Identifying and Managing Underperformance

LSC Guidance on Identifying and Managing Underperformance and the Operation of Notices to Improve Applying to the 2008/09 Academic Year

January 2008

Of interest to everyone involved in delivering LSC-funded provision
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This document outlines the processes and policies for the identification and management of underperformance and the operation of Notices to Improve in the FE system in the 2007/08 academic year, and the application to the 2008/09 year.
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The annexes referred to in this document provide detailed technical information. They are available in a separate document that can be accessed on the LSC website at [www.lsc.gov.uk](http://www.lsc.gov.uk).
Introduction

1 In response to commitments made in the Further Education (FE) White Paper Further Education: Raising Skills, Improving Life Chances (2006), the Learning and Skills Council (LSC) published Identifying and Managing Underperformance in January 2007. This document outlined the criteria for taking action where underperformance is evident, the action that should follow and the support given to colleges and providers.

2 Our Statement of Priorities: Better skills, Better jobs, Better lives (2007) has clearly set out our priorities and key actions for 2008/09 to 2010/11, and reiterates our commitment to eliminate inadequate provision by 2008.

3 The first version of Identifying and Managing Underperformance necessarily focused on the operation of minimum levels of performance and Notices to Improve applying to the 2007/08 academic year. The purpose of this updated version for 2008/09, however, is to build on and further clarify the existing arrangements. This latest document:

- places underperformance in the context of the LSC’s wider quality assurance activities;
- introduces the concept of the identification of underperformance in relation to the financial health and control of colleges;
- sets out the minimum levels of performance for provision commissioned for delivery in 2008/09;
- identifies what additional provision is in scope and introduces a more differentiated analysis of FE long qualifications;
- extends the guidance to include policy and actions on post-inspection activity; and
- strengthens the link between learner health, safety and welfare, and the quality assurance agenda.

4 In 2008, following a full academic year of operation of minimum levels of performance and Notices to Improve, the LSC will commission an external evaluation of these activities to determine whether it has met the objective of eliminating underperformance. An evaluation will also demonstrate whether the resultant actions taken by providers to improve provision disproportionately and/or adversely affect the following:

- individuals with learning difficulties and/or disabilities;
- individuals from a black or minority ethnic background;
- individuals of different genders; and
- under-represented community groups.

5 The policies set out in this document remain current until it is superseded by an updated version.
6 This guidance refers to a series of different scenarios that will affect different providers in different ways. To ensure complete understanding of these policies, the definitions set out in the following paragraphs will apply.

7 A college is defined as any institution established under Sections 15 or 16 of the Further and Higher Education Act 1992. These colleges are in receipt of funding through grant-in-aid arrangements.

8 All other non-college providers within the FE system will be referred to as ‘independent providers’. Independent providers are those non-college providers that hold contracts with the LSC, and they will not be in receipt of funding through grant-in-aid arrangements. They include:

- specialist providers for learners with learning difficulties and/or disabilities;
- adult learning providers (including local authorities, former external institutions, specialist designated institutions, and third sector or voluntary and community providers); and
- private training providers that hold contracts to deliver Apprenticeship or Entry to Employment provision.

9 The use of the term ‘providers’ in this document refers to both colleges and independent providers.
Quality Assurance in the LSC Business Cycle

10 The recent simplification of the quality landscape ensures that the roles of the main agencies are now clear: the Office for Standards in Education, Children’s Services and Skills (Ofsted) assesses provision; the Quality Improvement Agency for Lifelong Learning (QIA) improves provision; and through its commissioning arrangements, the LSC assures itself that it is funding the providers that are delivering the best quality provision available. As a minimum, the provision commissioned must be of at least a satisfactory standard (for example, it must meet the minimum levels of performance and Ofsted requirements) and must be improving.

11 The LSC is committed to continuously improving and simplifying relationships: each college and provider will have a single strategic partner, drawn from the local partnership team. This relationship will be critical to ensuring the quality, infrastructure and capacity of the FE system in responding to the ambitions and challenges set out in Lord Leitch’s report (Prosperity for all in the global economy – world class skills, published by HM Treasury in December 2006) and in the FE White Paper.

12 As a strategic partner, the LSC will evaluate the performance of a provider and undertake a differentiated level of intervention and scrutiny subject to that evaluation. All discussions will be informed by a mutual understanding of performance based on shared data linked to common performance standards as part of the Framework for Excellence. Discussions will also be proportionate to the volume of provision concerned and take into account a range of intelligence and information. This information might include the extent to which a provider’s self-assessment recognises, and seeks to identify and address, underperforming provision. This will mean a lighter touch for high-performing providers with greater scrutiny and intervention for those where there are concerns about performance.

13 Colleges and independent providers are quite properly responsible themselves for the quality of the education and training that they offer to learners and employers. Providers, therefore, should understand the approach to managing underperformance in the context of the LSC’s wider quality assurance arrangements. Serious concerns about performance are likely to be limited to a minority of providers; nevertheless, regular discussions between the LSC and providers about self-assessment reports and quality assurance arrangements are fundamental aspects of contract management.

14 Self-assessment is a process through which providers themselves have a responsibility to secure improvement. Nevertheless, the LSC has a legitimate interest in the process: self-assessment reports can clearly demonstrate the extent to which a provider has recognised any shortcomings for itself and put plans in place to address them. The discussion about self-assessment and the part that it plays in improvement is important, not least because it is a requirement of the funding contract to upload self-assessment reports to the Provider Gateway annually by a specified date (the current deadline is 31 December 2007). Ofsted inspection evidence also indicates there are still a significant number of providers where the self-assessment process is not sufficiently robust or accurate.

15 Quality assurance of schools is performed through separate accountability arrangements. School Sixth Form Challenge and Support was introduced in 2007. This followed a request in December 2006 from Jim Knight (the Minister of State for Schools and Learners) and Bill Rammell (the Minister of State for Lifelong Learning, Further and Higher Education) for the LSC, in partnership with local authorities and their school improvement partners, to discuss the performance of school sixth forms. As a result, there has been, for the first time, a joint and national recognition of underperformance issues. Local 14–19 partnerships will jointly monitor any actions to instigate improvement.
Identifying Underperformance

16 Until the Framework for Excellence becomes fully operational as a more comprehensive approach to assessing performance, there are four factors that will inform any decisions about action or intervention when analysing provider performance:

- success rates compared with minimum levels of performance;
- financial health and control monitoring;
- inspection outcomes; and
- learner health, safety and welfare arrangements;

17 When underperformance is identified via any of the four factors set out above, the LSC will expect the leaders and managers of the providers in question to recognise the issues and to put plans in place to address them. This will include agreeing improvement indicators with the LSC, but in the more serious cases, providers could lose funding or (in the case of colleges) be subject to a Notice to Improve.

18 The LSC has redefined the categories of underperformance. There are now two broad categories of underperformance, where there is a requirement for providers to take action: whole provider underperformance and significant provider underperformance.

19 Table 1 below indicates the extent of underperformance against each of the four categories used to analyse provider performance. Subject to the outcome, LSC action will follow.

<table>
<thead>
<tr>
<th>Extent of underperformance</th>
<th>Financial health and control</th>
<th>Inspection</th>
<th>Learner health, safety and welfare</th>
<th>Minimum levels of performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whole provider underperformance</td>
<td>In financial failure</td>
<td>Effectiveness of provision declared inadequate</td>
<td>Assessed as high risk</td>
<td>FE: 25 per cent or more</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Apprenticeship provision: fails to meet the minimum level</td>
</tr>
<tr>
<td>Significant provider underperformance</td>
<td>With emerging financial issues</td>
<td>Some sector subject areas or key questions judged inadequate</td>
<td>Assessed as medium risk</td>
<td>FE: 15 per cent to 24 per cent</td>
</tr>
<tr>
<td>Provider self-improvement activity</td>
<td>The LSC has no or few financial concerns</td>
<td>All grades satisfactory or better</td>
<td>Assessed as low to medium risk</td>
<td>FE: less than 15 per cent – although this may include pockets of underperformance that require improvement indicators</td>
</tr>
</tbody>
</table>
20 Where underperformance is minimal, it is the expectation that the provider will determine its own improvement indicators as part of its self-assessment process and in developing its quality improvement plan. Setting clear processes to enable monitoring, and for demonstrating, improvement allows the provider to show that its remedial actions are having a positive impact, and reassures the LSC that it can continue to attract funding.

