

# Education, Children's Services and Leisure Scrutiny Sub-Committee

Wednesday 16 January 2013

7.00 pm

Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1  
2QH

## Supplemental Agenda

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Date: 11 January 2013



# UNLEASHING GREATNESS

Getting the best from an academised system

The Report of the Academies Commission | January 2013

PEARSON

RSA

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## The Commission



*Commission Chair*

**Professor Christine Gilbert, CBE** was Her Majesty's Chief Inspector, Education, Children's Services and Skills, at Ofsted from 2006 until 2011. Prior to this, Christine was Chief Executive of the London Borough of Tower Hamlets. She joined the Council in 1997 as Corporate Director, Education, having been Director of Education in the London Borough of Harrow. Christine spent 18 years teaching in schools, eight of them as a secondary school headteacher.

Currently, Christine is Visiting Professor of Education at the Institute of Education. She is also undertaking a number of local and national education projects.



*Commissioner*

**Professor Chris Husbands** took up the post of Director of the Institute of Education in 2011. He began his career teaching History in comprehensive schools and was a senior manager in schools before entering higher education. He was Professor of Education and Director of the Institute of Education at the University of Warwick, Dean of Education and Lifelong Learning at the University of East Anglia and Professor of Education at the IOE. He was elected to the Academy of Learned Societies for the Social Sciences (AcSS) in 2012.



*Commissioner*

**Brett Wigdortz** has been CEO of Teach First since its launch in 2002, having written the original business plan for the charity while working as a management consultant at McKinsey & Company. Previously he has worked as a consultant, a journalist and researcher.

Originally from New Jersey he has a bachelor's degree in economics from the University of Richmond and a master's degree in economics from the University of Hawai'i. He currently serves as a trustee of PEAS and Future Leaders. He is also the co-founder, trustee and strategy adviser to Teach For All. His book *Success Against The Odds*, a candid account of the first 10 years of Teach First, was published in September 2012.



*Commission Director*

**Professor Becky Francis** is Director of the Commission. She is Director of the Pearson Think Tank, and Professor of Education and Social Justice at King's College London. She was previously Director of Education at the RSA, and Professor of Education at Roehampton University. Becky's policy research and analysis includes her recent influential work on 'Satisfactory' schools, in relation to social disadvantage; and she is best known for her academic work on gender and educational achievement.

## Foreword

The expansion of the academies programme under the Coalition government is dramatic. In May 2010 there were 203 academies and by November 2012 there were 2456. The scale and speed of change are huge and there could not be a more important time to explore the implications of this expansion. That is why the RSA and Pearson Think Tank established the Commission and why I was delighted to be invited to chair it.

I have been joined by two other commissioners: Professor Chris Husbands, Director of the Institute of Education, University of London, and Brett Wigdortz, Chief Executive of Teach First. Professor Becky Francis, of King's College London and Director of the Pearson Think Tank, has been the fourth member of the Commission's team.

The Commission was asked not only to consider the impact of the academies programme to date but also to anticipate what should happen when the majority of schools may be academies. We were clear from the outset that we would not engage in debates about the decision to develop the programme. During the seven months of the Commission's work, while we reviewed the academies landscape, we kept our sights focused on the future. We were more interested in ensuring that the academies programme delivers on its promise of a better education for every child. Our recommendations span both the present and the future: the present, a system that is becoming increasingly academised, in transition, perhaps, to a future in which all or the majority of schools are academies.

Witnesses to the Commission referred to the difficulties the Secretary of State would have in managing over 20,000 schools in England. If the Secretary of State has to manage any schools, the academies programme will have failed. Schools manage themselves – and never more so than when they become academies. However, there has to be enough support and challenge in the system, and enough checks and balances, for academies or groups of academies to be able to use the independence they have gained professionally and with moral purpose. In a successfully academised system, we will see schools supporting and learning from one another. They will operate as a community of schools, each independent but working best if connected to the rest of the system.

The ambition and pace of the government's academies programme cannot be doubted. Any business expanding at this rapid rate, however, would want to reassure itself that expansion was occurring in the most effective way. The Commission's report seeks to test this. We hope its recommendations will be used to support further implementation.



**Christine Gilbert**  
Commission Chair

## Overview and recommendations

*The Commission strongly supports the aspirational vision that lies behind the academies programme*

*There have been some stunning successes among individual sponsored academies and academy chains, and these have raised expectations of what can be achieved even in the most deprived areas. But it is increasingly clear that academy status alone is not a panacea for improvement*

We are seeing radical change in the English education system. Over half of all secondary schools and a growing number of primary and special schools have become academies, or are in the pipe-line to become one. Free Schools, University Technical Colleges (UTCs) and Studio Schools are emerging; these are also academies. This is a new educational landscape and it has developed with astonishing speed.

