Single Equality Impact Assessment
Identifying and Managing Underperformance

May 2009
Of interest to everyone involved in delivering LSC-funded provision
Further information
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This document is the single equality impact assessment of the LSC’s policies for the identification and management of underperformance.
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Introduction

1 The Learning and Skills Council (LSC) has commissioned the Office for Public Management (OPM) to evaluate its strategy for identifying and managing underperformance. Throughout this document, this is referred to as ‘the strategy’.

2 The evaluation of the strategy will identify:

• why certain activities are needed;
• the policies, strategies or specific activities that will bring about the desired outcomes;
• intended and unintended consequences;
• outcomes, and the way these are measured and monitored;
• processes and structures in place for delivery; and
• activities required for successful working with stakeholders.

3 As part of its evaluation, the OPM has to conduct a single equality impact assessment. This identifies the extent to which the strategy has (or potentially has) a differential or adverse impact on staff and learners. It also explores opportunities to promote equality and diversity.

4 The equality impact assessment adheres to the commitment set out in the LSC’s Single Equality Scheme, and is in line with the duty, as set out by the LSC, to assess policies so as to ensure that no group is discriminated against or disadvantaged.

5 This report sets out the findings of the baseline equality impact assessment, conducted during the winter of 2007/08. In order to monitor progress, a follow-up equality impact assessment will be conducted as part of the broader evaluation.

Identifying and managing underperformance

6 The strategy, first published in January 2007, sets out minimum levels of performance. It also outlines the LSC’s response to underperformance, and the support that is available to underperforming providers. The strategy sets out four criteria that the LSC uses to inform its decisions about underperformance:

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

7 The LSC will use the above criteria until the Framework for Excellence becomes fully operational.

8 In the winter of 2006/07, the LSC withdrew funding from providers where Apprenticeship provision failed to meet the minimum levels of performance. The LSC also issued ‘Notices to Improve’ in April 2007, and these were applied in the academic year 2007/08, with reference to success rates in 2005/06. These were the first annual interventions and actions, the provisions for which were outlined in the strategy.

9 The evaluation will use emerging and up-to-date success and learner profile data, and therefore the trends we have identified as part of this equality impact assessment are subject to further assessment throughout the evaluation.

Outline of our approach to the equality impact assessment

10 For the purposes of this baseline equality impact assessment, we conducted semi-structured interviews with nine LSC representatives and nineteen external stakeholders, gathering their views and experiences. A document review, conducted as part of the overall evaluation, also informed the equality impact assessment.

11 Interviewees were invited to identify trends and to propose credible hypotheses about the impact of the strategy on learners and staff from disadvantaged groups. We have not sought to corroborate or provide evidence of the findings at this stage, as data collected during further iterations of the evaluation and the next equality impact assessment will be used to test them.
The stakeholders

The contributing stakeholders are listed below.

**LSC representatives**

<table>
<thead>
<tr>
<th>Name</th>
<th>Position/Role</th>
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<tbody>
<tr>
<td>Dr Rick Brannen</td>
<td>Regional Learning and Quality Director for the North East</td>
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<tr>
<td>Catherine M Christie</td>
<td>Regional Director of Learning, Planning and Performance for the South West</td>
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<tr>
<td>Lesley Davies</td>
<td>Director of the Framework for Excellence and Quality</td>
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<tr>
<td>Nicole Francis</td>
<td>Partnership Director for Tower Hamlets</td>
</tr>
<tr>
<td>Lorna Freakley</td>
<td>Provider Development Manager for the East Midlands</td>
</tr>
<tr>
<td>Lyn Hughes</td>
<td>Provider Development Manager for Yorkshire and the Humber</td>
</tr>
<tr>
<td>Shona Hutton</td>
<td>Regional Contracts Director for the South West</td>
</tr>
<tr>
<td>David McCabe</td>
<td>Provider Development Manager for the North East</td>
</tr>
<tr>
<td>Karen Murray</td>
<td>Quality Assurance Director (responsible for equality and diversity)</td>
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**External stakeholders**

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<tr>
<th>Name</th>
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<tr>
<td>Vivien Bailey</td>
<td>HM Inspector</td>
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<td>Alison Boulton</td>
<td>Chief Executive</td>
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<tr>
<td>Shirley Cramer, CBE</td>
<td>Former Chair</td>
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<tr>
<td>Martin Doel</td>
<td>Chief Executive</td>
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<tr>
<td>Paul Eeles</td>
<td>National Development Manager</td>
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<tr>
<td>Chris Froggatt</td>
<td>Learning, Quality and Systems Directorate</td>
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<tr>
<td>Mark Kaczmarek</td>
<td>Deputy Director, Learning, Quality and Systems Directorate</td>
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<tr>
<td>John Landeryou</td>
<td>Director, Learning, Quality and Systems Directorate</td>
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<tr>
<td>Dr Peter Lavender, OBE</td>
<td>Member</td>
</tr>
<tr>
<td>Marc Mason</td>
<td>Chair</td>
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<tr>
<td>Joy Mercer</td>
<td>Quality Manager</td>
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<tr>
<td>Graham Moore, OBE</td>
<td>Chair</td>
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<tr>
<td>Jen Mullis</td>
<td>Learning, Quality and Systems Directorate</td>
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<tr>
<td>Linda Rose</td>
<td>Participation and Progression Division</td>
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<td>Sir George Sweeney</td>
<td>Chair</td>
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<tr>
<td>Lisa Vernon</td>
<td>Project Manager</td>
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<td>Martin Ward</td>
<td>Deputy General Secretary</td>
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<tr>
<td>Sue Witham, MBE</td>
<td>Head of Secretariat</td>
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<td>Sue Yeomans</td>
<td>Programme Director, Improvement Adviser Service</td>
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External stakeholders associated with various organizations:

