

Minimum Levels of Performance and Notices to Improve

Guidance applying to the 2011/12 academic year

December 2010

Of interest to everyone involved in delivering provision funded by
the Skills Funding Agency and the Young People's Learning Agency

In partnership with

Contents

Introduction.....	2
Minimum Levels of Performance.....	4
Application of minimum levels of performance (MLP)	5
Provision in scope for the application of Minimum Levels of Performance..	5
Provision not in scope	6
Minimum levels of performance; assessing 2009/2010 success rate performance to inform 2011/2012 allocations	7
Minimum levels of performance for employer-responsive provision	8
Application of minimum levels of performance by level of provision.....	8
Minimum levels of performance, 16-18 apprenticeships and local authorities.....	9
Minimum levels of performance reports for employer-responsive provision	9
Minimum levels of performance for learner-responsiveness provision	10
Application of minimum levels of performance for learner-responsive provision.....	11
Minimum levels of performance reports and data	12
Data Integrity.....	12
Minimum levels of performance: Ofsted.....	13
Re-instatement of Employer-Responsive provision.....	13
Notices to Improve	14
Financial health and/or financial management and control	15
Inspection.....	15
Minimum levels of performance	16
Multiple triggers for a Notice to Improve.....	16
Monitoring a Notice to Improve	16
Compliance and removal of a Notice to Improve.....	17
Failing to meet the conditions of a Notice to Improve.....	17
Public communication of Notices to Improve.....	18
Further Information.....	18

Introduction

This document sets out how the Skills Funding Agency and the Young People's Learning Agency (YPLA) intend to approach identified provider under-performance in the 2011/12 academic year in respect of:

- financial health and financial management and control
- the analysis of success rates against minimum levels of performance
- inspection outcomes

Beyond 2011/12 this policy area will be reviewed to better reflect Government policy and organisational change.

This guidance applies to General Further Education Colleges (GFECs), Sixth Form Colleges (SFCs), Adult Education Providers and Private Training Providers that deliver education and training, in scope for consideration, funded by the Skills Funding Agency and/or the Young People's Learning Agency (YPLA).

The term "college" is used in this document to describe further education and sixth form colleges established under the Further and Higher Education Act 1992. All other non-college providers will be referred to as independent providers, and includes private training providers, adult learning providers and independent specialist providers. Section 7.19 of the Schools White Paper 'The Importance of Teaching' stated that "if school sixth form provision falls below the minimum levels of performance agreed across all post 16 provision, it will be subject to improvement action, which could result in the provision no longer being funded." This process is still to be determined, and is subject to the passing of the Bill.

Some aspects of the guidance apply differently according to provider type and funding type. Where the guidance applies to all, the term 'all providers or provision' will be used. Where the guidance applies differently according to funding stream or provider type, the guidance makes this clear.

This guidance is jointly agreed, owned and applied by the Skills Funding Agency and the Young People's Learning Agency (YPLA). This guidance will refer to 'the Agencies' where both have a role but will explicitly refer to the Skills Funding Agency or the YPLA where a specific action or responsibility falls to one or other Agency. The YPLA provides performance information to colleges and providers on their own performance and provides information on providers' performance with each local authority and to national stakeholders.

Although this guidance refers to the actions and responsibilities of the Skills Funding Agency, it should be noted that the legal entity in whom the statutory functions are vested is the Chief Executive of Skills Funding. The Skills Funding Agency is the term used to describe the Chief Executive of Skills Funding and his staff to whom he can delegate his functions.

Scope, Application and Responsibility

1. The Skills Funding Agency and the YPLA each has specific responsibility for the funds it allocates, and each has its own funding agreements and contract for services with colleges and providers. Neither the Skills Funding Agency nor the YPLA can amend the contracts and agreements issued by the other. Nonetheless in order to maintain simplified communications, only one agency will operate as the single point of contact, as set out in Table 1 below.

Table 1.