The Commission strongly supports the aspirational vision that lies behind the academies programme. This was set up to address entrenched failure in schools with low performance, most particularly, schools located in the most disadvantaged parts of the country. The vision is of autonomy-driven improvement rooted in expectations of excellence, supported by outstanding leadership and governance. In removing academies from the control of local authorities, the expectation is that these schools use greater freedom and independence to lead and manage more effectively and more innovatively so that pupil outcomes improve. The Commission was not tasked to revisit the policy decisions to create and develop the academies programme, but rather to explore a future with a significantly or wholly academised system.

The introduction of academies has provided much-needed vitality to the school system. At the same time, the evidence considered by the Commission does not suggest that improvement across all academies has been strong enough to transform the life chances of children from the poorest families. There have been some stunning successes among individual sponsored academies and academy chains, and these have raised expectations of what can be achieved even in the most deprived areas. But it is increasingly clear that academy status alone is not a panacea for improvement. While inspiring cases abound, and there are signs of a trend of longer term improvement among sponsored academies, the recent report from the National Audit Office (2012) highlights that Ofsted has judged almost half of all sponsored academies as inadequate or satisfactory (the latter is now defined as ‘requiring improvement’). International evidence of the impact of similar systems continues to present a mixed picture.

The evidence considered by the Commission has left it convinced that there now needs to be a new, determined focus on the detailed implementation of the academies programme to ensure that it realises its transformative potential.

In particular, the Commission has recognised **three imperatives for the further development of the academies programme**. These imperatives are not new to the education system but they need to become a more central feature of the academies programme, so it is able to fulfil its promise of a better education for every child. They are:

- to ensure that there is a **forensic focus on teaching and its impact on pupils’ learning** so that the gap between the vision for academies and practice in classrooms is reduced and the words ‘academisation’ and ‘improvement’ become inextricably and demonstrably linked



- to ensure that an increasingly academised system is fair and equally accessible to children and young people from all backgrounds
- to ensure that academies demonstrate their moral purpose and professionalism by providing greater accountability to pupils, parents and other stakeholders. The role of governors is more important than ever in an academised system, and their scrutiny and challenge should ensure effective accountability.

The Commission's overarching conclusion is that if these imperatives are addressed, it is far more likely that the rapid rise in the number of academies will bring about genuine, systemic transformation. Transformational change in thousands of classrooms needs to be the focus of this next phase of the academies programme, with the goal of establishing a school system that serves all children and young people better than they have been served in the past.

*The Commission believes that a fully academised system is best seen as a community of schools, each independent but working best if connected to the rest of the system*

### **A forensic focus on both teaching and learning**

At the heart of improvement in either an increasingly academised system or, indeed, a fully academised system, sits the development of good teaching and learning. This dominates the thinking, planning and actions of the most successful academies and academy groups we saw – but far from all. This insight about the importance of teaching and learning is not novel but there are gains to be had from linking it more tightly to academisation.

The Commission believes that a fully academised system is best seen as a community of schools, each independent but working best if connected to the rest of the system. These schools would work with one another to accelerate school improvement, in particular the quality of teaching and its impact on learning and the achievements of children and young people. Collaboration across this national community of schools should enable a balance to be struck between independence and interdependence, with the clear aim of serving children and young people well.

Throughout this report, the Commission uses the DfE definition of academies as publicly funded independent schools. In practice, this description now means very different things, although all academies share a governance model that increases their independence from local authorities and creates a stronger link to the Secretary of State. Academies now range from the first early sponsored academies, set up to replace failing schools in poor areas and highly resourced strategic investments in change, to those established from 2010 as a result of the Coalition government's decisions to encourage good and outstanding schools to convert to academy status and to extend the sponsored academy programme into primary schools. Many of the good and outstanding schools that converted since 2010 have become standalone academies. Not all these 'converter academies' are fulfilling their commitment to supporting other schools to improve. This is significant given that they already represent over three quarters of all academies. So, in an academised system, where will capacity and support for improvement be found? This report argues for a new phase of academy development, described in Chapter 2 as *Academies Mark IV*, to provide such support for improvement.

Schools work in a competitive environment and have done so for many years. It is not contradictory to argue for more powerful and effective collaboration to sit side by side with this. While there is a tension between collaboration and competition, it can also be an energising one.

**The evidence considered by the Commission suggests a more intensive drive to develop professional connections, collaborative activity and learning – both within and across schools – will generate fundamental change across the school system.** This is a model of autonomous schools working in partnership to improve teaching and learning for them all. It is a model that not only shares and improves practice across the system but also has the potential for creating new and innovative practice. This represents a cultural shift. It is already underway but needing more momentum through a much tighter link with the process of academisation.