- Ofsted
- Association of Specialist Colleges
- LSC Equality and Diversity Committee
- Association of Colleges
- Association of Learning Providers
- Department for Innovation, Universities and Skills
- Local Education Authorities Forum for the Education of Adults
- The 157 Group
- Department for Innovation, Universities and Skills
- Department for Children, Schools and Families
- Single Voice
- Third Sector National Learning Alliance
- Association of School and College Leaders
- Sixth Form Colleges Forum
- Learning and Skills Improvement Service
Summary of Findings

13 Interviewees largely viewed the strategy as an instrument for improving the quality of outcomes for all learners through better provider performance. The strategy benchmarks provision against the minimum level, as set by the LSC, and uses information from inspection outcomes to ensure that learners receive adequate provision. To this end, interviewees viewed the drive for improved performance as a good opportunity to improve outcomes, specifically for disadvantaged groups, through the removal of underperforming provision.

14 As one LSC representative stated:

It [the strategy] could have a good effect, raising standards across the piece, rather than hanging on to poor provision.

15 Another LSC representative said:

I do think that [the strategy] is about having a fair playing field. Minimum levels should ensure that if learners work hard they can achieve their goals and are able to progress.

16 Nevertheless, some saw the use of success rates to measure provider performance as potentially problematic. Where there is 'insufficient or no improvement' in provision, the LSC will withdraw funding from the provider. Interviewees suggested that the link between performance management and minimum levels of performance could introduce a disincentive to enrol 'high-risk' learners. One interviewee summarised matters thus:

If the strategy is designed to focus on success rates, then providers will go for safe options ... [T]he main objective of this strategy is also its downfall.

17 Interviewees perceived this trend to be largely a result of providers responding in a manner that is 'risk averse'. This term referred to a general perceived reluctance to enrol learners with associated high-risk factors – a reluctance that manifested itself both in terms of investing the resources to attract learners and in the advice provided to learners. As a result, this response, consequently, could reduce participation rates among disadvantaged learners.

18 'High-risk learners' are defined as those who are less likely to complete their learning programme or are less likely to achieve. The likelihood of this is considered greater for learners from specific disadvantaged groups, most notably learners with learning difficulties and/or disabilities and learners with additional support needs.

19 Other risk factors identified include: learners with behavioural difficulties, older learners, learners who are likely to enrol on basic skills courses (for example, black and minority ethnic (BME) learners, learners with learning difficulties and/or disabilities), learners with mental health issues, learners with a poor exam history or patchy educational background, and learners from BME groups that traditionally underperform (for example, the Bangladeshi community).

20 It was suggested that high-risk learners require additional support to ensure completion and to attain good qualifications. One interviewee commented:

Some provision is seen as too risky, which is usually provision for those that are hard to reach. Providers will be reluctant to reach out to learners on the fringes.

21 Another stated:

You might have a student in front of you asking to do a course. It might be a long shot and this student might drop out, or they might not. With a more conservative approach to recruitment more of these cases are going to be turned away ... [I]f the college is under pressure in relation to this, they don’t take the risk.

22 In articulating the outcomes of this provider behaviour, several external representatives identified a possible shift in provider supply that could result in unintended outcomes.

- Providers could withdraw provision of courses that traditionally attract learners with additional support needs (for example, basic skills provision, particularly where provision in this subject area has previously underperformed).

- Providers could still maintain their offer but discourage or not target disadvantaged learners. Again, the impact of this response would be to reduce the number of learners from disadvantaged backgrounds.
This view suggests that the supply of provision to ‘risky’ learners will change, as providers shift their supply in response to the interventions that form part of the strategy. As a consequence, provision for this group of learners could, therefore, shrink, as providers target ‘less risky’ learners within their localities.

Interviewees also stated that staff could be affected by this possible change in supply – specifically those staff that provide for subjects that attract ‘high-risk’ learners. Interviewees noted that learners may be further discouraged in subject areas where a disproportionate number of staff are also from disadvantaged backgrounds, and that this could lead to falling demand and the withdrawal of courses.

The section above clearly focuses on the impact of funding being withdrawn as a consequence of a provider failing to attain the required success rates against the minimum levels of performance, and the potential adverse outcomes. However, the strategy also stipulates the withdrawal of funding if a provider fails a re-inspection. Ofsted is tasked with undertaking inspection against government regulatory expectations, and the LSC could intervene following re-inspection. This intervention could also give rise to some of the adverse outcomes described above.

Lastly, underperformance may arise as a result of evidence on the financial health of a provider, which may result in the LSC withdrawing funding. While this was not identified as a potential problem, further iterations of the equality impact assessment will have to take the impact of this aspect of the strategy into account, specifically in relation to staff from disadvantaged backgrounds.