21 The LSC will agree improvement indicators with providers where there are concerns about the performance. They will relate to the provider’s self-assessment report and quality improvement plan and will form part of the funding agreement or contract. Aspirational targets and any improvement indicators that were previously agreed and included within the development plan will not form part of the contract.

22 The development of the Framework for Excellence, as a more comprehensive approach to assessing performance, means that the continuing use of these criteria will no longer be appropriate. Initial work is already under way to scope how the framework will be used to inform interventions such as Notices to Improve and other serious actions relating to managing underperformance.

'Satisfactory but not improving' provision

23 The FE White Paper not only sets the target to eliminate inadequate or unsatisfactory provision by 2008, but also to have had a major impact on those organisations where performance is just satisfactory or not showing any improvement. The definition of ‘satisfactory but not improving’ uses that which is set out in the Ofsted publication *Proportionate inspection of further education colleges* (published in January 2007). It is an overall effectiveness grade of 3, and a “Capacity to improve” grade of 3 or 4. In raising the minimum levels of performance, the LSC anticipates that approximately 40 per cent of ‘satisfactory but not improving’ colleges will be in scope to receive a Notice to Improve.

24 The LSC will work with QIA, Ofsted, the Department for Innovation, Universities and Skills (DIUS) and the Association of Colleges to develop actions to bring about improvement in ‘satisfactory but not improving’ colleges and those that are judged to have made ‘no discernible progress’ or ‘insufficient progress’ at the first monitoring visit after inspection. These actions will be effective from September 2008. In addition, the LSC intends to work with DIUS, Ofsted, QIA and the Association of Learning Providers to consider action to improve private training providers that are ‘satisfactory but not improving’. Further information on these activities will be available in 2008.

25 The LSC considers that this joint work (to secure ownership by the sector of the solutions and to secure actions to address provision that is ‘satisfactory but not improving’) will contribute to the development of self-regulation. As the framework for self-regulation is further developed, the LSC will work with Single Voice (the proposed company to be created by representative bodies to represent the sector in strategic dialogue with government on regulatory matters) and other appropriate agencies to further enhance the sector’s capacity for self-improvement.

26 As providers continue to respond to expectations of better performance and the trajectory of improvement rises, the LSC will increasingly focus on how to support providers in the achievement of excellence.
Financial Health and Control

27 In the previous version of Identifying and Managing Underperformance, the LSC set out its intention to introduce a Notice to Improve relating to underperformance in the financial health and control of colleges. The LSC’s approach to intervention in this area is well established. The introduction of Notices to Improve will serve to strengthen existing financial processes and to support earlier improvement by taking a more preventative approach.

28 The LSC will introduce financial Notices to Improve from January 2008. These will apply to colleges only and will be issued based on the LSC’s review of audited accounts for 2006/07 and then on subsequent financial returns, LSC audit findings and other relevant information. The LSC will continue to assess annually the financial health of independent providers using audited accounts. The general principles and approach, however, can inform the LSC’s relationship with the other providers that it funds.

29 The principles underlying the approach to identifying and managing underperformance for financial health and control are to align with:
- existing financial health assessment processes and financial health assessment grades (financial health groups A, B and C);
- the revised financial health groups proposed under the Framework for Excellence;
- the existing approach to financial intervention, in particular in relation to the actions to be taken when colleges are identified as being in financial failure or demonstrating emerging financial issues;
- existing financial control assessment procedures and opinions (grades); and
- the revised financial control assessment approach proposed under the Framework for Excellence.

Identifying colleges in financial difficulties

30 The LSC, through its regional Provider Financial Management (PFM) and Provider Financial Assurance (PFA) teams, assesses colleges’ financial health and financial control on a regular and consistent basis. Providers’ future grades for the finance dimension of the Framework for Excellence will include scores for both financial health and financial control, and the current processes and procedures are in development to support these.

31 The LSC assesses the financial health of colleges twice a year and uses standard financial returns. The financial plan (covering the current year plus three future years) is due on 31 July each year, and the finance record (an electronic version of the audited accounts) is due on 31 December. Each return generates an ‘autoscore’ and includes a formal self-assessment of the college’s financial health. This may differ from the autoscore. The LSC subsequently confirms the college’s financial health group through validation by PFM teams, using a consistent approach across regions.

32 Regional PFA teams carry out a cycle of provider audits, which examine:
- financial management and governance (which are aligned with the inspection cycle); and
- the direct audit of LSC funding streams.

The outcome of each audit will be a detailed report, which may identify financial control issues and outline recommendations for the college to address.

Defining college financial underperformance

33 Financial difficulties are usually the symptom of wider business problems, and the underlying causes vary. Where the LSC identifies financial difficulties, the whole college is assessed for financial health purposes. However, there are different degrees of financial failure or underperformance.
Whole provider underperformance

34 Whole provider underperformance is where a college is in financial failure. In such a case, the college:

- would be classed as being in ‘inadequate’ financial health (category 4) under the new Framework for Excellence financial health groups. In the interim, the definition would be a college within financial health group C, which actually is, as opposed to being likely to become, financially dependent on a third party (usually the LSC or its bank);
- would be classed as ‘inadequate’ for its financial control following audit by the LSC; and
- might need exceptional financial support from the LSC.

35 The LSC will issue a Notice to Improve to all colleges that are in financial failure. The college would be required to develop a strategic recovery plan (if it is sufficiently robust, the LSC can accept a strategic recovery plan as the basis on which to continue funding a provider that is in serious financial difficulties).

36 Unlike Notices triggered by inspection outcomes or minimum levels of performance where improvement must be demonstrated in a period of 12 months, it is not expected that a college will become financial category A or B within the usual 12-month period. The LSC recognises that financial health recovery will typically take three years. As such, for financial health Notices only, this period to demonstrate improvement may typically be longer. There will, however, be an examination of progress throughout the first 12 months of the Notice period, including set milestones that must be reached – otherwise the LSC will move to consider strategic options. Where the Notice is issued in relation to financial control, it is the expectation that the college will be able to show improvement within the standard 12-month period.

Significant provider underperformance

37 Significant provider underperformance is defined as when a college has emerging financial issues. In such a case, the college:

- would be ‘satisfactory’ for its financial control following audit by the LSC;
- would show signs of deteriorating financial health (an example might include two consecutive operating deficits), although it might still be in a reasonable financial position overall – would be identified through early warning indicators;
- might be suffering from a persistent failure to address previous audit recommendations (this will be viewed as an indicator that the college has emerging financial issues); and
- would be unlikely to need exceptional financial support.

38 A college that has emerging financial issues will not receive a Notice to Improve (unless, of course, it is also in financial failure). The college and the LSC would formally agree improvement indicators, as part of a required strategic improvement plan that the LSC would monitor.

39 Where a college persistently fails to address previous audit recommendations, it is expected that the improvement would need to be demonstrated within a shorter period than that of a financial Notice to Improve (as the provider would already have had time to implement improvement). If the college does not achieve the improvement indicators within the agreed timelines, it is anticipated that the LSC will issue a Notice to Improve.

40 The purpose of the increased focus on requiring improvements at an earlier stage from colleges that have emerging financial issues is to minimise the need for later exceptional financial support funding. The LSC can support improvement through close working and careful agreement and monitoring of targets and milestones with the college.

Managing financial underperformance

41 The degree of financial intervention required for a particular college (and expressed in a Notice to Improve or agreed improvement indicators) will depend on the nature, scale and causes of the financial difficulties, and the stage at which they are identified. For this reason, the possible interventions available to the LSC are sufficiently varied to allow for the best response to the specific circumstances, rather than a standard approach. It is critical that an appropriate financial intervention approach is developed and followed through in each case. Once the LSC identifies actual or emerging financial difficulties, it is not acceptable not to intervene.
Possible actions in response to financial difficulties

42 As in all responses to identified difficulties, the action taken will be proportionate to a college’s circumstances. Possible actions available to the LSC include the following.

