weaknesses are appropriate and that areas of concern can be addressed within an acceptable timescale. The Council will support colleges and providers, in particular those that appear to be at risk of not meeting its requirements, through one or more of the following:

- staff from the local and national offices of the Council
- external sources of management support
- the Standards Fund
- any other relevant transitional or normal funding streams.

The Council's Powers

12 The Council will exercise its power to secure the provision of financial resources to providers of post-16 education and training to ensure that provision funded by the Council is of a high quality. The Council also has the power to impose conditions when providing funds to a college or other provider of post-16 education and training. The conditions can include the following provisions:

- require the college or other provider to allow the Council or those designated by the Council such as auditors, access to their accounts, documents and computers and associated apparatus and materials
- require the college or other provider to supply information to the Council for the purpose of carrying out its functions
- enable the Council to require the repayment (in whole or in part) of sums paid by the Council if any of the conditions subject to which the sums were paid are not met and require the payment of interest in respect of any period in which a sum due the Council in accordance with any condition is unpaid.

Further Education Colleges

13 The conditions of funding in respect of further education colleges are set out in the financial memorandum and the annual funding agreement. The Council could also impose specific conditions on a college when providing funding, which could be related to carrying out agreed actions under an action or financial recovery plan including strengthening management arrangements.

14 In addition to imposing conditions of funding, the Council has a specific power to appoint up to two additional governors to the governing bodies of institutions in the further education sector. The power to appoint additional governors has been delegated to local Councils.

15 The Council could ask the Secretary of State to intervene or exercise her statutory powers of intervention. These are set out below at paragraphs 19 to 23.

16 The Council can also propose that the Secretary of State dissolves/creates a further education corporation. The exercise of these

powers can be used to bring about a merger of a failing college.

Work Based Learning providers

17 The Council's conditions in relation to the funding of work-based learning providers are contained in the standard contract. The contract provides details about how breaches of contract should be dealt with depending on whether the breach is categorised as a minor or a serious breach. In addition, the contract provides for either party to give three months notice to terminate the contract. Local Councils can also decide not to renew a contract once an existing contract has terminated.

18 The Council is currently reviewing the terms of its contract for work based learning provision which will apply from August 2002 to include a specific reference to the quality of provision.

Powers of the Secretary of State in relation to Further Education Corporations

19 *The Learning and Skills Act 2000* provides the Secretary of State with powers to intervene in further education corporations. The Secretary of State may remove all or any of the members of a further education institution's governing body; appoint new members of that body if there are vacancies, however they arise, and give directions to the governing body as she thinks fit as to the exercise of their powers and performance of their duties. The Secretary of State may intervene in one of the above ways if she is satisfied that one of the following conditions has been met:

- the institution's affairs have been or are being mismanaged
- the institution's governing body have

failed to discharge any duty imposed by or for the purposes of any Act of Parliament

- the institution's governing body has acted or is proposing to act unreasonably with respect to the exercise of any power or performance of any duty imposed by or under any Act of Parliament
- a report regarding the institution made by HM Chief Inspector of Schools, or the Chief Inspector of Adult Learning indicates that the institution has serious weaknesses or is failing or likely to fail to give an acceptable standard of education.

20 Before the use of these powers is formally considered, the Secretary of State will normally write to the chair of the governing body expressing great concern about the circumstances at the college, making clear the government's expectations and setting out the powers available to the Secretary of State and possible future actions.

21 The Secretary of State has the power to request either the Office for Standards in Education (OFSTED) or Adult Learning Inspectorate (ALI) to carry out an inspection of a specified college, or other type of provider.

22 The Secretary of State has the power to dissolve a further education corporation following consultation with the corporation and the Council and to establish a new corporation. This power has so far only been used in the context of college mergers, where one or more of the merged colleges have been dissolved following the creation of a new corporation. The power has not yet been used solely to close a failing college.

23 The Secretary of State may revoke, revise and replace Instruments and Articles of Government of a further education corporation. This power was used with effect from 1 April 2001 when an order with new Instruments and Articles of Government was made. These:

- prescribe the composition of a further education corporation/governing body
- make the governing body of a further education corporation the authority responsible for appointing new governors, appointing a chair and vice-chair, appointing a clerk, appointing a principal and other senior post-holders and for dismissing and suspending senior post-holders.

In principle, the Instrument and Articles of Government of a further education corporation may be revised on an individual basis.

Powers in relation to School Sixth Forms

24 Local education authorities (LEAs) have the power to:

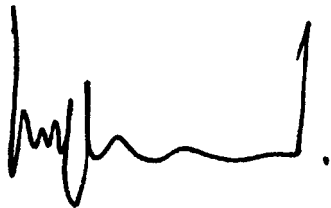
- set up 16-19 institutions as schools
- propose the closure or re-organisation of school sixth forms to the School Organisation Committee (SOC) following statutory processes.

25 Under existing legislation, neither the Secretary of State nor the Council has the power to direct the re-organisation, closure or opening of LEA maintained 16-19 provision. However, the Council has the power to propose closure of a sixth form to the SOC but only in the following circumstances:

- in the case of a sixth form or 16-19 institution which is deemed inadequate, as set out in schedule 7 to the *Learning and Skills Act 2000* where a sixth form is still judged to be inadequate by OFSTED two years after the original judgement of inadequacy. Note, however, that these powers do not apply where the school as a whole requires special measures
- the Council may propose that an LEA maintained institution be incorporated

under section 16 of the *Further and Higher Education Act 1992*, and join the further education sector, with the consent of the LEA and governing body.

26 The government has now introduced an Education Bill 2001 which includes proposals to amend the *Learning and Skills Act 2000* to give the Council power to make proposals for the establishment by a local education authority of one or more schools to provide secondary education suitable for the requirements of 16 to 19 year olds, altering an existing school maintained by the LEA or discontinuing an LEA maintained school which only provides post-16 education. This power is intended to be exercised to meet recommendations in the report of an area inspection or in the circumstances prescribed in regulations.

A handwritten signature in black ink, appearing to read 'John Harwood', with a stylized flourish at the end.

John Harwood, Chief Executive

Notes

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