Different stakeholder perceptions

The concerns outlined above were more commonly expressed by external stakeholders, and particularly by those that work with disadvantaged groups. Conversely, LSC representatives were able to identify mechanisms to monitor, and ultimately prevent, differential provision to disadvantaged groups. For example, one LSC representative suggested that providers were keen to attract a cross-section of learners:

I think there is limited impact on people undertaking long courses … [T]he sector works for the good of the learner and is unlikely to be selective even though they may not have an abundance of learners.

Areas to focus on during the evaluation

At this stage, the majority of interviewees identified no differential impact on learners as a consequence of age, sexual orientation, religion or belief, and maintained that there was no perceptible impact on those groups. Where gender was mentioned, it was often to describe the impact on young males (black or white), with reference to the challenges of retention and poor attainment.

Interviewee perceptions may have been coloured by the fact that little evidence has so far been collected on sexual orientation or the religious beliefs of learners and staff. However, further iterations of the equality impact assessment and the qualitative data gathering will allow us to continue to assess the effect of the strategy on staff and learners from these groups.

It is important to note that learner and staff profiles have not yet been interrogated to assess the extent to which they confirm the hypotheses offered here, and, by and large, interviewees were cautious about offering their views. Further activities to be conducted during the evaluation and the equality impact assessment will allow us to corroborate or challenge the hypotheses. Nevertheless, the evidence does illustrate the need to ensure continuous support and to make sure that information is used to inform commissioning decisions at a local level.

In addition, it will be useful to explore any geographical differences in impact that emerge during the evaluation. In particular, by capturing local and national trends on underperformance we can highlight issues of differential impact, especially where provision is aimed at specific types of learners. This will also provide evidence to illustrate the way in which providers and commissioners manage provision to ensure that learners have access to, and a choice of, learning.
The Foster Review highlighted the importance of the equality and diversity agenda in further education (FE), stating:

To achieve the positive vision set out in this report, the FE college of the future must ... deliver its core purpose in an inclusive way which improves diversity and equality of opportunity.

(Foster, 2005)

The Leitch Review restates this view, seeing improved equality of opportunity as central to improved prosperity for all:

Without greater equality of access to skills improvements, disparities will increase further ... To achieve world-class prosperity and fairness in the new global economy, the UK must achieve world class skills.

(Leitch, 2006)

Therefore, if the principles underpinning the delivery of raised ambition are achieved, social deprivation, poverty and inequality will diminish.

The objectives of the strategy to identify and manage underperformance align with the mission that the Leitch Review and the Foster Review both set out. The strategy is used as a tool to monitor and manage underperformance and to raise levels of success among all learners. As part of the equality impact assessment, interviewees were asked if the strategy to identify and manage underperformance was likely to have an adverse effect on the diversity of learners, with reference to the six equality strands (race/ethnicity, disability, gender, age, sexual orientation, and religion, faith or belief).

In response, interviewees noted that the strategy could be used to promote equality and diversity further, specifically among learners who are accessing learning at underperforming providers. In fact, in March 2008, the Quality Improvement Agency (QIA) reported that 'A gap which had appeared in the 2004/05 figures between the success rates of disabled learners and the overall figures has closed', and that by 2008, 'The gap between the overall success rate and that of ethnic minority learners has narrowed', suggesting improved gains across the board (QIA, 2008).

While Pursuing Excellence: the National Improvement Strategy (QIA, 2007) highlights the role the FE sector has played in ‘reflecting and responding to the diversity of local communities’ and the ‘strong track record in tackling inequality and reducing the achievement gap’, the concerns raised in this report highlight the imperative of embedding monitoring and review of equality and diversity in performance management processes.

Nevertheless, interviewees suggested that providers would increasingly shape their offer either to attract high performers or to focus on subject areas where they were assured of successful provision, and not enrol ‘high-risk’ learners. Interviewees identified a number of groups that could be deemed to be high-risk learners:

- learners with learning difficulties and/or disabilities;
- previous offenders;
- adult learners;
- BME groups;
- teenage mothers; and
- young white men.

Courses that typically attract learners who require additional support – for instance basic skills, English for speakers of other languages (ESOL) provision and construction – may be reduced in favour of other subject areas. The perception of this risk is corroborated by findings documented by QIA:

The learner experience is improving with success rates rising each year and overall learner satisfaction being very high. However, for some learners, including certain [BME] groups and those learners with disabilities or learning difficulties, the picture is sometimes less positive, even though the gap is closing on success rates.

(QIA, 2008)
Interviewees recognised that providers are tasked with the duty to serve their community, and that they should develop strategies to target and attract learners from traditionally underperforming communities.

In considering how best to address the possibility of withdrawn programmes or courses, it was suggested that providers need support in developing models to address the retention of high-risk groups, and that they should not be penalised if they enrol these learners. Another LSC representative suggested that provider response should focus on restructuring the delivery method, to ensure that the necessary support is available to learners. This would entail a 'change in thinking' on the part of providers.