- Withdrawing the general consents in the financial memorandum and requiring a college to seek formal consents instead, based on demonstrated business cases, and giving consent for enough solvency-related borrowing to meet any foreseeable needs, provided the bank is content to offer facilities. (This will reduce the impact on public funds.)
- Copying all documents and correspondence to the chair of the governing body.
- Requiring the college to provide monthly management accounts.
- Closely monitoring college performance across all funding streams and non-LSC funded activity. This would be on a monthly or quarterly basis (or as appropriate), and would include face-to-face meetings with the principal, the senior management and, where necessary, the chair of the governing body.
- Requiring the college to provide an updated three-year financial plan and commentary, including full analysis of the reasons for any financial difficulties.
- Only funding a college to cover the next month’s operating costs and to meet any creditor payment terms.
- Requiring the college to produce a strategic improvement and/or recovery plan.
- Commissioning an independent organisational review into the underlying causes of any financial difficulties, and the priorities for addressing these.
- Commissioning a strategic options review to consider options for the future of the provision and the college.
- Requiring a review to take place of the senior management and/or governors to determine whether a college has the appropriate leadership and management to achieve recovery (this can form part of an independent organisational review).
- Withdrawing funding (or an element of funding).
- Exercising the right to nominate an observer to the governing body.
- Requesting that an LSC observer be allowed to attend meetings of the governing body.
- Exercising powers to remove, appoint or add governors (either directly or via the Secretary of State, according to the Learning and Skills Act 2000).
- Proposing the dissolution of the corporation to support the cessation or merger of the institution (the power to make orders dissolving FE corporations will transfer to the LSC from the Secretary of State under the Further Education and Training Act 2007, but will still be subject to the statutory requirement to publish and consult on proposals).
- Providing interim cash flow support for colleges while they are developing their recovery plans, with rigorous conditions attached (a college should make every effort to obtain this support from its bank – the LSC can give consent for solvency borrowing in excess of the limits set out in the financial memorandum where appropriate).
- Where appropriate, agreeing exceptional financial support for a college, based on an accepted recovery plan, rigorous conditions and milestones.
Underperformance identified through inspection is defined as a provider receiving an Ofsted judgement of ‘inadequate’ for:

- overall ‘Effectiveness of provision’;
- one or more of the following key questions: ‘Achievement and standards’, ‘Leadership and management’ (while deemed to be satisfactory or better overall);
- one or more sector subject areas (while deemed satisfactory or better overall).

Table 1 on page 04 sets out how inspection judgements relate to the extent of underperformance.

This definition applies equally to all LSC-funded provision – regardless of the funding route. The LSC’s approach to addressing underperforming provision is consistent, but specific actions may differ according to the contracting relationship with the provider in question.

Colleges

In all cases where Ofsted judges a college to be inadequate overall, the LSC will issue a Notice to Improve. The processes associated with this action are in paragraphs 120 to 145.

Where a college has underperforming provision (provision that has been graded as inadequate against one or more of the Ofsted key questions and/or one or more sector subject areas), but is not overall inadequate, the LSC will not issue a Notice to Improve. However, there will be actions for both the college and the LSC. In such a case, the LSC and the college, as part of the post-inspection action plan, will agree robust improvement milestones. The plan must focus on the action to be taken by the college to address those aspects of provision identified in the section of the inspection report headed ‘What should be improved’, together with the areas for improvement listed for each curriculum area.

Where there is underperformance, the LSC may seek to limit or cap growth in LSC-funded learner numbers at that college and/or within a sector subject area. This approach seeks to protect the interests of learners and to reduce the number of learners entering inadequate provision where suitable alternative provision may be available. Even if Ofsted judges a college as satisfactory on re-inspection, any growth in learner numbers and associated funding will be gradual and relative to the risk to the local delivery of provision. This approach is to preserve a college’s ability to continue to deliver quality provision. Table 2 below outlines the actions taken and growth restrictions applied to a college, by the LSC, in relation to inspection outcomes.

<table>
<thead>
<tr>
<th>Ofsted judgement</th>
<th>LSC action</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inadequate overall</td>
<td>Notice to Improve issued</td>
<td>If appropriate, limited or no growth at an institutional level</td>
</tr>
<tr>
<td>Satisfactory overall, but inadequate against one or more of the key areas (including ‘Leadership and management’)</td>
<td>Improvement indicators set</td>
<td>If appropriate, limited growth at an institutional level, or limited or no growth in learner numbers in particular sector subject areas</td>
</tr>
<tr>
<td>Satisfactory overall, but one or more inadequate sector subject areas</td>
<td>Improvement indicators set</td>
<td>Limited or no growth in learner numbers in that sector subject area</td>
</tr>
</tbody>
</table>
48 The LSC recognises that inspection might occur at any point in the business cycle and, as such, it is not the intention to apply conditions retrospectively to previously agreed final funding allocations.

49 Any decision about the withdrawal of funding will result from the outcome of re-inspection. Where Ofsted judges a college as overall inadequate for a second time following re-inspection, it will have failed the basic condition of its Notice to Improve. This will require swift and robust intervention, and strategic options will be pursued. These strategic options are set out in more detail in paragraph 141.

50 If Ofsted judges a sector subject area to be inadequate for a second time under re-inspection, the LSC, in most circumstances, will cease funding that provision. To ensure the minimum disruption to learners, this cessation will normally take effect from the end of the academic year. Where the LSC ceases to fund a sector subject area in a college, it will consider the impact on a local area of any changes in delivery ambitions or organisational structures of colleges or independent providers. This will mean continuing to take an interest in the overall volume, pattern, quality and range of provision from which learners and employers can choose in each local area to ensure sufficient breadth, depth and responsiveness of provision.

Independent providers

51 The difference between colleges and independent providers in accountability arrangements results from the different contractual relationship with the LSC. As such, independent providers do not receive a Notice to Improve. The one exception is where a Notice to Improve is issued to specialist providers for learners with learning difficulties and/or disabilities. This is due to the vulnerability of the learner cohort, and the fact that the contracts specify provision for individual learners.

52 Where Ofsted judges any independent provider to be overall inadequate, and it receives a grade 4 for ‘Capacity to improve’, the LSC reserves the right to cease funding that provider without offering further opportunity to improve. It is, however, the expectation that this scenario will be extremely rare. Where contract termination is necessary, the LSC will proceed in line with the contract terms. The LSC and the provider will normally agree that funding will cease at the conclusion of the nearest term or, if appropriate, academic year (unless it relates to the learners’ health, safety and welfare, where immediate cessation will occur if there is an imminent risk to learners). The LSC also recognises that, in some circumstances, the provider itself may determine that it does not wish to continue delivering LSC-funded provision.

53 However, where Ofsted judges an independent provider as overall inadequate, the LSC will normally continue to contract with that provider – presenting it with the opportunity to improve. In these cases, or where Ofsted judges an independent provider as inadequate against any of the key questions and/or sector subject areas, an appropriate post-inspection action plan will be agreed, and improvement indicators will be set. The LSC will formally outline the conditions and improvement indicators in a contractually binding letter to the provider. Table 3 below outlines the restrictions that may be applied.

Table 3: Actions taken and growth restrictions applied to an independent provider resulting from inspection outcomes

<table>
<thead>
<tr>
<th>Ofsted judgement</th>
<th>LSC action</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inadequate overall</td>
<td>Formal letter sent, outlining conditions and improvement indicators</td>
<td>The LSC will not contract for any new starts with the provider</td>
</tr>
<tr>
<td></td>
<td>Notice to Improve issued to specialist providers for learners with learning difficulties only</td>
<td></td>
</tr>
<tr>
<td>Satisfactory overall, but inadequate against one or more of the key areas (including ‘Leadership and management’)</td>
<td>Formal letter sent, outlining conditions and improvement indicators</td>
<td>The LSC will not contract for any new starts with the provider, or will cap recruitment to that provider at the number of learners and/or funding levels at the time of inspection</td>
</tr>
<tr>
<td>Satisfactory overall, but one or more inadequate sector subject areas</td>
<td>Formal letter sent, outlining conditions and improvement indicators</td>
<td>The LSC will not contract for any new starts in the inadequate sector subject areas</td>
</tr>
</tbody>
</table>
54 If Ofsted judges any independent provider as overall inadequate following re-inspection, in all cases the LSC will cease funding that provision. The same principle applies to a sector subject area that Ofsted has judged as inadequate for a second time. The LSC will consider the impact on a local area of any changes in delivery ambitions or organisational structures of colleges or providers. This will mean continuing to take an interest in the overall volume, pattern, quality and range of provision from which learners and employers can choose in each local area to ensure sufficient breadth, depth and responsiveness of provision.