Provider type	Area of concern		
	Overall Inadequate at Inspection	Below Minimum levels of performance	Concerns regarding financial health and financial management and control
FE colleges	Skills Funding Agency	Skills Funding Agency	Skills Funding Agency
Adult learning providers	Skills Funding Agency	Skills Funding Agency	N/a
Sixth Form Colleges	YPLA	YPLA	YPLA
Private training providers	Skills Funding Agency	Skills Funding Agency	Skills Funding Agency*

* The YPLA retains responsibility for financial monitoring for a small number of business and charitable providers

2. It is recognised that many providers will have a mix of learners across the age split (16-18 and 19+), and that in such cases both agencies will have a legitimate interest in their performance. It has therefore been agreed that the two agencies will share information about quality and underperformance and each will involve the other when addressing underperformance where there is a legitimate reason to do so.

Minimum Levels of Performance

3. Whilst it is recognised that providers are autonomous institutions, responsible for their own self improvement and quality assurance processes, Ministers want a strong and transparent system of accountability of which minimum standards are a part. The minimum thresholds and approach set out in this document have been agreed by Ministers in the Department for Business, Innovation & Skills (BIS) and the Department of Education (DfE). This supporting guidance has been developed jointly between the Skills Funding Agency and the YPLA to reflect the fact that this policy is jointly delivered by the two Agencies. As a general principle, both Agencies will respect the autonomy and professionalism of providers and will seek to minimise the bureaucratic burden on them at every opportunity. The principles and minimum level thresholds in this guidance were shared in advance of Ministerial clearance with provider associations and the Local Government Association.
4. Ministers support the proposals and approach for 2011/12, and given their wish to retain a minimum standard in the future have asked their officials and the funding agencies to reflect upon:
 - whether the current methodology is fit for purpose beyond the 2011/12 academic year
 - how a minimum standard can be developed that is clear, simple and consistent, and how it might be integrated in other measures of performance including the Framework for Excellence, and
 - whether a single integrated measure can provide information for both the public and as a check on accountability or fitness for continued funding.
5. The following underlying principles apply this year:
 - The methodology for calculation is unchanged from previous years
 - Application of the policy (that is. assessment of performance) is at an all age level – achieved by joint working between both funding agencies
 - The sponsor agency will issue the notice to improve in every case where it is appropriate to do so but where there is an interest from another agency it will be a signatory to that Notice
 - Change has been kept to a minimum
6. However, a small number of changes have been made:
 - There is a modest increase to some of the thresholds; this reflects Ministers' desire to continue to drive out poor provision and reflect the increases in success rates (minimum levels of performance thresholds have not increased for the last two years);

- There is additional analysis in the reports by age (16-18 and 19+) to enable colleges, providers and funding agencies to see if underperformance is concentrated in a particular age group;
- There is a joint Agency approach this year, so new protocols for joint working around moderation, notification and communications will apply; and
- There may be cases where underperformance is mainly driven by the provision being delivered to young people. Where the decision to issue a Notice to Improve is borderline, the YPLA will consider evidence about progress using the Learning Achievement Tracker Value Added (LAT VA) tool as well as minimum levels of performance.

Application of minimum levels of performance (MLP)

7. The Skills Funding Agency and the YPLA will, where appropriate and in instances of joint legitimate interest adopt a joint approach to the application of MLP in 2011/12.
8. **Minimum levels of performance applied to 2011/12 using 2009/10 success rates calculated and applied at an aggregated level across all ages, for each provider.** Learner Responsive MLP reports will contain additional information about age, at a map code level. This information will help providers and the Agencies to identify where there needs to be improvement or action.
9. Minimum levels of performance represent the absolute minimum success-rate performance, and providers are expected to exceed them.
 - Meeting the levels is not necessarily good enough to guarantee continued funding
 - MLP outcomes will be used in conjunction with wider provider performance evidence to inform Skills Funding Agency commissioning decisions, and to provide assurance to the YPLA of fitness for continued funding through its lagged funding approach.
 - Some high-performing providers may not secure funding from the Skills Funding Agency for adult provision if there is low or no learner and employer demand, or if demand has been met by better performing providers, or if the provision is considered to be a low priority.

Provision in scope for the application of Minimum Levels of Performance

10. The minimum levels of performance will continue to apply to:
 - FE learner responsive long qualifications (any qualification where the difference between the start date and the end date recorded against the ILR is 24 weeks or more); and

FE learner responsive short qualifications (any qualifications where the difference between the start date and the end date recorded against the ILR is between five and 24 weeks) for provision offered by:

- General FE colleges
- Sixth Form Colleges
- Colleges with subject-based specialism (such as colleges of agriculture or colleges of art and design)
- Higher Education institutions that deliver FE provision and complete the ILR
- Adult learning providers.