Equality strand: learning difficulties and/or disabilities

While interviewees broadly subscribed to the view that the strategy aims to improve provider performance, and that raised standards ensure better outcomes for all learners, some raised concerns about the possible adverse impact on disabled learners. A number of interviewees made specific reference to learners with learning difficulties and/or disabilities. Interviewees attributed this to adverse selection of learners with learning difficulties and/or disabilities and reduced provision in specific subject areas.

Adverse selection

One interviewee was particularly concerned about the effect of adverse selection, and suggested that the number of students with learning difficulties and/or disabilities had declined, estimating a drop of 16 per cent in one year. The interviewee raised concerns about access to learning for learners with learning difficulties and/or disabilities:

Two years ago, the Learning and Skills Council confirmed that students with learning difficulties and/or disabilities were a high priority. Within two years, we have seen the number of adults with learning difficulties and/or disabilities accessing LSC-funded provision decline rapidly. It is not because of the quality of provision; the only reason is that the learners or providers did not jump through the hoops to give the providers the success rates that they require ... Provision changed overnight in response to providers’ desire to play safe.
49 This challenges the vision set out in *Through Inclusion to Excellence* and also in *Realising the Potential*, where the LSC was tasked with developing a national strategy for the collaborative regional/local delivery of provision for learners with learning difficulties and/or disabilities that is high quality, learner centred and cost effective. [Foster, 2005]

50 Other groups that were identified as possibly being adversely affected include learners with mental health issues. Ensuring that learners who fall within this category are assured of support to enable them to attend consistently can prove to be challenging for providers, and, as one stakeholder concluded:

\[ T \]here are some issues regarding minimum levels of performance that make them question whether to maintain provision.

**Reduced provision in specific subject areas**

51 Some interviewees suggested that there are some subject areas that are more likely to see underperformance, or where there is additional risk of low retention and completion rates. Interviewees identified Preparation for Life and Work and basic skills courses as examples of the latter. Those courses that are targeted at learners with additional support needs (for instance, learners with severe learning difficulties and/or disabilities) may encounter challenges surrounding retention (where the programme does not lead to a qualification) and lower success rates (where the programme does have qualifications). Some interviewees believed that providers withdraw provision in response.

52 One stakeholder suggested that, though the link may be tenuous, this was a particular issue for learners with learning difficulties and/or disabilities:

I think providers review their provision and the worst performing areas are Preparation for Life and Work, which attracts learners with learning difficulties and/or disabilities. These may be the least well performing areas and providers have decided to get rid of the programme. This may be slightly tenuous, but disabled pupils have fared badly in this.

53 Nevertheless, it should be noted that the 2006/07 national average for Entry and Level 1 qualifications (which is generally targeted at the most disadvantaged learners) is 69.2 per cent, to be set against the minimum level of performance of 60 per cent. The difference between the minimum level and the national average success rates is broadly the same across Levels 1, 2 and 3. This suggests that Entry and Level 1 qualifications are successful and benefit those learners who are undertaking the appropriate learning programmes. However, the above perceptions serve as a useful reminder of the potential danger of adverse selection if minimum levels become more difficult to negotiate.

**Equality strands: age, gender, sexual orientation, religion and belief**

54 There was no direct reference to possible or actual adverse impact on learners as a consequence of their age, gender, sexual orientation or religious belief. However, wherever possible, we will interrogate learner profiles to identify trends that could indicate differential or adverse impact. In addition, further iterations of the equality impact assessment will look at the impact of the strategy on the equality strands discussed in this section.
Diversity of Staff

55 The Workforce Strategy for the Further Education Sector in England, 2007–2012 highlights the lack of diversity in the FE sector, noting that:

Across the Lifelong Learning Sector only 9% of all staff are from Black and Minority Ethnic (BME) Groups. In Further Education colleges this figure is 7%. In Greater London, 50% of learners are BME, but less than 28% of managers are BME.

(LLUK, 2007)

56 In addition, compared to the general workforce, the FE sector has a lower proportion of disabled staff. The Disability Rights Commission (now part of the Equality and Human Rights Commission) estimated that one in five of the population has a disability. However, ‘the latest information on the Further Education Sector in England reveals that 2.3% of staff have voluntarily disclosed a disability’ (LLUK, 2007).

57 Similarly, in March 2008, the Commission for Disabled Staff in Lifelong Learning highlighted ‘the systematic failure of public policy to address the needs of disabled staff in lifelong learning’, setting out the need for ‘more disabled staff recruited to and working in the lifelong learning sector, and more successful disclosure procedures so that the data are more accurate’ (NIACE, 2008).

58 In considering the possible role of the strategy in addressing some of the concerns stated above, interviewees recognised that it embodies what one interviewee termed the ‘clear impetus to make sure that you are delivering to your community’, and that there should be no discrepancy between the profile of learners and the profile of the workforce and the wider community in the locality.

59 The majority of the interviewees could not identify any differential or adverse impact that the strategy might have on the diversity of staff. They suggested that the strategy had a ‘neutral’ impact on the diversity of staff – that is, neither a positive nor an adverse impact. Nevertheless, a minority did suggest that the withdrawal of particular courses would have an impact on the diversity of staff.

60 In articulating this view, one LSC representative stated:

There may be a higher proportion of staff from the diversity strands in qualifications for Skills for Life. There may be more teachers and staff with disabilities working in those subject areas. If the providers cease to deliver those subject areas, they will end the contracts for those staff.