55 When a contract is terminated with a specialist provider for learners with learning difficulties and/or disabilities, the LSC will work with Connexions and any other relevant agencies to secure new providers for those learners to whom the LSC has a funding commitment beyond the date the contract will cease.

School sixth forms

56 The inspection cycle, process and reports for school sixth forms are different from those for the rest of the sector. Inspection of schools includes the sixth form. Underperformance in this context is defined as where a school sixth form is deemed to be inadequate:

* for 'Effectiveness and efficiency' of the sixth form
* in one or more of the following key areas: 'Achievement and standards', 'Personal development and well-being', 'Curriculum and other activities', 'Care, guidance and support', 'Leadership and management' (while deemed overall satisfactory or better).

57 If Ofsted judges a school sixth form as inadequate, the area director is alerted. It is the expectation that discussions will be held with the local authority and the 14–19 partnership to ensure that robust actions are in place to address the underperformance. Where support is required, this should be determined through those discussions, noting that responsibility for actions lies with the local authority and its school improvement partners. QIA support is not available for schools.
Learner Health, Safety and Welfare

58 Learner health, safety and welfare are a fundamental part of raising standards and ensuring that the quality of education and training provision meets the needs of learners and applies equally to all types of provision. Within our wider quality assurance arrangements, a provider's performance in this area will inform any funding decisions taken by the LSC. The LSC’s approach is clearly set out in its publication Learner Health, Safety and Welfare: The Learning and Skills Council Approach (published in November 2006). The LSC works closely with key partners including the Health and Safety Executive (HSE) in this area.

59 The LSC takes a risk-based approach to seeking assurance on the arrangements made by a provider for ensuring the health and safety of learners. All providers are risk-assessed and all of the LSC’s funding agreements contain conditions covering learner health, safety and welfare. If a provider breaches (or is at risk of breaching) these conditions, the LSC will take the necessary steps to ensure compliance. This could include formally setting improvement indicators or, in the most serious cases, it could mean that the LSC ceases to fund the provider or the part of the provision to which the breach relates.

60 At present, the LSC does not issue a Notice to Improve where there are concerns regarding learner health, safety and welfare. Policies relating to actions taken where the LSC has identified risks in relation to a provider’s ability to meet the minimum legal and contractual requirements will be reviewed in 2008. Any changes will apply to the 2009/10 academic year. The LSC will consider how this would link to the role and work of the HSE and/or other relevant agencies.

61 Additionally, specialist providers for learners with learning difficulties and/or disabilities may have the social care element of their offer inspected by the Commission for Social Care Inspection (CSCI), or by Ofsted (where the learners are aged 16 to 19 and fall under children’s services arrangements). The LSC will take into account inspection judgements of social care, when it assesses the learner health, safety and welfare of these providers. In some circumstances, where CSCI or Ofsted deems the social care to be inadequate, the LSC may cease contracting with the provider.

62 Failure to meet the required legislation, or guidelines such as the Protection of Vulnerable Adults, may also lead to the withdrawal of a contract. Other provider types delivering to vulnerable learners must also meet, where necessary, these requirements. Failure to do so may also lead to the withdrawal of funding or a contract.
Minimum Levels of Performance

63 Minimum levels of performance will be reviewed annually and, if necessary, raised and differentiated to reflect any improvements made by the sector. This will ensure that there is enough flexibility in the system to focus on underperformance and to ensure that the LSC can procure provision from the best available providers.

 Provision in scope for the 2008/09 business cycle

64 The minimum levels of performance will continue to apply to general FE long qualifications (any qualification where the difference between the start date and end date recorded against the individualised learner record (ILR) is 24 weeks or more) offered by:
- FE colleges;
- sixth form colleges;
- colleges with subject-based specialisms, such as colleges of agriculture and colleges of art and design;
- higher education institutions that deliver FE provision and complete the ILR; and
- adult learning providers.

65 The minimum levels of performance will also continue to apply to Apprenticeship provision (irrespective of provider type) offered by:
- the colleges and adult learning providers identified above; and
- private training providers.

The LSC previously indicated that, over time, minimum levels of performance would apply to all qualifications. New provision in scope for 2008/09 includes general FE short qualifications (by sector subject area and whole provider) offered by the providers identified above.

66 A short qualification is defined as any qualification where the difference between the start date and the end date recorded against the ILR is between 5 and 24 weeks.

67 Train to Gain is in scope for minimum levels of performance under a pilot year. More information on the arrangements is available in paragraphs 104 to 113.

68 As outlined in the LSC consultation Developing the Offenders’ Learning and Skills Service: The Prospectus (published in September 2007), the LSC intends to adopt minimum levels of performance for offender learning delivered in a custodial setting, which will need to vary according to key settings and particular groups of learners. Details will be published in spring 2008.

69 Currently, all other provision is excluded from the arrangements for minimum levels of performance. The majority of this other provision seeks to engage learners and/or will likely draw from the Foundation Learning Tier. The LSC plans to model in depth how minimum levels of performance would work using these credits and qualifications. In the meantime, the LSC will continue to rely on other evidence, such as inspection outcomes, to identify and assess underperformance in this provision.

70 Key skills remain unaffected by minimum levels of performance arrangements. This is because they are not currently included in the calculation of standard qualification success rates (QSRs), which form the core data for calculating performance against the minimum levels. Key skills will, however, be included in the calculation of minimum levels of performance based on 2007/08 data returns.

71 Any provision that is not in scope will be inspected by Ofsted and be quality-assured by the LSC via policy evaluation, the provider dialogue and the examination of wider performance data. For example, in Entry to Employment this might include the percentage of positive progressions.

Minimum levels of performance for the 2008/09 business cycle

72 In 2007/08, consideration of provider performance against the minimum levels will use the most recent available success rate information from 2006/07. Table 4 on page 14 outlines the minimum levels of performance for the 2008/09 commissioning round. There is a minimum level of 55 per cent for data recorded as ‘sector subject area and qualification level unknown’.
Identifying and Managing Underperformance

Apprenticeship provision

73 Minimum levels of performance represent just the absolute minimum success rate performance and the LSC expects providers to exceed them. Meeting the levels will not be enough to guarantee continued funding. In Apprenticeship provision, a provider that achieves the minimum levels of performance may still be below the area, regional or national benchmark for a specific framework.

74 To secure the best opportunities for learners and employers, regions may decide to withdraw the contracts for some frameworks that fail to meet the regional benchmarks, and therefore purchase from providers that are meeting, or exceeding, these benchmarks. LSC regions will make clear, publicly, where they will purchase based on a higher level. National achievement rates for frameworks are available at www.apprenticeships.org.uk/partners/frameworks/apprenticeshipsdata.

75 In addition, some highly performing providers may not secure funding for provision if there is low or no learner and employer demand or where demand has been met by better-performing providers.

76 Although the LSC has kept the change to a minimum, the calculation and analysis used for Apprenticeship provision will differ this year. Previously, a provider’s performance against the minimum levels was calculated using the ‘old’ measure – in order to allow the LSC to make judgements on a consistent basis in relation to progressing towards floor targets or three-year development plans. This year, the LSC will begin using the current overall QSR (details of the how the methodology will work are available at Annex B). The QSR has been in operation since 2005 and, as such, last year’s data was provided about performance on both measures as a period of transition. The ‘timely’ QSR is not used for minimum levels of performance, but may be used as a complementary measure, as part of the provider dialogue.