11. The minimum levels of performance will also continue to apply to Apprenticeship and employer-responsiveness provision including Train to Gain (irrespective of provider type) offered by:

- Colleges and adult learning providers;
- Employers; and
- Private training providers.

Provision not in scope

12. All other provision, whilst still eligible for inspection by Ofsted and performance management by the appropriate Agency, is currently excluded from the analysis of success rates against the minimum levels of performance. These types of provision are set out below.

Key skills and functional skills

13. Key skills will shortly be phased out and replaced by functional skills. It is not considered appropriate to include key skills qualifications in the calculation of minimum levels of performance based on the 2009/10 data returns for learner responsive provision.

14. Functional skills delivered as **stand-alone** qualifications will also be excluded from MLP calculations, since they were delivered as a pilot qualification in 2009/10.

15. Where functional skills are delivered as part of an Apprenticeship framework, that framework will remain in scope for MLP; the relevant Sector Skills Council or Sector Skills Body will have satisfied itself that the functional skills qualification is appropriate for the framework.

16. Standard FE qualification success-rate reports will show key skills and functional skills achievements separately, and both qualifications may be included in the scope of general discussions about performance.

AS-levels

17. AS-levels are excluded from the MLP calculation. The reasons for their exclusion were set out, by the then Learning and Skills Council (LSC), last year and remain unchanged.

Offender Learning

18. MLP does not apply to Offender Learning. Offender Learning is assessed in other ways and performance is managed by reference to requirements set out in the provider's contract.

Foundation Learning

19. As in previous years, Foundation Learning remains out of scope. This is the national suite of learning for young people working mainly at Entry Level and Level 1.

Minimum levels of performance; assessing 2009/2010 success rate performance to inform 2011/2012 allocations

20. For the 2011/12 academic year, consideration of provider performance against the minimum levels will use the most recent available success-rate information from 2009/10. Table 2 shows the minimum levels of performance thresholds.

Table 2. Minimum levels of performance thresholds

Programme/Qualification type	Minimum level
FE long qualification Level 1	63 per cent
FE long qualification Level 2	63 per cent
FE long qualification Level 3	63 per cent
A-levels	75 per cent
FE long qualification Level 4 or higher	61 per cent
FE short qualification (all levels/5 to 24 weeks)	65 per cent
Apprenticeships (full framework)	53 per cent
Advanced Apprenticeships (full framework)	53 per cent
Train to Gain	68 per cent

Minimum levels of performance for employer-responsive provision

21. The Skills Funding Agency will be the lead agency in applying MLP for all employer-responsive provision.
22. Employer Responsive success rates are reported using two measures, overall and timely. 'Overall' counts all learning aim achievements over time, with reporting taking place in the year that the learner is expected to finish their learning. However, timely success rates only count those learning aims that are completed within 90 days of the initial planned end date, which means it is time dependent. For both Apprenticeship and Train to Gain the success rate methodology will use an overall qualification success rate.
23. Where a provider is below the MLP thresholds and that underperformance contains employer responsive provision, Skills Funding Agency will remove provision. Providers will be expected to cease enrolling new starts in the sector subject area which is underperforming from 1 April 2011. This will impact on the provider's funding allocation in 2011/12.

Application of minimum levels of performance by level of provision

Provision level for Apprenticeships (MLP threshold to apply this year = 53 per cent)

24. The MLP reports for Apprenticeships show performance at an overall headline success-rate level; at national, regional and local authority level; and by sector subject area (SSA) and sector framework code (SeFC). Cells are shaded red where provision is below the MLP threshold of 53 per cent, and green where performance is above that level. The reports also show performance by age 16-18, 19-24 and 25+. This is provided for information only: **MLP is calculated at the overall SSA Tier 1 level** by combining Apprenticeship and Advanced Apprenticeship levels of learning. A copy of the report format can be found in the associated technical annex.
25. In keeping with previous years, MLP for Apprenticeship provision will be applied at the SeFC level, informed by performance at the SSA Tier 1 level.
 - Where performance at the SSA Tier 1 level exceeds the threshold of 53 per cent, all provision within that SSA may be retained. However, where there are pockets of underperformance, the Skills Funding Agency will expect the provider to set and share with their account manager appropriate improvement indicators in line with the conditions of funding.
 - Where performance at the SSA Tier 1 level is below 53 per cent, all frameworks will be removed, save for any that is above the threshold at the aggregated level of learning.