61 Another interviewee agreed with this, highlighting underperformance in ESOL and Preparation for Life and Work provision, which could have an ‘adverse effect on the highly diverse workforce’ that delivers these course programmes.

62 In exploring the implications of this, the LSC representative concluded that a less diverse workforce could have an impact on the learning experience, highlighting the importance of a workforce that reflects the demographic make-up of the students it serves:

It is important to have a workforce that look like and talk like the learners.
Opportunities to Promote Equality and Diversity

63 The strategy is perceived to be an effective tool in raising standards and provision, and thereby improving outcomes for all learners. This is reflected in overall improved learner experience and improved success rates. To this end, the strategy ensures that learners are able to access a better standard of provision. As one interviewee summarised it:

[The strategy] says whatever the gender, disability, race, sexuality of the learner, you are entitled to be on a programme that provides good outcomes. [It] says that every learner is entitled to succeed and this has some merit to it.

64 In articulating how this strategy could support such a vision, a representative from the LSC suggested that it would encourage a shift in thinking, with providers giving greater consideration and support to learners, in order to make certain that learners are on the most appropriate course to ensure their success. This was termed a ‘better initial assessment’ of the learner.

65 In addition, success rates and other information used to identify equality and diversity provide useful data on which to make assessments as to the strategy’s impact. Interviewees believed that improved data and information gathering ensures that the LSC is better able to monitor outcomes for learners from disadvantaged backgrounds.

66 One LSC representative noted that the data used to identify underperformance provides useful information for monitoring and determining provision for commissioning decisions. This is a particularly useful lever to ensure that provision for disadvantaged groups remain when other provision is withdrawn.

67 Similarly, one external stakeholder said:

I would hope the [strategy] would have an effect on improving outcomes for disadvantaged learners. It will ensure that we can set targets and review outcomes ... [W]ith new data and the Framework for Excellence, we will be able to develop a package of performance management and drill down on all aspects of performance, specifically equality and diversity.

68 Nevertheless, one LSC representative emphasised the importance of collecting different types of data to improve the monitoring of underperformance:

The true story is uncovered through quantitative and qualitative data. If you look at success rates in qualifications, you will miss out on curriculum areas where there are no qualifications. Where you have learners with complex learning needs not doing a qualification, then you will not capture the successes in this area.
Our interviews showed that stakeholders view the strategy as an effective tool in raising the standard of provision for all learners. The challenge is to ensure that the gains secured through improved provider performance are realised by learners from disadvantaged backgrounds. The findings from this equality impact assessment identify potential challenges, which may result in reduced participation rates and limited access to learning for learners from disadvantaged backgrounds.

The interventions that were perceived as leading to disincentives are primarily in relation to underperforming providers. This is not considered to be an issue for those providers that are deemed to be ‘satisfactory but not improving’.

Specifically, interviewees were concerned that the disincentives will lead to a shift in supply patterns for specific groups of learners. Interviewees identified learners that are ‘high risk’ – in particular, learners with learning difficulties and/or disabilities – as being vulnerable to adverse selection decisions made by providers.

However, it is important to note that there have been improvements across the FE sector, and that these developments are set within a climate of improved success rates. In June 2008, the LSC reported an improved achievement in the number of working-age adults who gain Skills for Life qualifications, with a 6 per cent increase from 2005/06 to 2006/07. There were also improved success rates in FE colleges, with an increase of approximately 1 per cent (to 77 per cent) between 2005/06 and 2006/07. In addition, framework completion rates for all Apprenticeship programmes increased by over 11 per cent between 2005/06 and 2006/07 (when the figure stood at 60 per cent).

Recommendations

**Recommendation 1: Ensure that sound monitoring systems are in place at a local and regional level**

National data on learners and staff data profiles are recorded and held in a number of available datasets – for example, individualised learner records. At this stage, it is difficult to identify with any certainty whether there are any changes by providers in the patterns of selection. Funding for Apprenticeship provision was first withdrawn in early 2007, and Notices to Improve were first issued in April 2007, based on academic data from 2005/06. This limited timeframe would suggest it is only now that there is an opportunity to identify whether there are emerging patterns of selection. In addition, where there are patterns emerging, at this stage we may not be able to attribute this to provider selection procedures – other factors, such as changing demographics and local skills needs and priorities will affect recruitment.

Nevertheless, mechanisms and procedures need to exist at the regional and local level to ensure that there is monitoring of participation and retention rates among learners from disadvantaged backgrounds. In addition, data analysis can be cross-referenced with contextual factors (such as demographics and local skills needs), which could help isolate the impact of provider selection and support analysis of the impact of provider selection on learner demand.

**Recommendation 2: Ensure improved data quality across the six equality strands**

It is imperative to collect and review data across all six of the equality strands, but particularly sexual orientation and religious belief, where there is currently limited data collection. The effective collection of data on participation rates among all the groups listed within the six equality strands will provide invaluable information on participation and learner achievement among specific client groups. However, there are some inherent risks associated with this approach. Specifically, there is a risk that the information collected will be patchy, given that learners and staff are required to identify themselves and declare their status, and they may be reluctant to do so. This is particularly problematic when collecting data on sexual orientation, religious beliefs and disability.

