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**RAISING EXPECTATIONS - ENABLING THE SYSTEM TO DELIVER –  
16-19 LEARNING COMMISSION**

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**Responsible Cabinet Member - Councillor Cyndi Hughes,  
Children and Young People Portfolio**

**Responsible Director - Murray Rose, Director of Children's Services**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To update Cabinet on progress to date in preparing for the transfer of funding and commissioning responsibility for the delivery of high quality education and training for young people aged 16-19 (16-25 for learners with an identified learning disability), from the Learning and Skills Council (LSC) to individual Local Authorities (LAs) from April 2010.

**Summary**

2. The Apprenticeships, Skills, Children and Learning (ASCL) Act 2009 requires Local Authorities to put in place the arrangements described in this report and as such they represent statutory requirements. Approval is sought to progress the necessary HR, legal and financial arrangements required statutorily to facilitate the transfer of the commissioning responsibilities.

**Recommendation**

3. It is recommended that Members:-
  - (a) Note the proposed Regional Planning arrangements (**Appendix 1**), and authorise the Director of Children's Services, in consultation with the Cabinet member for Children & Young People to keep these arrangements under review to ensure they are effective in supporting the Authority in discharging its responsibilities..
  - (b) Note the outcomes of the Learning and Skills Council (LSC) staff matching process, 6 posts will transfer formally to the Local Authority from the LSC from 1 April 2010.
  - (c) Approve, in relation to (b) above, the creation of the identified posts on the LA establishment.
  - (d) Note the financial implications to support the staff transfer.
  - (e) Confirm the intention to support shared services as appropriate at SRG level.

- (f) Authorise the Director of Children's Services, in consultation with the Corporate Director of Resources and the Head of Legal Services, to put in place all necessary arrangements for receiving the transferring LSC staff in line with best practice in Transfer of Undertakings – Protection of Employment (TUPE) legislation.
- (g) Authorise the Director of Children's Services, in consultation with the Corporate Director of Resources, the Head of Legal Services and appropriate senior LSC officers, to put in place all necessary arrangements for the transfer and management of funding contracts, agreed by the LSC with learning providers in the Borough, from 1 April-31 July 2010 and from 1 August 2010-31 July 2011.
- (h) That the report be referred to the Children and Young People Scrutiny Committee.

### **Reasons**

- 4. The recommendation is supported as the Machinery of Government changes asked LAs to prepare for the transfer of statutory responsibility from the LSC in 2010 by agreeing regional and sub-regional arrangements. This has now been statutorily required as part of the enactment of the ASCL Bill. The recommendations placed before Cabinet have been widely consulted on with partners and providers and have been endorsed by the Children's Trust and 14-19 Partnership arrangements in each local authority in the region.

**Murray Rose**  
**Director of Children's Services**

### **Background Papers**

No background papers were used in the production of this report.

Helen Ellison : Extension 3886

S17 Crime and Disorder	This report has no implications for crime and disorder
Health and Well Being	This report has no implications for health and well being.
Sustainability	This report has no effect on sustainability.
Diversity	All groups of post 16 learners are affected.
Wards Affected	All wards.
Groups Affected	All post 16 learners.
Budget and Policy Framework	This does not effect the Council's Budget and policy framework
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	This report falls within the Aspiring theme of the Sustainable Community Strategy. The change shifts the responsibility for any 16-19 National Indicator targets from the Learning and Skills Council to the Local Authority.
Efficiency	This change has a positive effect on the efficiency of the Borough Council budget.

## MAIN REPORT

### Information and Analysis

#### Background

5. The White Paper *Raising Expectations: Enabling the system to deliver*, produced jointly by the DCSF and the Department for Innovation, Universities and Skills (DIUS) identified detailed proposed changes to the machinery of government with regard to skills training for adults and the creation of an effective system to deliver the learning entitlement to 14-19 year olds. The entitlement concept relates to a range of curriculum and guidance initiatives and services that should be available to all 14-19 learners regardless of where they study. The reforms were designed to give councils the strategic lead for 14-19 education and training, enabling integration of provision between schools, colleges and employers as they jointly offer the new range of Diplomas and Apprenticeships alongside GCSEs and other qualifications.
6. Earlier in 2009, Local Authorities (LAs) were asked to consider the best way of grouping together to meet the learning needs of 14-19 year olds, informed by a detailed analysis of travel to learn patterns. This is a review of the choices that learners make in respect of their post-16 learning provider and the extent to which they stay within or move beyond their “home” local authority. This analysis informed the creation of sub-regional clusters of LAs to work together to create a commissioning plan for 14-19 learning in their geographical area. The LAs in Tees Valley submitted a joint response – the SRG Stage 2 Submission - proposing a sub-regional grouping (SRG) of the 5 Tees Valley LAs. The SRG Stage 2 submission was approved by Cabinet in January 2009.