77 The minimum levels of performance apply to each provider by framework and by Advanced Apprenticeship or Apprenticeship level. Where a provider’s achievement rate is below the minimum level of performance for any framework, that provision will be subject to competition. Meeting the new minimum levels of performance in Apprenticeship provision will remain a contract requirement for all new and existing providers.

78 The LSC does not issue Notices to Improve for Apprenticeship provision. New contracts will not be issued to providers for the delivery of provision that does not meet minimum levels of performance. In the few and exceptional cases where a provider is delivering provision below the minimum levels, but has been successful in the re-tendering process, specified improvement indicators will form part of the provider’s new contract terms. Undertaking QIA support will also be a contractual requirement.

79 Some providers may be able to demonstrate some improvement in performance above the minimum level using in-year 2007/08 data. However, while encouraging, the LSC will not factor this data in to decisions about extending existing contracts. Any data used to identify underperformance will use period 15 of 2006/07 data only. This provides a fair and consistent approach. Some high-quality providers and employers only return

**Table 4: Minimum levels of performance for 2008/09**

<table>
<thead>
<tr>
<th>Programme/qualification type</th>
<th>Minimum level</th>
</tr>
</thead>
<tbody>
<tr>
<td>FE long qualification Level 1</td>
<td>55%</td>
</tr>
<tr>
<td>FE long qualification Level 2</td>
<td>55%</td>
</tr>
<tr>
<td>FE long qualification Level 3</td>
<td>55%</td>
</tr>
<tr>
<td>A-levels</td>
<td>75%</td>
</tr>
<tr>
<td>FE long qualification Level 4 or higher</td>
<td>55%</td>
</tr>
<tr>
<td>FE short qualification (all levels)</td>
<td>62%</td>
</tr>
<tr>
<td>Apprenticeships (full framework)</td>
<td>45%</td>
</tr>
<tr>
<td>Advanced Apprenticeships (full framework)</td>
<td>45%</td>
</tr>
<tr>
<td>Train to Gain</td>
<td>65%</td>
</tr>
</tbody>
</table>

Note: the minimum level of performance for Train to Gain is indicative only for 2008/09.
15

achievement data at the year-end. Considering in-year
data would not allow a comparison of performance with
some of the very best providers.

80 For training providers that hold contracts with the
NES, identification and consideration of
underperformance will take place, where the data is
available, at a regional level. Where the data is not
available, identification and consideration will
necessarily take place at the national level instead.
Providers that are not meeting the levels will have their
contracts for the underperforming provision terminated
or run down.

81 Some national employers hold contracts to deliver
training to their own staff, but it is not possible for the
LSC to open up this provision to competition – only
employers themselves can do that. Therefore, where
there is a direct funding contract with a poorly
performing employer, the LSC will not terminate it, in
the same way as for other independent providers.

82 The LSC will hold discussions with employers about
how to bring about improvement, and will agree clear
improvement actions. These could include a requirement
for employers to make significant changes to their
internal management and delivery arrangements, or to
re-tender the provision (if there is sub-contracted
delivery). The NES has communicated to employers its
intention to withdraw funding and contracts if there is
not enough improvement against the targets and
deadlines set. The LSC will apply the same policy
where it holds direct contracts with employers at a
regional level.

83 Providers operating under ‘lead and feed’
arrangements (where a provider delivers across most, or
all, LSC areas, but has a single provider dialogue with a
lead LSC area) will continue to do so. Commissioning
decisions are taken at the local level. Even if a provider
has acceptable levels of performance at the regional or
national level, this does not automatically ensure
continued funding within LSC areas. As such, ‘lead and
feed’ providers will experience different discussions in
each region and local area, depending on their
performance. This will be reflected in their final
contracts. In addition, following significant internal
consultation, the LSC may take the strategic decision
(on grounds of medium to long-term quality or
financial health concerns) to stop contracting with that
provider altogether.

84 Where a provider has large volumes of sub-
contracted delivery (including consortia), there are clear
provisions in the contract with the lead provider in
relation to sub-contracting. These provisions allow the
LSC to require contract leads to identify:
  • the providers that make up the delivery;
  • what they are delivering; and
  • the contribution and performance of each sub-
contractor to the total.

85 As part of the provider dialogue, and if partnership
teams have concerns, the team will verify the quality of
all of the sub-contractors, via the lead provider. All
LSC-funded providers should be able to produce
information on their sub-contracting arrangements as
a matter of course. This should provide the LSC with
sufficient assurance that the existing arrangements can
deliver provision to the appropriate standard.

86 In the longer term, the LSC will be examining its
relationship with consortia, to better understand
provider relationships, particularly where a consortium
sub-contractor may also have a direct contracting
relationship with the LSC.

FE long qualifications

87 For FE long qualifications, the methodology remains
unchanged: underperformance is calculated using
aggregated guided learning hours for qualifications and
weighted success rates within qualification aims.
Identification is by qualification level and by subject
sector area. Assessment of underperformance will use
2006/07 data.

88 While the methodology for calculating FE long
qualifications remains unchanged, there are now
differential levels to form part of the analysis. A-levels
no longer form part of the FE Level 3 long qualifications.
They now have a discrete minimum level, which reflects
their higher national success rates, and will enable
further assessment. Creating a separate minimum level
of performance for A-levels will provide additional
information for the LSC when assessing providers’
performance, and will complement value-added
assessment through the Learner Achievement Tracker.
The LSC will use these data sets and other evidence to
inform any dialogue on A-level performance.

89 The performance against the minimum level for
A-levels will not, on its own, attract a separate Notice
to Improve, but the performance of A-level provision
against the 75 per cent minimum level will contribute
to the calculation for a Notice to Improve in the total
long course offer. In order to determine the overall
calculation, the LSC will look at the proportion of
provision that is below the minimum level and will draw from all of the long qualifications to inform its calculation. The definition of A-levels is included in Annex A. The minimum levels of performance reports will include both an A-level column and a Level 3 (excluding A-levels) column.

**FE short qualifications**

90 This year, the measurement of short QSRs against a minimum level has been introduced. Assessment will use 2006/07 data, and analysis will be by sector subject area only. Short qualifications were not previously included in underperformance calculations, but the LSC did publish an indicative minimum level of performance for them. This informed the commissioning dialogue and provided a clear message about our expectations from 2008/09 onwards.

91 In modelling this year’s levels, it was apparent that combining underperformance of both short and long qualifications, to create a single institutional performance score, masked underperformance in long qualifications. As long qualifications account for approximately 85 per cent of FE provision and this percentage will increase in line with funding and policy priorities, a single institutional performance score is not introduced this year. Short qualifications, therefore, will generate a ‘separate’ Notice to Improve.

92 FE very short qualifications (any qualification that is recorded against the ILR as less than five weeks) are not currently included in the LSC’s calculation of underperformance in FE. The LSC will continue to publish minimum levels of performance for these qualifications, to provide a clear signal about expectations. They will, however, remain outside discussions about performance. The indicative minimum level for very short course provision is 85 per cent.

**Managing FE performance against the minimum levels of performance**

93 The LSC will analyse the volume of an institution’s underperforming provision separately for short and long qualification provision and, where emerging performance issues are evident, discuss the minimum levels of performance reports as part of the provider dialogue. The extent of any underperformance will determine the scale of the LSC’s actions. These actions are set out below.

94 In the majority of FE providers, relatively small amounts of provision or numbers of sector areas will be underperforming. Where underperforming provision is less than 15 per cent of the total volume of a provider’s long and/or short qualification provision, the range of success rate-related improvement indicators agreed with the LSC will vary according to the percentage of underperformance.

95 For example, where underperformance is between 5 and 15 per cent, the LSC will discuss with the provider how it will improve performance and further agree relevant improvement indicators. For some providers these improvement indicators will form part of the funding agreement. In contrast, where underperformance is 5 per cent or lower, the provider, typically, will determine its own improvement indicators. The provider will inform the LSC through the institution’s quality improvement plan, self-assessment report or strategic business plan.

96 The LSC may wish to discuss, and agree, with the college improvement indicators that do not relate to minimum levels of performance. For example, value-added performance within A-level performance. These additional improvement indicators may form part of the contract.