Furthermore, while data is captured consistently at a national level, the quality of the information does vary, and thus can give rise to regional and local disparities. This may create specific challenges for comparative analysis.
Recommendation 3: Ensure monitoring of commissioning at the local and regional level

LSC documents such as Planning for Success or the Statement of Priorities identify a clear need for a strategic approach to commissioning, built on regional strategic analysis and ongoing monitoring of delivery. Furthermore, the extent to which providers can adversely select learners is limited by the requirements of the Common Inspection Framework. The framework includes an assessment against equality-of-opportunity considerations (including the extent to which the provider targets and recruits under-represented groups within its community) that will have an impact on the overall grade of the provider.

Nevertheless, a framework for planning should incorporate equality and diversity considerations that inform commissioning decisions. Ultimately, LSC local and regional leads should strengthen and bolster the promotion of access through commissioning. This would be an especially important consideration in the event of a decision to cease funding a provider (which could be to the detriment of specific client groups), or if a provider ceases to provide courses in a specific curriculum area. In particular, this could address the disparity in opportunity identified in World-class Apprenticeships with particular regard to BME, disabled and female apprentices, who have fared less well in accessing opportunity. As one interviewee said:

The LSC should review the learner mix on provision currently falling below Minimum Levels of Performance to assess the equality and diversity implications if this provision were withdrawn.

Recommendation 4: Ensure good initial assessment and support for learners

Providers should be supported in developing good assessment of learners. An LSC representative suggested that, at present, this practice is patchy across the regions, and that a learner-driven approach should also ensure that learners are on the programme of learning that is most appropriate for them to secure a better outcome.

The Learning and Skills Improvement Service (LSIS), with the support of provider representative bodies, could further develop its established programmes to ensure that standardised support is available nationally.

Next steps

The next iteration of the equality impact assessment will provide an opportunity to gauge progress against this baseline equality impact assessment. Building on recommendation 1, as academic performance data emerges, there will be an opportunity to undertake further statistical analysis, which will be benchmarked against participation and success rates across different groups. The data on learners and staff profiles will allow us to detect emerging trends, to verify or test the hypotheses outlined in this assessment, and to identify the extent to which outcomes are a result of the strategy or of other factors. Finally, the evaluation activities will provide a further opportunity to corroborate the findings we have presented in this report.
Annex A: Discussion Guides

Interview guide: LSC staff

Introduction
OPM has recently been commissioned by the Learning and Skills Council to evaluate the impact of the LSC’s strategy, which identifies and manages underperformance. The purpose of the evaluation is to develop understanding of and identify:

- Why certain activities are needed
- Processes and structures in place for delivery
- How activities require successful joint working with a range of potential stakeholders
- What policies, strategies or specific activities will bring about desired outcomes
- Identify the unintended consequences
- How to measure and monitor outcomes

As part of this work, we have also been asked to undertake an Equality Impact Assessment. Our assessment is to identify the extent to which the strategy outlined in *Identifying and Managing Underperformance* appears to have a ‘differential or adverse’ impact on different groups of existing and potential learners and LSC employees. During this interview, we would like to discuss the impact the strategy could have on equality and diversity in FE colleges on particular groups (for instance BME groups, disability groups, LGBT groups), whether the strategy could be considered discriminatory and whether it provides any opportunities to actively promote equality.

As part of this assessment OPM is conducting telephone interviews with external stakeholders and LSC staff with responsibilities relating to this policy.

The interview should last no longer than 45 minutes.

Questions

About you

1. Could you briefly describe your role and how long have you been in this position? *Probe: How does your role relate to the strategy for identifying and managing underperformance? Who supports you in this?*

About the LSC strategy to manage underperformance in FE provision

2. What aspects of the strategy do you think have been particularly successful? Why? *Probe: For learners, employers, staff, governing bodies, equality groups?*

3. What barriers undermine the success of this strategy?

4. Overall, what do you consider to be the intended outcomes of this strategy as set out in *Identifying and Managing Underperformance*?

5. **a.** For learners?
   **b.** For providers?
   **i.** WBL providers
   **ii.** FE colleges
   **c.** For relevant stakeholders?

6. **5.** What processes are in place to monitor and review the outcomes of this strategy? *Probe: How effective are the processes? Who is involved in monitoring and reviewing – learner or staff views? How is impact measured? How would you define successful outcome of this strategy? *Probe: For individuals; organisations?*

Impact of strategy on equality and diversity: Staff

6. **6.** Is the strategy likely to have an adverse effect on the diversity of staff with reference to the following equality strands?

   a. Black or Minority Ethnic
   b. Disability
   c. Gender
   d. Age
   e. Sexual Orientation
   f. Religion or belief

Why?
7 Overall, in your view, is the strategy likely to have a positive, adverse or no impact on diversity of staff in general?

Probe: In the short term? In the long term?

With respect to the following groups of staff?

   a. Principals and Senior members of staff
   b. Governors
   c. Teachers
   d. Other non-teaching staff

Why?