#### 16-19 Commissioning and the Transfer of Responsibilities

7. The Apprenticeships, Skills, Children and Learning Act 2009 (ASCL) is the legislative framework that confirms the changes first outlined in the Raising Expectations White Paper. The Act is wide-ranging and encompasses a number of areas in addition to the changes to the machinery of government of the 16-19 phase.
8. From 1 April 2010, all unitary and county councils will take over responsibility for 16 to 19 education from the Learning and Skills Council (LSC). This is a significant shift in responsibility and funding, involving the transfer of £7 billion of public money and nearly 1,000 LSC staff nationally. The key features of the new system are:
  - (a) LAs to identify demand and plan provision to meet the learning needs of young people post 16
  - (b) LAs to commission the provision
  - (c) A funding model which ensures that money reaches providers appropriately.

9. LAs will be responsible and accountable for securing the provision of high quality education and training for 16-19 year olds, (and 19-25 year olds subject to a learning difficulty assessment), and for those young people in youth custody aged 10 to 18. LAs will be supported by a small non-departmental public body – the Young People’s Learning Agency (YPLA) – which will ensure coherence of planning and budgetary control at a national level.
10. LAs will be responsible for commissioning and procuring learning provision on behalf of young people in their own area and for young people choosing to travel in to learn from other local authority areas. This will ensure that providers, particularly further education colleges, are not required to have multiple dialogues with a number of LAs. Due regard will be given, through the SRG and Regional Planning Group (RPG), to ensuring appropriate learning is available to meet the needs of residents of their area within the constraints of the funding agreement reached with the YPLA.
11. The Department of Business Innovation and Skills (BIS), through a new agency, the Skills Funding Agency (SFA) will take on responsibility for all other learners over the age of 19, not subject to a learning difficulty assessment. It will also, through the National Apprenticeships Service (NAS), be responsible for securing apprenticeships for 16-18 year olds and all adults.
12. The legislation establishes LAs as the single point of responsibility and accountability for children’s and young people’s services from 0 to 19 (25 for learners subject to a learning difficulty assessment).

**Progress to Date - Local and Sub-regional**

13. The proposed local, sub-regional and regional structures and planning processes are founded on the principle of subsidiarity, recognising the primacy of LAs. Through effective collaboration at SRG level LAs will inform and shape the regional agenda. They also reflect the key relationships being developed at SRG level with Multi-Area Agreements (MAAs) and sub-regional governance structures.
14. The ASCL Act requires the dissolution of the LSC and the transfer of designated LSC staff to support the most appropriate element of the new system – the YPLA, the SFA, the NAS or the Local Authority. As part of the establishment of the new arrangements, current LSC staff have been through a “matching” process. The matching process reflects the duties and responsibilities that are transferring to each part of the new system from the existing LSC arrangements. Staff most closely aligned with the discharge of those responsibilities in respect of Local Authority areas have been identified to transfer to LA teams.

<p><b>LSC funding for posts transferring to Darlington Borough Council</b></p> <p>Band 4 - Head of 16-19          Band 3 - 16-19 Manager          Band 3 – vacancy (16-19 Manager)          Band 2 – vacancy (16-19 Adviser)          Band 1 – vacancy (16-19 Administrator)</p>
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15. The Transfer of Undertakings (Protection of Employment) – TUPE – regulations apply to staff transfers apart from administrative reorganisations of the public sector. In such a case guidance requires that the staff be treated as if the principles of TUPE apply. LSC and local authority HR staff in Tees Valley have been working together. To oversee the transfer, in line with best practice guidelines for TUPE transfers. Similarly, each LA has initiated a programme of orientation and induction activities in advance of the formal transfer date of 1 April 2010 so that appropriate organisational and team development can take place in readiness for the formal transfer of responsibilities. Most transferring LSC staff will be spending time in their respective LA teams working on associated 16-19 initiatives in advance of April 2010. In Tees Valley agreement was reached for formal shadowing to commence in January 2010.
16. For staff transferring, the actual staffing cost including on-costs will also transfer. Where a vacancy transfers, the average cost of the vacancy will be transferred. The transferring staff will be embedded within Local Authority teams and their Children's Trust commissioning arrangements.
17. The Authority will receive, annually up to 2012/13, special purpose grant funding to the area-based grant from DCSF to cover the additional costs associated with taking on these additional responsibilities.
18. In addition to the LA team, a sub-regional shared service was approved as part of the Stage 2 submission. This service will take the form of a virtual team and will undertake those activities which are best completed once on behalf of all LA partners. Accountability for these decisions will remain with individual LAs. The SRG structure to support these arrangements is included at **Appendix 2**.
19. Each LA will take on the responsibility for administering the funding agreements with their local schools and colleges (and independent private providers for Foundation Learning). Funding for Academies will be administered by the Young People's Learning Agency (YPLA) who will assume responsibility for all open academies in April 2010. Academies will be considered within the commissioning process; however the YPLA will be responsible for deciding on the number of sixth form places to be funded in each 11 – 18 academy, taking account of the views of the local authority and the academy as well as its own local intelligence.
20. Funding agreements will cover the periods April 2010 – July 2010 (the current funding agreement) and August 2010 – July 2011. These agreements are already, or will be, in place before the formal transfer of responsibilities and as such they will transfer, along with the agreed funding allocations on April 2010. It will be for the LA team to administer rather than negotiate and agree these allocations.
21. For the delivery year August 2011 – July 2012, LAs will lead all elements of the planning, commissioning, administrative and quality assurance process, although the budget will be held regionally by YPLA. A consultation document has been produced by the DCSF – The National Commissioning Framework – that describes the potential processes and lead responsibilities for 2011-12. This will become statutory guidance in April 2010.