Minimum levels of performance, 16-18 apprenticeships and local authorities

26. MLP will be applied to employer responsive apprenticeship provision at an all age level. However, it is recognised that the YPLA and local authorities have a legitimate interest in any impact that the application of MLP policy will have in respect of 16-18 Apprenticeships.
27. The Skills Funding Agency will provide the YPLA with information about provision that has been removed as a consequence of being below MLP and providers that are subject to improvement conditions.
28. Where provision ceases with immediate effect, the Skills Funding Agency will ensure that as far as is practicable, affected learners are transferred to provision that is within reasonable travelling distance and at least meets a minimum quality standard.

Application of MLP by provision level for Train to Gain (MLP threshold to apply this year = 68 per cent)

29. Train to Gain MLP reports will be produced nationally, regionally and locally. Provision will be shown by SSA Tier 1 and SSA Tier 2 on the vertical axis, and by level of learning on the horizontal axis. There is no analysis by age. An example of the report format can be found in the associated technical annex.
30. For Train to Gain, **MLP is calculated at the overall SSA Tier 1 level**, by combined levels of learning including Foundation Level. In keeping with last year, MLP for Train to Gain provision will be applied at SSA Tier 2, informed by performance at SSA Tier 1.
 - Where performance at SSA Tier 1 level exceeds the threshold of 68 per cent, all provision within that SSA may be retained. However, where there are pockets of underperformance, the Skills Funding Agency will expect the provider to set and share with their account manager appropriate improvement indicators in line with the conditions of funding.
 - Where performance at the SSA Tier 1 level is below 68 per cent, all provision at SSA Tier 2 will be removed, save for any that is above the threshold at the aggregated level of learning.

Minimum levels of performance reports for employer-responsive provision

31. Both the QSR and the MLP reports are constructed at the local authority level (regionally and nationally aggregated, where appropriate), using the ILR field A23 delivery location.
32. MLP will be applied at the **regional level** of performance for those providers that deliver in more than one location. For providers that deliver provision across more than one region, MLP will also apply at the regional level.

33. Although MLP will be applied at the regional level, this does not mean that localised instances of poor performance will be disregarded during the normal single contract management arrangements. The reports at both national and local authority level will enable the Agencies to see where there is significant underperformance at that level. It is expected that providers will set improvement indicators for all underperforming programmes within their Self Assessment Quality Improvement Plan.

Employers

34. Some national employers hold contracts to deliver training to their own staff, but it is not possible for the Skills Funding Agency to open up this provision to competition – only employers themselves can do that.

35. The Skills Funding Agency will hold challenging 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 for the provision (if there is sub-contracted delivery).

36. The National Employer Service has communicated to employers its intention of withdrawing funding and contracts if there is not enough improvement against the targets and deadlines set. The Skills Funding Agency will apply the same policy wherever it holds direct contracts with employers at a regional level.

Sub-contracted provision

37. Where a provider has sub-contracted delivery (including consortia), the lead provider is responsible for all aspects of the provision that it is contracted to deliver. The provider must have a legally binding agreement with each and all of its sub-contractors, in accordance with the 2010/11 Funding Requirements published July 2010. These provisions 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.

38. The Skills Funding Agency requires the lead provider to monitor the quality of all its sub-contractors effectively. All Skills Funding Agency funded providers should be able to produce information on their sub-contracting arrangements as a matter of course. The Skills Funding Agency will apply MLP at contract holder level.

Minimum levels of performance for learner-responsiveness provision

39. The YPLA will be the lead agency for applying MLP for sixth form colleges. For all other provider types, the Skills Funding Agency will be the lead agency, liaising with the YPLA where appropriate. Both agencies have, however, a legitimate interest in those providers that deliver learner-responsive provision to both young people 16-18 and adults 19+.

40. For FE qualifications funded through the learner-responsive funding stream the methodology remains unchanged: underperformance is calculated using aggregated guided learning hours (glh) for qualifications and weighted success rates within qualification aims. The MLP reports show an analysis of provision by qualification level and by sector subject area, followed by a more detailed analysis at mapcode level. Assessment of underperformance will use 2009/10 data.