In an education system of autonomous and independent schools, there are real benefits to be gained from the government itself linking improvement through collaboration more systematically to the implementation of the academy programme. The Secretary of State has already made clear his commitment to a school-led approach to improvement in *The Importance of Teaching: the schools White Paper, 2010*. His commitment includes promoting a range of initiatives such as academy chains, Teaching Schools, the expansion of Teach First, National Leaders of Governance, an increase in the numbers of National Leaders of Education, the sponsorship of weak schools by strong schools and the conversion of groups of primary schools to academy status together. To continue this school-led improvement drive would require, for example, **all converter academies to meet the expectations for collaboration and school support set out in their applications to convert.**

**To further enable this cultural shift, the Commission feels that Ofsted should not judge a school to be ‘outstanding’ for leadership unless it can provide evidence of its contribution to system-wide improvement, such as support for the improvement of another school.**

The evidence considered by the Commission emphasised the importance of school leaders themselves keeping a sharp focus on education and learning within and across schools and on ensuring adequate professional development. It also emphasised the importance of teacher development linked closely to a culture of classroom observation and peer learning. **The Commission believes this would be well supported in Academies Mark IV by the establishment of an independent Royal College of Teachers.** The College could help make the link between research and the classroom more explicit. Pump-primed by the DfE, but completely independent from it, the College should have the encouragement of school-to-school collaboration, including peer challenge and support, as one of its key objectives.

**The role of governors in an academised system is more important than ever and needs to receive greater attention.** Traditionally, governors have been strong in providing support for the leadership of their school but, with the increased autonomy and independence of academies, scrutiny and challenge by governors become critical. **The Commission’s evidence-gathering suggests there needs to be a radical shift in their capacity, knowledge and attitude if they are to take on both the leadership role expected in an academised system and fulfil their legal responsibilities**

*The role of governors in an academised system is more important than ever and needs to receive greater attention*



as directors of charitable companies. The agreement between an academy trust and the Secretary of State assumes a key role for the governors in school improvement; this can be well supported by working with governors from other schools.

The Commission recognises, in particular, that the knowledge, calibre and independence of the Chairs of school governing bodies are extremely important to school improvement and take on a new significance in an academised system. **The Commission believes that the recruitment of Chairs needs to be far more professional and rigorous. Chairs' posts should be advertised, as is widely the case with other public sector Board roles, and schools should be expected to have at least one independent person on the selection panel for a new Chair.** In addition, any new Chair should be expected to undertake formal training within six months of being appointed.

*Schools themselves increasingly need to take on the provision of school improvement services to other schools*

Given the speed of academisation, the traditional role of the local authority has changed but there is still a lack of clarity about any new one. The government needs to consider this urgently as part of its implementation of academisation. **The Commission believes that local authorities should hold the lead responsibility for planning and commissioning sufficient school places to meet local need.** The Commission heard that the role of local authorities in this is far from clear. Local authorities should also embrace a stronger role in education – not as providers of school improvement services but as guardians and champions of the needs and interests of all children in the area. **The Commission believes that over a period of three years, local authorities should phase out all their own provision of school improvement services and devolve them to school-led partnerships.**

**Schools themselves increasingly need to take on the provision of school improvement services to other schools.** The Commission received evidence from a number of active school-led partnerships which are having demonstrable impact. **Academies must be clear where they can find support when they need it. The Commission therefore encourages the government to consider a more systematic approach to this as part of its implementation of academisation.** There is considerable interest in school-led improvement networks – sometimes involving other private, public or third sector partners. These would not seek to replicate what was available locally, for example, through teaching school alliances, but would raise awareness of what was available and broker connections. The Commission believes that the professional associations and teaching unions would have much to contribute to the design and delivery of such networks. They are uniquely placed to help improve and develop schools and, in doing so, to ensure academisation and improvement are inextricably linked.

### **Ensuring fairness and accessibility**

Evidence to the Commission illustrated the impressive commitment of many academies to social inclusion but this did not extend to all that we saw. The Commission views social segregation in the school system as a problem for equality of opportunity and to system improvement. It heard, for example, of some academies willing to take a 'low road' approach to school improvement by manipulating admissions rather than

by exercising strong leadership. It is vital, as academies begin to assert their independence more vigorously, that such practices are eradicated. Ensuring excellent teaching and school-to-school collaboration is the route to improve learning and raise achievement for all pupils, no matter what their background.