97 In cases where there is more significant concern (the volume of provision underperforming is in the range of 15 to 24 per cent), a formal Notice to Improve will be issued. The LSC will issue the Notice to Improve in the form of a letter setting out the conditions to be met to secure continued funding, and the timeframe within which improvement is expected to be demonstrated (usually within 12 months). In most circumstances, the LSC will ask QIA to source support; working with the LSC and the provider, QIA will identify the appropriate level and type of support required.

98 Where cases of serious concern arise and whole provider underperformance (25 per cent or more of a provider’s total volume of long and/or short qualifications) is identified, the Notice to Improve will be issued to both the college principal and the governing body (or their respective equivalents in adult learning providers).

99 Where the LSC issues a Notice to Improve to a provider, based on performance against the minimum levels of performance, it may restrict the growth of LSC-funded learners in that provider. This is consistent with the LSC’s approach to a Notice to Improve issued due to an inspection judgement of inadequate. Table 5 on page 17 outlines the anticipated restrictions.
In very rare cases, where success rates are considerably lower than the minimum level of performance and a college’s capacity to improve is weak, immediate consideration of the strategic options for the restructuring of that provision may be required. This may occur when the provision in question is not likely to improve (or is not demonstrating progress towards improving) to at least the current minimum levels within the maximum 12-month Notice to Improve period. This extremely serious level of underperformance presents significant risks to learners, employers and the public purse.

The LSC will consider issuing a Notice to Improve under exceptional circumstances. This is likely if underperforming provision is less than 15 per cent of an institution’s total provision, but still represents a significant volume of the total provision offered or total funding from the LSC, and the volume of underperformance represents a poor return on significant investment by the LSC, or a significant risk to learner achievement.

Our Statement of Priorities: Better skills, Better jobs, Better lives stated that the LSC will undertake a review of adult learning providers to consider their role and their contribution to LSC targets and the balance of provision in a local area or region. In addition, the Government will consult more widely on informal adult education later this year. Local adult learning providers, however, will remain in scope for minimum levels of performance in 2008/09 for long and short FE provision, and current arrangements will apply. The outcome of the LSC’s review will determine how it addresses the performance of these providers in the future.

Train to Gain

The LSC has created a new, refined success rate for Train to Gain, which is broadly similar to the measure used for Apprenticeships. This new and comparable success rate will replace the success rate used in contracts awarded in the first year of operation of Train to Gain, which was originally designed for the Employer Training Pilots.

The new success rate is, broadly, the proportion of learners who successfully achieve a learning aim, compared with all of those learners whom the provider expected to achieve in a particular year (irrespective of their start date). The LSC will use this success rate for both minimum levels of performance and for cases in which the LSC officially reports on QSRs. A more detailed definition of the methodology and an example report are available at Annex C.

There has been extensive modelling of in-year performance using this new success rate methodology and an indicative minimum level of performance has been set at 65 per cent, based on the trajectory of performance using this new definition.

### Table 5: Actions taken and growth restrictions applied to a provider resulting from poor performance against the minimum levels of performance

<table>
<thead>
<tr>
<th>Effectiveness calculation against the minimum levels of performance</th>
<th>LSC action</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 per cent or more</td>
<td>Notice to Improve issued</td>
<td>If appropriate, limited or no growth at an institutional level</td>
</tr>
<tr>
<td>15 to 24 per cent</td>
<td>Notice to Improve issued</td>
<td>If appropriate, limited growth at an institutional level, or limited or no growth in learner numbers in particular sector subject areas</td>
</tr>
<tr>
<td>0 to 14 per cent</td>
<td>In some circumstances, and if appropriate (for example where a sector subject area is significantly poor), improvement indicators set</td>
<td>In some circumstances, limited or no growth in learner numbers in that sector subject area</td>
</tr>
</tbody>
</table>

The LSC is committed to ensuring that local adult learning providers receive at least 90 per cent of their 2007/08 FE budgets. However, this protection will be subject to them reaching the appropriate quality thresholds. It remains the expectation that providers that are subject to a Notice to Improve will still meet its conditions, and (as indicated in the section on inspection) any provider that fails re-inspection will lose the funding associated with the inadequate provision. This approach, pending the review, offers the right balance between budgetary stability and securing high-quality provision for learners.
Although Train to Gain has completed a full year of operation, it does not have the same history of success rates found in FE or Apprenticeship provision. At the time of publication, there is not a complete data set. Most providers’ data will be returned by December 2007, but a number of FE colleges that offer Train to Gain will be returning their data via the FE ILR, which closes on 31 March 2008.

In the light of the incomplete data set and the introduction of a new success rate, it has been determined that the published minimum level of performance for Train to Gain this year is indicative. It will apply to Train to Gain offered by:

- the colleges identified in paragraph 64; and
- training providers.

In this transition year, success rate performance against the minimum level of performance will not be an automatic trigger for the LSC to cease funding the underperforming provision and seek to commission additional or replacement provision. As such, the LSC will use the current Employer Training Pilots success rate for the forthcoming commissioning round and for other 2007/08 Train to Gain related business decisions. For the procurement of provision from 2009/10 onwards, however, failure to meet the minimum levels of performance will result in the loss of LSC funding.

The transition year will allow discussions to take place with providers to clarify data and performance issues, and to identify the barriers to success. This information will inform future QIA support for the programme, which will be discussed in the commissioning dialogue and will be reflected in the regional improvement plans. The transition year will also give the LSC an opportunity to make sure that the success rate definition is robust, and to carry out further modelling and trend identification. There will be a complete data set (and emerging 2007/08 data) to inform this.

Minimum levels of performance apply only to QSRs. As such, brokerage performance will not be included within minimum levels of performance arrangements. Where appropriate, however, the LSC will cease contracting with brokers who are unable to meet LSC expectations. These expectations will form part of contract terms and conditions.

Providers will be able to access their reports via the Planning and Modelling (PaM) system at [http://gateway.lsc.gov.uk/pam](http://gateway.lsc.gov.uk/pam). For FE provision this year, if a provider returns F05 data at any stage between November and March, a report will be automatically created. In addition, FE reports will be produced and uploaded to the Provider Gateway based on F05 data received by 8 February 2008 and 31 March 2008 (the close of F05) respectively.

Apprenticeship reports for period 15 of 2006/07 are available via the PaM system and have been uploaded to the Provider Gateway. Reports on Train to Gain performance have also been uploaded to the Provider Gateway. Final reports will be produced in April 2008, following the closure of the FE 2006/07 data collection.

The accuracy of data returns is vital; a provider’s data return cannot be revised once the work-based learning and FE ILRs have closed.

The LSC is currently examining the impact of the demand-led funding approach on the way in which minimum levels of performance data is reported. It is planned that, from 2008/09, the data will be presented against the three separate funding models for 16–18 provision, adult learner-responsive provision and employer-responsive provision.
Minimum levels of performance: Ofsted and the Quality Improvement Agency

118 Ofsted will receive, from the LSC, copies of all final reports through the Provider Gateway. These will enable Ofsted to plan inspections and to contribute to the pre-inspection provider performance report.

119 The QIA will also receive, from the LSC, copies of the LSC final minimum level performance reports. The QIA will use the information to fulfil its role in providing support to improve provision, usually through the Improvement Advisor Service (IAS).
Notices to Improve

120 Notices to Improve are a vehicle for driving up performance. They outline the conditions that a college must adhere to in order to secure continued funding in its current configuration and with its existing provision. The LSC only issues Notices to Improve to colleges identified as underperforming through one or more of the following triggers:

- A college receives an Ofsted inspection judgement of inadequate for 'Effectiveness of provision'.
- A college is in financial failure.
- 15 per cent or more of short and/or long qualification provision falls below the minimum levels.

121 There are two situations where providers other than colleges may receive a Notice to Improve. The first is when Ofsted judges specialist providers for learning with learning difficulties and/or disabilities as overall inadequate – as explained in paragraph 51. Secondly, FE providers other than colleges will also receive a Notice to Improve where they fail to meet the minimum levels. Many of the outcomes of the Notice to Improve process described in this document are applicable to these providers. Table 6 below sets out how Notices to Improve apply to each provider type.