## **Progress to Date – Regionally**

22. In addition to collaboration at a sub-regional level to plan and commission provision, LAs will need to come together with other key stakeholders such as the Regional Development Agency (RDA), Government Office North East (GONE), Young People's Learning Agency and the new Skills Funding Agency as part of a Regional Planning Group (RPG). The role and structure of the North East RPG is summarised at **Appendix 1**.
23. The Regional Planning Group will scrutinise the commissioning plans of the Sub-Regional Groups to ensure that they are coherent, fall within the overall budget available and deliver the entitlement for all young people in the region. The RPG will also work with the Regional Skills Partnership to make sure that commissioning plans reflect local skills needs. Recent national guidance indicates an expectation that at a regional level the voice of employers should be strongly represented in helping to ensure that economic growth is driven forward and the needs of the labour market are being met.

## **Financial Implications**

24. It is the intention of Government to fund fully the actual costs of transferring LSC staff (that is, salary, NI, pensions, and any other contractual allowances), to fund transferring vacancies (that is, salary, NI, and pensions) at the average of the top and bottom of the relevant pay band, and to make an allocation for IT, premises and other costs. LAs have received details of their allocation for 2010/11.
25. The DCSF is working with the Government Actuary's Department and Local Government Pension Scheme actuaries to calculate the total cost of the pension transfer and this will include assessing what additional funding each local authority will need to meet their employer contribution for the transferring LSC staff. This will be cost neutral for LAs and does not impact on local authority budgeting.
26. The DCSF will make the payments as a special purpose grant within the area-based grant for 2010/11 and the following two years. In 2010/11 this will be £224,000 of which £199,000 will be used to fund the new responsibilities and £25,000 that will be held in corporate reserves. The DCSF position for 2013 and beyond is that any funding that goes beyond the current spending review period cannot be guaranteed. There is a DCSF recognition that there will be ongoing statutory responsibilities for LAs and that these responsibilities will be reflected in the revenue support grant or area-based grant.
27. From April 2010 the YPLA will start making monthly payments to LAs that are the sum of individual provider allocations for that authority and any other profile payments to the authority under formula funding. These YPLA payments to LAs will be made under a grant agreement between the YPLA and LAs that will set out total allocations by provider, by learning programme for each provider and by month and monthly profiles for formula funding. Individual allocations to providers will be calculated through a national funding formula and must be passported in full. The finance and administrative capacity to service these contracts is part of the transferring staff resource from the LSC to LAs.
28. The National Commissioning Framework, to be published in April 2010 provides guidance and protocols for local authorities, to support the planning and commissioning process.

## **Legal Implications**

29. LAs are, under the ASCL Act 2009, the legal inheritors of the LSC's funding agreements with colleges and providers for 16-19 provision. LAs will not need to issue funding agreements for the remainder of academic year 2009/10.
30. Funding agreements and associated contracts are already in place for all eligible learning providers for the delivery year 1 August 2009 – 31 July 2010. These contracts will be novated to LAs to administer for the learning providers based in their geographical area. The funding agreements and associated contracts for the delivery year 2010-11 will be agreed by the LSC with all learning providers by 31 March 2010 and will also be novated to LAs for their management. Both novations will be effective from 1 April 2010.
31. DCSF have given the YPLA advice that LAs do not need to subject YPLA funding to open and competitive tendering for new allocations for financial year 2010-11 or academic year 2010/11. LAs should not therefore need to hold open and competitive tendering for 16-19 learner responsive at colleges, for example.
32. The TUPE transfer of LSC staff into the Local Authority will be conducted according to the agreed TUPE best practice guidelines. A Tees Valley HR officer group has been established to oversee this transfer across Tees Valley.

## **Outcome of Consultation**

33. The 'Raising Expectations' white paper has been subject to national, public consultation.
34. The Stage 2 Proposal was approved by Cabinet in January 2009. A range of briefing events and consultations were arranged for external partners and associated organisations and agencies including the 14-19 Learning Partnership and TVU. The Children's Trust has received regular updates.

## **Appendices**

- Appendix 1 Proposed regional planning arrangements
- Appendix 2 Tees Valley Sub Regional Group structure