Learner-responsive long qualifications

41. The methodology for calculating MLP for learner-responsive long qualifications remains unchanged: differential levels for different types of provision form part of the analysis – the levels to apply are set out in table 2.

42. A-levels remain distinct from FE Level 3 long qualifications. AS-levels are not included in the MLP calculations. A2 qualifications, however, remain in scope. 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 of performance against MLP in the total long-course offer. The overall performance-calculation methodology is unchanged: the Agencies will look at the proportion of provision that is below the minimum level, and draw on all of the long qualifications in scope to determine the overall performance calculation.

Learner-responsive short qualifications

43. The Agencies will continue to assess performance, and to apply MLP separately for short qualifications, that is, for provision of between five and 24 weeks' duration.

Application of minimum levels of performance for learner-responsive provision

44. The Agencies will analyse the performance of a provider's learner responsive provision against minimum levels separately for short and long qualification provision. The extent of any underperformance will determine the scale of the Skills Funding Agency and YPLA actions, the YPLA will discuss and involve the local authority in determining the actions.

45. Each case of underperformance that is at a level that attracts a Notice to Improve will be considered on a case by case basis. The actions taken will be subject to an age analysis and will reflect the needs of the particular Agencies and or local authority. A range of actions will be open to the Agencies and these will include:

- A plan and timetable for improving the provision
- Capping the provision
- Removing the provision
- Taking the provider out of the lagged learner funding approach (YPLA only)

The options listed above are all available through the terms set out in the contract between the Agency and the provider.

46. A Notice to Improve will be in the form of a letter, jointly signed if the provider is in receipt of funding by both funding agencies, setting out the conditions that must be met if the provider is to secure continued funding. The letter will also include the timeframe within which improvement should be demonstrated (usually 12 months). In most cases, the Agencies will ask Learning and Skills Improvement Services (LSIS) to source support.
47. In very rare cases, where success rates are considerably lower than the minimum levels of performance and where an organisation's capacity to improve is inadequate, as defined by Ofsted, immediate consideration of the strategic options for restructuring that provision may be required. This would probably 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 period under the Notice to Improve. This extremely serious level of underperformance represents a significant risk to learners, employers and the public purse.
48. For more information on the issuing of Notices to Improve please see the section on NTI Guidance, below.

Minimum levels of performance reports and data

49. All providers will be able to access their reports via the Provider Gateway from 8 December 2010.

Table 3. Reporting timetable

Type	Data source	Availability of the reports*
Apprenticeships	2009/10 Period 15 data	w/c 6 December 2010
Train to Gain	2009/10 Period 15 data	w/c 6 December 2010
Learner-responsive	2009/10 F05 data	w/c 14 December 2010

*subject to confirmation by the Data Service

Data Integrity

50. The accuracy of data returns is **vital**; provider data returns cannot be revised once the ILRs have closed. This has been communicated consistently by the Information Authority and is supported by both Agencies and Ofsted.
- There will be increased scrutiny of the accuracy and integrity of the data used to identify underperformance. In 2009, the LSC

identified a need to clarify the guidance on data management and individualised learner record (ILR) completion.

- The Information Authority has clarified the rules for ILR completion and both Agencies have strengthened their audit arrangements. Should an audit reveal that a provider has not been recording data in good faith, appropriate sanctions will be applied.

51. If a provider has any queries regarding data and submitting data they should contact the account manager (if appropriate) and/or the Data Service, Service Information Desk at servicedesk@thedata-service.org.uk

Minimum levels of performance: Ofsted

52. Ofsted will have access to all final MLP reports through the Provider Gateway.

Re-instatement of Employer-Responsive provision

53. Should an employer responsive funded provider wish to re-instate provision that was previously removed through MLP, it should provide evidence to the Skills Funding Agency of employer or learner demand and describe actions that it has taken to improve success rates for this provision. Account managers will assess the evidence presented to ensure that the interests of learners are protected. Following this assessment, all requests for reinstatement of publicly-funded provision will be subject to moderation. Organisations will be notified of the moderation outcome and the implications for public funding of the provision. In the event of learner transfer your account manager should be contacted.