122 While the triggers for taking action are absolute, the conditions associated with improvement will be reasonable and proportionate to the risk to learners, employers or the LSC’s funds. The conditions take into account the local and regional context (or national context, in the case of some specialist providers for learning with learning difficulties and/or disabilities), particularly where there is a limited supply of alternative provision.

Financial health and control

123 The basis for issuing Notices to Improve in relation to financial health and control is set out earlier in this document. A Notice triggered by inadequate financial health will be issued within three months of the receipt of financial health returns. This period allows sufficient time for the LSC to perform the assessments and for regional moderation. A Notice triggered by inadequate financial control will be issued four weeks after the final audit report has been sent to the college. A Notice based on either financial health or financial control may be issued at any point after the relevant information becomes available, where the LSC determines that the college is a financial failure.

Table 6: Application of Notices to Improve to provider type

<table>
<thead>
<tr>
<th>Provider type</th>
<th>Inspection: does the LSC issue a Notice to Improve?</th>
<th>Minimum levels of performance: does the LSC issue a Notice to Improve?</th>
<th>Financial health and control: does the LSC issue a Notice to Improve?</th>
</tr>
</thead>
<tbody>
<tr>
<td>FE colleges</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Adult learning providers</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Private training providers</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Specialist providers for learners with learning difficulties and/or disabilities</td>
<td>Yes</td>
<td>N/A</td>
<td>No</td>
</tr>
<tr>
<td>School sixth forms</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
Inspection

124 Notices to Improve that are the result of an inspection outcome of inadequate will be issued to the provider within 10 working days of the publication of the inspection report on the Ofsted website. From 1 January 2008, in most cases, the 12-month period of the Notice will begin 12 weeks after the issue date, rather than the date of the inspection. This is to allow the production of a post-inspection action plan and to secure QIA support. The college will usually have a period of up to 12 months from the start of the Notice period in which to meet the conditions of the Notice to Improve. The conditions will seek to address the weaknesses identified within the inspection report.

125 If the college has complied with the Notice, the LSC will formally lift it only if Ofsted judges the college as satisfactory (or better) at re-inspection. A judgement of inadequate at re-inspection will mean that the provider has failed to meet the requirements of the Notice to Improve. This will result in the immediate adoption of one or more strategic options.

Minimum levels of performance

126 The LSC will issue a Notice to Improve triggered by an analysis of success rates against the minimum levels, within three weeks after the close of the ILR. If, before the close of the ILR, 15 per cent or more of short and/or long qualification provision falls below the minimum levels of performance, the LSC will discuss, as data becomes available, with the provider (its principal and key staff in the first instance) the implications of the initial performance data. This may include the implications and possible conditions of a potential Notice to Improve. This discussion is intended to:

• enable colleges to secure robust and final data earlier, to inform any discussion and ascertain the extent of underperformance;
• determine whether a college has the capacity to improve within the 12-month period;
• determine further options for a college and its learners, taking into account the range of provision involved, the extent of underperformance and any available alternative providers;
• determine what provision is underperforming and whether an institution wishes to continue delivering that provision; and
• enable the LSC to review the evidence to support its decision.

127 The LSC will not issue a Notice if the volume of the short and/or long qualification provision below the minimum levels of performance falls below 15 per cent by the close of the ILR.

128 The discussion will also enable the LSC to determine whether it is appropriate to issue a Notice to Improve to a provider where 15 per cent or more of short qualification provision falls below the minimum levels. For example, this will determine if the provider will still be delivering the underperforming provision in the future. The LSC will issue Notices to Improve proportionately, reflecting the volume of learners affected and the level of funding.

Multiple triggers for a Notice to Improve

129 As indicated above, there will now be Notices to Improve for long and short qualifications, and for financial health and control. This will only apply to FE and sixth form colleges, and it is, therefore, possible that a small number of these types of providers could be subject to a Notice to Improve for more than one area of underperformance.

130 In cases of multiple triggers, the Notice issued will result from the first trigger and, where a college underperforms in more than one area, there will be additional schedules attached to that Notice, for which compliance points may vary in nature and timing. This recognises that financial health and control checks, analysis against the minimum levels of performance and inspection all take place at different times.

131 The LSC has decided to adopt this approach as it seeks to address underperformance at an institutional level. Many providers that have poor success rates are likely also to have financial issues and poor inspection grades. Where a college is under Notice for all the triggers, the LSC will be extremely concerned about its long-term viability to attract funds.

132 A number of different scenarios could result in a college that is already subject to a Notice to Improve then being subject to a second. Providers that are continuously underperforming and only meeting the minimum levels will remain subject to the Notice to Improve. This reinforces the message that it is not acceptable simply to meet the minimum standard, and that the LSC is serious about eliminating underperformance.
133 Failing to meet the conditions of an initial Notice to Improve triggered by the failure to meet the minimum levels of performance will not result in a second Notice. Only failure to meet the new minimum levels will do so. If a college continuously fails to meet the minimum levels, the LSC will consider for how long it is appropriate for that college to be subject to a Notice to Improve. The LSC will also consider whether more robust action should be taken if a college fails to meet the minimum levels of performance for longer than two years.

Monitoring a Notice to Improve

134 After a Notice to Improve is issued, support is secured through QIA. The provider will develop an improvement plan to address the type of underperformance:

- a financial recovery plan for financial health and control (though it may need to address underlying causes of concerns in relation to wider college business activities such as quality);
- a post-inspection action plan for inspection; and
- a QIA improvement action plan for minimum levels of performance, related to its own improvement plans and self-assessment reports.

135 Where a Notice to Improve, issued to a college, consists of several schedules for different areas of underperformance, the various improvement plans should be brought together to form a more strategic inter-related plan to meet the needs of the college and all of the agencies involved. This should assist governors in discharging their responsibilities to monitor progress and take the college forward.

136 If a provider is subject to a Notice to Improve for having 25 per cent or more long qualification provision below the minimum levels of performance, it may become evident, through discussion and monitoring, that it is not complying with the conditions attached to its Notice. In these cases, the LSC may invite Ofsted to undertake an enhanced monitoring visit or a full inspection of that provider.

137 This could happen at any point during the Notice period subject to circumstances. The LSC will then use that Ofsted report to inform its decisions about the need for further action. Ofsted will continue to undertake its own planned programme of inspections, including any monitoring visits for a college that it has declared inadequate.

Failing to meet a Notice to Improve

138 At the conclusion of any type of Notice to Improve, the majority of colleges will have addressed the underperformance and the conditions set. However, there may be some colleges where insufficient progress has been made, and, as such, they have not complied with the conditions of the Notice. These colleges pose a significant risk to the quality of learners’ experience and to public funding.

139 Where it is evident that the college is unlikely to achieve the conditions of the Notice, the LSC, within the Notice period and usually after the Ofsted monitoring visit, will begin to consider and explore the possible strategic options available. This is to minimise any adverse impact on learners and employers.

140 If a college fails to meet the conditions of a Notice (issued in relation to inspection or minimum levels), the LSC will simply cease funding the underperforming provision. The LSC will not intervene further, unless the viability of a college is compromised by the withdrawal of funding. In this case, the LSC is likely to have already been in discussions with the college and the governing body to discuss the financial health and long-term role of the institution.

141 An appropriate course of action will be agreed, taking into account all of the available information including Ofsted judgements, the reports from the QIA advisor, the college’s history of addressing improvement and the robustness of its approach to self-assessment. One of the following options will be pursued.

- Varying the conditions of funding to meet specific requirements.
- Re-profiling funding.
- Subjecting colleges to funding audit and reconciliation for underperformance on 16–18 provision.
- Appointing two members to the governing body.
- Adding LSC observers to the governing body.
- Directing changes to strengthen leadership and management, including considering the possibility of dismissing the principal or senior post-holders (a power that is designated under the college’s articles of government).
- Directing the governing body in the exercise of its powers and the performance of its duties.
- Removing some or all of the members of the governing body.
- Taking the actions outlined in paragraph 42 (actions in response to financial difficulties).
• Considering reorganisations or directing changes to put collaboration arrangements in place.