Impact of strategy on equality and diversity: Learners

8 Is the strategy likely to have an adverse effect on the diversity of learners with reference to the following equality strands?

   a. Black or Minority Ethnic;
   b. Individuals with learning disabilities and/or disabilities;
   c. Gender;
   d. Age;
   e. Sexual Orientation;
   f. Religion or belief;

Why?

9 Overall, in your view, is the strategy likely to have a positive, adverse or no impact on diversity of students in general?

   a. In short term
   b. In long term

10 Is the intervention strategy likely to have a greater impact on particular groups more than others? If so which groups and why?

11 In your view, is this strategy likely to impact on relations between the groups? If so, which groups, and how?

Reviewing and monitoring

12 What processes are currently in place to monitor and review the implications of this strategy on equality and diversity? Probe: Who is involved in monitoring and review? Staff? Learners? Who leads on this work?

13 What processes should be in place to monitor and review the implications of this strategy on equality and diversity? Probe: Who should be involved? Who should lead?

Support

14 What support or initiatives are currently in place to proactively promote equality of opportunity?

15 Are there any particular organisations that currently support the LSC to ensure that this strategy has positive impact on diversity of students and staff?

16 What support or initiatives should be in place to proactively promote equality of outcomes?

Impact of strategy on equality and diversity: General Questions

17 In your view, will the strategy have any other adverse effects on FE colleges, their staff or students?

18 Overall, does the intervention strategy provide any opportunities for promoting equality and diversity? (prompt: increase diversity amongst governors)

19 If the strategy were to have a positive impact on diversity, what would this look like? (probe for learners and staff)

Minimum levels of performance

20 How does your role, if at all, relate to this part of the strategy? Probe: Who supports you in implementing this part of the strategy?

21 What aspects of identifying minimum levels of performance have been successful?

   a. For FE colleges – long and short qualifications?
   b. For Apprenticeship provision?
   c. Train to Gain provision?

22 What aspects of identifying minimum levels of performance have been less successful?

23 To what extent have strategies in response to below minimum levels of performance been successful? Probe: For Apprenticeship provision e.g. opening provision to competition? Inclusion of specified improvement indicators in new contracts? Discussion with employers?

Financial Health and Control

The LSC assesses the financial health of colleges twice a year and uses standard financial returns. The LSC confirms the college’s financial health group through validation by PFM teams, using a consistent approach
across regions. The PFA teams carry out a cycle of provider audits looking at financial management and governance and direct audit of LSC funding streams.

- Where a college is in financial failure the LSC will issue a Notice to Improve.
- Where there is significant provider underperformance, the college and the LSC will formally agree improvement indicators, as part of the strategic improvement plan.

24 How does your role, if at all, relate to this part of the strategy? **Probe:** Who supports you in implementing this part of the strategy?

25 What do you think are the intended outcomes of this aspect of the strategy?

26 What aspects of the strategy have been particularly effective in identifying colleges in financial difficulties? Why?

Probe: Who was involved? What strategies and interventions were used? What were the outputs and outcomes? Were the outcomes measured and monitored?

27 What barriers undermine the success of this aspect of the strategy?

**Learner Health, safety and welfare**

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.

28 How does your role, if at all, relate to this part of the strategy? **Probe:** Who supports you in implementing this part of the strategy?

29 What do you think are the intended outcomes of this aspect of the strategy?

30 What aspects of the strategy have been particularly effective in identifying colleges in financial difficulties? Why? **Probe:** Who was involved? What strategies and interventions were used? What were the outputs and outcomes? Were the outcomes measured and monitored?

31 What barriers undermine the success of this aspect of the strategy?

**Notices to Improve**

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 provision’
- A college is in financial failure
- 15% or more of short and/or long qualification provision falls below the minimum levels of performance

32 How does your role, if at all, relate to this part of the strategy? **Probe:** Who supports you in implementing this part of the strategy?

33 How effective have Notices to Improve been in addressing underperformance? If not, why not?

34 What aspects of monitoring providers that have been issued with a Notice to Improve have been successful?

35 What aspects of monitoring providers that have been issued with a Notice to Improve have been less successful?

**Failure to meet a Notice to Improve**

36 How effective is the strategy in identifying providers that fail to meet a Notice to Improve? What factors support this? What factors undermine this?

37 What strategies and interventions have been successful in supporting colleges that have failed to meet a Notice to Improve?

38 What strategies and interventions have been less successful in supporting colleges that have failed to meet a Notice to Improve?

**Support from QIA**

39 How effective has the QIA been in supporting providers?

40 How effective has the QIA been in supporting LSC and other stakeholders to manage underperformance?

**Aims of the evaluation**

41 Thinking about this evaluation, what would a successful outcome be for you?

42 What would the final products from the evaluation need to look like in order to be of most use to you and your organisation?

**Final question**

43 Is there anything you would like to add before we close?

Thanks and close
Interview guide: external stakeholders

Introduction
OPM has recently been commissioned by the Learning and Skills Council to evaluate the impact of the LSC's strategy which identifies and manages underperformance. The purpose of the evaluation is to develop understanding of and identify:

- Why certain activities are needed
- Processes and structures in place for delivery
- What policies, strategies or specific activities will bring about desired outcomes
- Identify the unintended and intended consequences.
- How to measure and monitor outcomes

As part of this work, we have also been asked to undertake an Equality Impact Assessment. Our assessment is to identify the extent to which the strategy outlined in Identifying and Managing Underperformance appears to have a ‘differential or adverse’ impact on different groups of existing and potential learners and LSC employees. During this interview we would like to discuss the impact the strategy could have on equality and diversity in FE colleges on particular groups (for instance BME groups, disability groups, LGBT groups), whether the strategy could be considered discriminatory and whether it provides any opportunities to actively promote equality.