Notices to Improve

54. The Agencies issue Notices to Improve to providers identified as underperforming, where:

- A college is in financial failure (inadequate financial health or inadequate financial management and control);
- A provider receives an Ofsted inspection judgement of 'inadequate' for 'Overall Effectiveness of provision'; or
- 15 per cent of more of short- and/or long-qualification learner-responsive provision that falls below the minimum levels.

Table 4 Communication of Notices to Improve by a single point of contact

Provider type	Overall Inadequate at Inspection	Minimum levels of performance	Financial health and financial management and control
FE colleges	Skills Funding Agency	Skills Funding Agency	Skills Funding Agency
Adult learning providers	Skills Funding Agency**	Skills Funding Agency	Not in scope
Sixth Form Colleges	YPLA	YPLA	YPLA
Private training providers	Skills Funding Agency* [improvement indicators set in accordance with the contract]*	Not in scope	Not in scope

* other than those solely funded by the YPLA – in many cases those solely funded by YPLA would be delivering Foundation Learning which is not in scope for MLP

** (see paragraphs 60 and 61, below)

55. Where the conditions on a Notice to Improve include the requirements of both Agencies, these will be jointly signed.

56. 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 public funds. The conditions take account of the local and regional context (or national context, in the case of some specialist providers for learners with learning difficulties and/or disabilities), particularly where there is a limited supply of alternative provision.

Financial health and/or financial management and control

57. A Notice that is triggered by 'inadequate' financial health will be issued within three months of receipt of the financial health returns. This allows sufficient time for the sponsor agency to perform the assessments and for moderation. A Notice triggered by 'inadequate' financial management and control will be issued four weeks after the final audit report has been sent to the provider. A Notice based on either financial health or financial management and control may be issued at any point after relevant information becomes available, if the sponsor agency determines that the provider is in financial failure.

Inspection

58. Where Ofsted inspection has identified underperforming provision (as defined in the contract or Financial Memorandum), the Agencies are committed to a fair and comparable approach across providers. In the case of Colleges a Notice to Improve is usually issued; for other providers, the Skills Funding Agency will usually set out a number of improvement indicators, as specified in paragraph 8.4.1 of Schedule 3 of the contract for services (or paragraph 8.5.1 of the Conditions of Funding for public bodies).

59. A Notice to Improve that is the result of an inspection outcome of 'Overall Effectiveness' Grade 4 will be issued within 10 working days of publication of the inspection report on the Ofsted website. Where there is a joint interest in the provider the Notice will be jointly signed; responsibility for issuing the Notice will rest with the relevant sponsor agency, and the conditions will reflect the concerns of both agencies where appropriate. The period of the Notice will begin 12 weeks after the issue date, rather than from the date of the inspection. The college will have the period up to re-inspection in which to meet the conditions of the Notice to Improve. The conditions will seek to address the weaknesses identified within the inspection report. Similar timescales and conditions will usually apply to the improvement indicators issued to non-college providers.

60. The contract or funding agreement between the relevant Agency and the provider is the primary lever for action in the case of inadequate inspection outcomes (in whole or in part). In the event of an inadequate inspection judgement this will be defined as significant failure. In such circumstances the Agencies may elect to use their contract clauses (outlined in Section 8, Raising Standards, of Schedule 3 of the Contract, or Section 5, Raising Standards, of the Financial Memorandum for Colleges). In addition, the YPLA may suspend automatic entitlement to the lagged learner number funding allocation approach.

61. Compliance in this context is improvement at re-inspection. If, on re-inspection, Ofsted judges a college or provider to be overall 'inadequate' in

whole or part for a second time, that provider will have failed the basic condition of its Notice to Improve. This will require swift and robust intervention, and strategic options will be pursued in line with the Agencies intervention policy.

Minimum levels of performance

62. A Notice to Improve triggered by an analysis of 2009/10 success rates against the minimum levels will be issued for the 2011/12 academic year, and Notices to Improve will be issued in early spring 2011. Notices will be jointly signed by both agencies where appropriate. In addition, the YPLA may suspend automatic entitlement to the lagged learner number funding allocation approach.

Multiple triggers for a Notice to Improve

63. There are Notices to Improve for long and short qualifications, inspection, financial health, and financial management and control. It is, therefore, possible that a small number of Providers could be subject to more than one Notice to Improve.