142 The college and its governing body should drive the implementation of the adopted strategic option (though in some circumstances it may be the LSC). The college will manage the transitional period via a short-term post-Notice to Improve record of actions, which the LSC will agree. The governing body, in partnership with the LSC, will lead any related actions during this period.

143 Where a college is subject to a Notice to Improve with multiple schedules, if the conditions of any schedule are not met, the LSC will manage this non-compliance by pursuing one of the courses of action set out in paragraph 141. Meeting the conditions of one schedule will not diminish the importance of the remaining conditions or lead to the lifting of other schedules. Correspondingly, if a college fails to meet the conditions of a Notice schedule, this will lead to the consideration of strategic options. The college will not have the opportunity to demonstrate improvement against the remaining Notice to Improve schedules.

144 If a college has not met the conditions of the Notice to Improve, there may be rare cases when the LSC and the governing body cannot agree a way forward and they have exhausted all approaches to instigating change. When this occurs, the LSC may seek to use the powers of intervention conferred under the Further Education and Training Act 2007.

145 The Act received Royal Assent in October 2007. The provision in the Act that requires the LSC to prepare and publish a statement of its intervention policy comes into force on 23 December 2007. It requires the LSC to publish a policy statement. This will set out our existing powers and any new powers and how these will be used to identify and manage underperformance and when and how the LSC would intervene. The LSC will publish its intervention policy statement in January 2008, and will consult on the processes within it associated with the use of the powers. The rest of the provisions in relation to intervention come into force on 18 April 2008.
Implications of Underperformance for Providers

146 Where a provider is underperforming, this will clearly have an impact on a number of activities and opportunities. As outlined above, continued underperformance will usually result in a loss of funding. However, prior to ceasing funding, the LSC may seek to minimise the impact upon learners and public funding. As outlined in other sections of this document, this may include limiting the number of LSC-funded learners. There is a range of other restrictions that may also be implemented and/or activities that may be affected. These relate to:

- capital developments;
- reorganisations and mergers;
- teacher training; and
- centres of vocational excellence (CoVEs) and the New Standard.

Capital development

147 In itself, a Notice to Improve is not a reason to stop a college making, and progressing with, a capital application. However, as indicated in Annex A of the LSC Capital Handbook (2006), a provider must be able to demonstrate that it meets the appropriate quality threshold. Where whole provider underperformance is evident, the provider in question would not be expected to meet this criterion. It is, however, anticipated that some providers subject to a Notice to Improve might be able to demonstrate enough improvement in quality (which would be confirmed by success rate data or inspection) to meet the threshold.

148 As the capital proposal progresses, these colleges’ Notices to Improve are likely to be successfully met. If an application progresses (where the conditions of a Notice to Improve have not already been met), final approval and the transfer of any funds would be subject to meeting the conditions of the Notice to Improve, or to improved inspection outcomes on re-inspection. All parties (the LSC, Ofsted and QIA) would have to agree that there has been sufficient improvement.

149 Where there is significant underperformance, a provider can still apply for monies, as part of a current property strategy, for capital developments to support delivery in sector subject areas that are not underperforming (as the provider is likely to have met the quality threshold). Where inadequate leadership and management are evident, the LSC is unlikely to agree to fund any capital development.

Reorganisations and mergers

150 If a college is under a Notice to Improve prior to its decision to proceed with a merger proposal, this, from an LSC perspective, will not affect the overall decision to merge; however, appropriate action to address the underperformance will need to be clearly reflected in the plans for the merged college. If the LSC issues the Notice after the colleges have taken the decision to merge, however, there will need to be clear evaluation of its impact on the proposal. The LSC will continue to work with the college(s) to ensure that the proposed merger will continue to meet its objectives and deliver quality provision to local communities.

151 When two or more colleges merge, if one has a Notice to Improve this will not be transferred to the new college. However, the new college will be expected to set out the plans in place to address the underperformance. This process may include new improvement indicators for the new college based on those within the original Notice. The LSC and the new college will agree appropriate timescales for these improvement indicators to be met and how it will show evidence of improvement.
**Teacher training**

152 In the light of the FE workforce reforms and the Government’s current consideration of regulations relating to the induction of newly qualified teachers (NQTs), the LSC will work with the Department for Children, Schools and Families, DIUS and Lifelong Learning UK to consider the implications for, and actions relating to, colleges under a Notice to Improve or a provider judged to be inadequate by Ofsted. Further information will be available in 2008.

**Centres of vocational excellence and the New Standard**

153 The LSC will deem a provider to have failed to meet the CoVE performance criteria if any of the following occurs:

- if a provider is assessed by Ofsted as being inadequate in terms of leadership and management, overall effectiveness, and/or in the sector subject area of the CoVE; and/or

- a provider fails to meet the minimum levels of performance in the sector subject area of the CoVE.

154 In these circumstances, the LSC will suspend the provider’s CoVE status until the underperformance is addressed.

155 A similar process applies to the New Standard. If a provider holds an Ofsted (and formerly Adult Learning Inspectorate) assessment of grade 4 for overall effectiveness, this will preclude it from accreditation under parts A and B of the New Standard.

156 If a college is subject to a Notice to Improve (based on underperformance of between 15 per cent and 25 per cent), this will preclude it from accreditation under parts A and B of the New Standard. If a private training provider falls below the minimum levels of performance, this will preclude it from accreditation under part B of the New Standard for any underperforming sector.

157 If, at any point, a provider that has achieved the New Standard is identified as inadequate against any of the ways of identifying underperformance, it will lose LSC funding for the associated provision and New Standard status will be withdrawn.
Support for Quality Improvement

158 When a provider is issued with a Notice to Improve, or is identified as underperforming, the LSC will ask the QIA to source support, normally through the IAS. This support, for providers, is currently free of charge. The QIA, working with the LSC and the provider, will identify the appropriate level of support required – this will depend on the extent of underperformance. An improvement advisor will usually be allocated to the college, or other appropriate support packages will be used that may draw on other improvement services, such as the Skills for Life Improvement Programme.

159 QIA support is not just for providers with underperformance. Providers identified as satisfactory or better are now also able to access support from the IAS, and can self-refer, or be referred by the LSC. The QIA IAS application form is available at www.qia.org.uk/programmesandservices/uploads/1IASApplicationForm.doc.

160 If a provider is underperforming in a specific area, QIA can deliver other forms of support. A list of the services is available at www.qia.org.uk/programmesandservices/uploads/Programme_Matrix_EXTERNAL_COPY.xls.

161 DIUS has proposed that the QIA’s function should merge during 2008 with that of the Centre for Excellence in Leadership (CEL) to create a new sector-led organisation. It will act as a centre of expertise in improvement leadership and innovation for the FE system. A consultation is currently under way (led by DIUS, QIA and CEL) to help to determine the future shape and direction of the new organisation, and, ultimately, the improvement offer that will be available to providers. Until that merger takes effect, the QIA’s current services will continue.

Supporting financial improvement

162 Financial improvement support rests with the LSC, not with the QIA. The QIA does not have a remit to provide improvement support in relation to resolving financial difficulties. However, where financial difficulties also reflect a range of performance and quality issues, QIA and the LSC will pool their improvement resources to support recovery.

163 If a college needs support for financial improvement, it is the expectation that it will purchase and openly secure that support through its own procurement processes. Where appropriate, the LSC can help the college to secure the best available support by providing advice on any tenders submitted. The LSC can provide exceptional financial support to colleges, or secure that financial improvement support itself, but would aim to do so only as a last resort.

Supporting improvement in learner health, safety and welfare

164 The LSC has clearly set out its approach to raising standards in Learner Health, Safety and Welfare: The Learning and Skills Council Approach. It is the expectation that providers will fund their own improvement support for learner health, safety and welfare.

165 The LSC is not empowered to provide LSC-funded organisations with advice and assistance on health and safety legislation. This role must be undertaken by the person deemed to be ‘health and safety competent’ within the funded organisation (competent advice as required by the Management of Health and Safety at Work Regulations 1999) or through securing external advice. It also should be noted that the QIA, or the LSC, cannot provide support for this expert area of work.