As part of this assessment OPM is conducting telephone interviews with external stakeholders and LSC staff with responsibilities relating to this policy.

All interviews will be anonymous and confidential.

The interview should last no longer than 45 minutes.

Any questions?

Questions

About you

44 Could you briefly describe your role and how your role relates to the strategy for identifying and managing underperformance? Who supports you in this?

About the LSC strategy to manage underperformance in FE provision

45 Overall, what do you consider to be the intended outcomes of this strategy as set out in Identifying and Managing Underperformance?

a. For your organisation?
   b. For other relevant stakeholders?
   c. For learners?
   d. For providers?
      i. WBL providers
      ii. FE colleges

46 What processes are in place to monitor and review the outcomes of this strategy? Probe: How effective are the processes? Who is involved in monitoring and reviewing – learner or staff views? How is impact measured?

47 What aspects of the strategy do you think have been particularly successful? Why? Probe: For your organisation, learners, employers, staff, governing bodies, equality groups?

48 What barriers undermine the success of this strategy?

49 How would you define successful outcome of this strategy?

   Probe: For your organisation, other organisations; individuals?

Minimum Levels of Performance

50 What aspects of identifying minimum levels of performance have been successful?

   a. For your organisation?
   b. For FE colleges – long and short qualifications?
   c. For Apprenticeship provision?
   d. Train to Gain provision?

51 What aspects of identifying minimum levels of performance have been less successful?

52 To what extent have strategies in response to below minimum levels of performance been successful? Probe: For Apprenticeship provision e.g. opening provision to competition? Inclusion of specified improvement indicators in new contracts? Discussion with employers?

Financial Health and Control

The LSC assesses the financial health of colleges twice a year and uses standard financial returns. The LSC confirms the college’s financial health group through validation by PFM teams, using a consistent approach across regions. The PFA teams carry out a cycle of provider audits looking at financial management and governance and direct audit of LSC funding streams.

- Where a college is in financial failure the LSC will issue a Notice to Improve.
Where there is significant provider underperformance, the college and the LSC will formally agree improvement indicators, as part of the strategic improvement plan.

53 What do you think are the intended outcomes of this aspect of the strategy?

54 What aspects of the strategy have been particularly effective in identifying colleges in financial difficulties? Why?

Probe: Who was involved? What strategies and interventions were used? What were the outputs and outcomes? Were the outcomes measured and monitored?

55 What barriers undermine the success of this aspect of the strategy?

Learner Health, safety and welfare

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.

56 What do you think are the intended outcomes of this aspect of the strategy?

57 What aspects of the strategy have been particularly effective in identifying colleges in financial difficulties? Why?

a. Probe: Who was involved? What strategies and interventions were used? What were the outputs and outcomes? Were the outcomes measured and monitored?

58 What barriers undermine the success of this aspect of the strategy?

Notices to Improve

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 provision'

• A college is in financial failure

• 15% or more of short and/or long qualification provision falls below the minimum levels of performance

59 How effective have Notices to Improve been in addressing underperformance? If not, why not?

60 What aspects of monitoring providers that have been issued with a Notice to Improve have been successful? What aspects have been less successful?

Failure to meet a Notice to Improve

61 How effective is the strategy in identifying providers that fail to meet a Notice to Improve? What factors support this? What factors undermine this?

62 What strategies and interventions have been successful in supporting colleges that have failed to meet a Notice to Improve? What strategies and interventions have been less successful?

Support from LSIS (QIA)

63 How effective has the QIA been in supporting providers?

64 How effective has the QIA been in supporting LSC and other stakeholders to manage underperformance? Probe: Your organisation?

Impact of strategy on equality and diversity

65 Is the strategy likely to have an adverse effect on the diversity of learners with reference to the following equality strands?

a. Black or Minority Ethnic
b. Disability
c. Gender
d. Age
e. Sexual Orientation
f. Religion or belief

Why?

66 Effect on diversity of Staff?

67 Overall, in your view, is the strategy likely to have a positive, adverse or no impact on diversity of learners in general? Impact on staff?

Probe: In the short term? In the long term? Why? Is the strategy likely to have a greater impact on particular groups more than others? If so which groups and why? (probe for learners and staff). In your view, is this strategy likely to impact on relations between the groups? If so, which groups, and how? (probe for learners and staff)

68 Overall, does the strategy provide any opportunities for promoting equality and diversity? (prompt: increase diversity amongst governors). Probe What would this look like? (probe for learners and staff)
Aims of the evaluation

69 Thinking about this evaluation, what would a successful outcome be for you and your organisation?

70 What would the final products from the evaluation need to look like in order to be of most use to you and your organisation?

Final question

71 Is there anything you would like to add before we close?

Thanks and close
Annex B: Bibliography


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