64. In cases of multiple triggers, there will be separate Notices issued as the points for compliance might vary in each case. This recognises the fact that financial health, financial management and control, analysis against the minimum levels of performance and inspection all take place at different times and whilst the Skills Funding Agency may issue a notice to a GFEC, some or all of the conditions may have been specified by the YPLA (and vice versa in respect of Sixth Form Colleges).

Monitoring a Notice to Improve

65. After a Notice to Improve has been issued, the lead agency may contact LSIS in order to secure support for the provider. The provider will work with LSIS on improvement arrangements. The provider will develop an improvement plan to address underperformance. This must be shared with the sponsor Agency.

66. The LSIS Improvement Advisor Service (IAS) continues to provide support for those providers in receipt of a Notice to Improve. Further detail about the LSIS IAS is available at [here](#).

67. The provider will relate the plan to its own improvement plans and self-assessment reports.

68. Where multiple Notices to Improve have been issued, the various improvement plans should be brought together to form a comprehensive strategic plan.

69. At any point during a Notice period, Ofsted may be invited to undertake either an enhanced monitoring visit or a full inspection of that provider. The Ofsted report will be used to inform decisions about the need for further action. Ofsted will continue to monitor its own planned programme of inspections, including any monitoring visits to a provider that it has declared to be 'inadequate'.

Compliance and removal of a Notice to Improve

70. Compliance with a Notice that has been triggered by financial health and/or financial management and control is demonstrated when the detailed conditions outlined in that Notice has been met and the associated actions have been fully implemented.

71. Compliance with a Notice that has been triggered by inspection is demonstrated if, on re-inspection, Ofsted judges the provider to be 'satisfactory'. A judgement of 'inadequate' on re-inspection will mean that the provider has failed to meet the requirements of the Notice to Improve.

72. Compliance with a Notice that has been triggered by MLP is demonstrated if the provider has met the conditions laid out in the Notice and has reached the appropriate thresholds and/or milestones against which the Notice was issued, that Notice will be lifted.

73. It is acknowledged that a provider may be able to demonstrate, using its in year data, that it has met the conditions of a Notice to Improve that will apply to the following year. If the Agency or Agencies is/are satisfied that the necessary improvement has been demonstrated, the Notice may be lifted. This will occur at the close of the FE ILR – or earlier, if the provider concerned confirms, in writing, that no further data will be returned.

74. In all cases, the formal removal of a Notice to Improve will occur when the provider receives a letter from the lead agency for communications, signed by both agencies where appropriate, indicating that the Notice conditions have been met.

Failing to meet the conditions of a Notice to Improve

75. At the conclusion of any Notice to Improve, the majority of providers will have addressed the underperformance and the conditions laid down. However, there may be some providers where insufficient progress has been made and where the conditions of the Notice have not been met. These providers pose a significant risk to the quality of learners' experience, and to public funding.

76. Where it is evident that the provider is unlikely to fulfil the conditions of the Notice, the sponsor agency, within the Notice period (and usually after the Ofsted monitoring visit, if the Notice relates to inspection), will begin to consider and explore the strategic options available. This is to minimise any adverse impact on learners and employers.

77. If a provider fails to meet the conditions of a Notice that has been issued in relation to inspection or minimum levels, the sponsor agency may cease funding the underperforming provision.

78. Failing to meet the conditions of a Notice to Improve constitutes a breach of contract. In such circumstances the sponsor agency will consider action in line with the terms and conditions of the contract and/or the Agency's published Intervention policy.

Public communication of Notices to Improve

79. The lead agency for communications will inform BIS and DfE of providers that are in receipt of a Notice. Ministers reserve the right to draw this to the attention of constituency and boundary constituency MPs.

80. The sponsor agency informs provider representative bodies and local authority partners of those of its members that are under Notice for minimum levels of performance:

- AOC
- ALP
- ASCL
- 157 Group
- Horex
- LEAFA
- SFCF

81. The sponsor agency informs LSIS and Ofsted of Notices issued for minimum levels of performance.

82. While the Agencies do not publish Notices to Improve, if a specific request for information relating to a Notice is received under the Freedom of Information Act 2000, then, under the provisions of that Act, the sponsor agency may be required to disclose the Notice and the associated conditions.

Further Information

83. If you require any further information or clarity you should contact the Skills Funding Agency account manager or YPLA regional office.

