

## **Further and Higher Education Act 1992: Use of Statutory Intervention Powers in Sixth Form Colleges, Pending the Passage and Enactment of the Education Bill**

### **Purpose**

1. This note provides a position statement on the process in relation to statutory intervention in sixth form colleges relating to the existing powers in the Further and Higher Education Act (FHEA) 1992 as amended by the Apprenticeships, Schools Children and Learning (ASCL) Act 2009 pending the passage and enactment of the Education Bill.

### **Background**

2. The ASCL Act 2009 inserted a new s.56E into the FHEA 1992, which gave powers of intervention in sixth form colleges to local authorities; this reflected the detailed planning and commissioning role they were intended to undertake at that time. The ASCL Act 2009 also conferred powers on the Young People's Learning Agency (YPLA) to intervene in sixth form colleges in certain circumstances. In addition, s56G (1) of the Further and Higher Education Act 1992, which was added to by the ASCL Act 2009, requires the YPLA to:

‘prepare a statement of the policy to be followed by local education authorities with respect to the exercise of their powers under 56E’.

3. After the commencement of the ASCL Act 2009 the new government published various statements on its intent to reduce bureaucratic burdens on schools and colleges. These intentions are to be given legislative effect in the Education Bill published in January 2011.

### **Education Bill**

4. The Education Bill proposes the dissolution of the YPLA, and consequently any powers it has to intervene in sixth form colleges. The Bill also transfers the powers of local authorities to intervene in sixth form colleges to the Secretary of State.

5. In addition, the Bill proposes the repeal of the corresponding powers of local authorities and the YPLA to appoint up to two governing body members to a sixth form college corporation.

6. In view of the changes proposed in the Education Bill and the need to reduce the amount of prescription affecting local services, the YPLA has agreed, with the Department for Education (DfE) and the Local Government Association (LGA), that it would issue a short statement of the policy to be followed by local authorities for the period before the legislative changes proposed in the Education Bill are likely to take effect. The steps set out below provide a process to be followed in the event that any necessary intervention is required in the interim period.

### **Holding Position Pending the Passage of the Education Bill**

7. The Secretary of State has made clear that, whilst the proposals in the Bill are intended to support the autonomy of schools and colleges, there should be swift action in the event of identified failure.

8. The YPLA is committed to supporting local authorities in their duty to secure 16-19 provision of a suitable standard, their role in raising concerns about the quality of post-16 education provision in their area and the statutory intervention powers of local authorities. To this end sixth form college failure identified through inspection, financial health and control and/or failure to meet minimum levels of performance, will prompt the YPLA to call a case conference inviting key stakeholders, including local authorities. The frequency/intensity of case conference meetings will be proportionate to the scale of the associated problem and will be determined on a case by case basis. In the event that there is a concern about a general further education college, in respect of which intervention powers are vested in the Chief Executive of Skills Funding, the Skills Funding Agency will be responsible for calling a case conference inviting key stakeholders including local authorities.

9. The statutory intervention powers as prescribed are specific in their nature. Where a member of the public or college staff has other concerns about a sixth form college, these will be dealt with through the YPLA's complaints process.  
<http://www.ypla.gov.uk/aboutus/contactus/complaints/>

### **Case Conferences**

10. In the case of a sixth form college which is already the subject of concern, the local authority will be engaged in discussions about how best to address the specific concerns. It is the role of that case conference group to determine whether, ultimately and after due consideration, the use of intervention powers is the right course of action and whether there is sufficient evidence to notify the Secretary of State (and the YPLA) that the local authority will exercise its intervention powers, as required and in accordance with s.56E of the FHEA 1992.

### **Escalation of Cases Requiring Intervention**

11. If the exercise of intervention powers is deemed necessary in a sixth form college, advice from the YPLA, which will work closely with the LGA, should be sought through the regional YPLA representative involved in the case. All parties involved in the process will work to ensure that:

- the interests of learners already at the college are properly taken into account
- public funds are properly managed
- there is sufficient evidence to trigger the appropriate intervention power
- there is an opportunity for fair and reasonable representation by the college and its Corporation about any proposal to exercise the powers
- any stakeholders with a legitimate interest in the college have been appropriately informed and involved
- the local authority, or if appropriate the YPLA, can demonstrate that they are exercising their powers reasonably and in accordance with the legislation.

12. Where there is disagreement between members of a case conference group about the need for intervention this should be escalated through their respective governance structures, but where areas of disagreement cannot be resolved through this route, the DfE, as a matter of policy, will provide advice to the Secretary of State on the appropriateness and evidence to exercise powers of intervention in that particular case.

### **Governance and Legal Advice**

13. Each stakeholder involved in a case conference will be responsible for ensuring that data protection and confidentiality requirements are met. They will also be responsible for their own management reporting, adherence to governance arrangements and securing legal advice on such cases within their own organisation.

### **Unexpected or Immediate Need for Intervention**

14. It is highly unlikely that it will be necessary to exercise powers of intervention in a college that is not already subject to scrutiny or a case conference. It is, however, possible. If such a case emerges that causes sufficient concerns that places learners or public funds at risk but is outside the triggers of inspection, financial health and control and minimum levels of performance or should the need for intervention be immediate and urgent then this should be escalated directly by the stakeholder identifying the college to the regional YPLA lead and a case conference of stakeholders convened immediately.

### **Clearance**

15. This process has been agreed by DfE, LGA and YPLA and takes effect immediately.

### **Key Contacts**

16. The key contact in the first instance for the management of colleges subject to case conference and for securing advice is the appropriate YPLA Regional Director. The key contact in local authorities will be the Director of Children's Services or equivalent or their named nominee.

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### **Contacts**

#### **YPLA Regional Directors**

<http://www.ypla.gov.uk/regions/regional-contacts>

#### **Directors of Children's Services**

<http://www.adcs.org.uk/contacts/dcs.html>