In addition, in this transitional period, as the education system becomes increasingly academised, there is a need to ensure a level playing field, one that does not favour one type of school over another. **Parity is particularly important in relation to funding and admissions, and in supporting fair access to all schools, particularly for children with special educational needs.**

The Secretary of State needs to develop a system for admissions that allows parents some independent recourse in terms of their relationship with an individual school, or each academy trust, acting as its own admissions authority. This is particularly important in terms of appeals. **The Commission therefore believes that academies and maintained schools should be placed on a common footing regarding admissions and should operate within a framework of open and fair compliance.**

**The Commission urges the Secretary of State to identify the organisation best placed to provide an independent appeals service for disputes over individual cases relating to admissions.** Such a service should be instigated and run in a quasi-judicial manner.

**In the interests of demonstrating fairness and accessibility, the Commission believes that each academy should publish comprehensive data, including socio-economic data, about who applies to it and who is admitted.** This should have the effect of providing moral impetus to schools to maintain or adopt inclusive practice. **The Commission suggests that these data should be aggregated and analysed by the Office of the Schools Adjudicator to identify any risks in terms of socio-economic segregation.**

### **Ensuring accountability to pupils, parents, and other stakeholders**

Academies that take professional learning seriously understand their accountabilities not only to parents and communities but also to pupils and use this to raise standards. The Commission was persuaded by the evidence it received that **the greater independence of academies means they have a greater responsibility for accounting to parents, other partners and local communities.** As the chief executive of a large academy chain argued:

‘If we want to retain our freedom to get ahead of our critics, we need to make sure as a sector that we build a reputation for being open and accountable.’

**Coles, 2012**

The Commission saw a number of examples where academies had actively engaged parents and communities, not only in detailed discussion about their children’s learning and achievement but also in contributing to their review and evaluation processes. These academies considered parents and families to be key partners in education.

However, the Commission also received evidence indicating that academies were not always sufficiently responsive to parents as partners.

Some parents told the Commission that they felt their views and involvement in the school were no longer valued once it had assumed academy status. **In a fully academised system, as part of each school's moral and professional accountabilities, the importance of parents and pupils needs to be recognised explicitly. All academies need to find innovative ways to understand and talk to parents, including those who appear not to want to be engaged.**

**To support good accountability to parents and the local community, the Commission believes there should be regular and formal reporting. At academy trust level, this might be in the form of an annual report underpinned with an open forum, held either in public or online, encouraging broader discussion.**

The Commission believes high standards of transparency and accountability should apply to academy chains as much as to academies themselves. This is particularly important to facilitate the more vibrant entry into and exit from the education market by sponsors that the Government would like to see.

To this end the Commission believes that the practice for appointing sponsors, commonly known as the 'beauty parade', should be ended and the DfE should design a selection process that is open, fair, rigorous and supported by clear criteria. The Commission feels that funding agreements for sponsorship should be reduced from seven to five years. It also suggests that the Office of the Schools Commissioner should be charged with producing an annual report which includes some comparison of the performance of sponsors.

## **Recommendations**

The education system in England has undergone almost continual change in the post-war period. Academisation is one of the most significant structural transformations and such large-scale change requires detailed attention to implementation if real and lasting improvement in pupils' learning and achievement is to be achieved. If we have learned anything about change over the past thirty years, it is that improvement is likely to be both accelerated and sustained if there is broad ownership at local, school and classroom level.

The recommendations that follow are designed to support implementation and deepen transformation so that all children and young people experience the benefits of academisation.

**The Commission's recommendations**, in response to the evidence it considered, vary from the broad to the more detailed. Substantial recommendations are highlighted below. They reflect the questions posed by the Commission in its call for evidence in May 2012. These concerned:

- levers and barriers to school improvement within a totally academised system and securing achievement for all pupils within this
- academies' use of their freedoms
- the implications of an academised system on admissions
- the impact of diversification and mass academisation on existing academies and schools
- governance, accountability and due diligence.

Additional, often more technical, recommendations are outlined in the chapters themselves.

### Key recommendations: school improvement

*The government needs to support academisation with a detailed implementation plan, linking it more closely to the acceleration of school improvement and, in particular, the quality of teaching and learning*

- The government needs to support academisation with a detailed implementation plan, linking it more closely to the acceleration of school improvement and, in particular, the quality of teaching and learning.
- More academies should recognise the value of establishing a collaborative culture, both within and across schools, which recognises the importance of professional development focused on practice in classrooms and of learning in context, and resource it accordingly.
- Academies, in particular their governing bodies, should take greater ownership of accountability, thereby making themselves more open and transparent, by acknowledging the importance of teachers' individual and collective accountability, and by ensuring pupils, parents and the local community play an active part in school review and development planning.
- Ofsted should support a school-led, collaborative approach to systemic improvement by recognising the importance of collaborative development as well as individual excellence. It could do this by:
  - judging school leadership outstanding only if a contribution to system-wide improvement can be evidenced
  - reducing inspection if inspectors' quality assurance of a school's self-evaluation demonstrates it is sound and underpinned by rigorous, external peer review.
- The DfE should invite the National College to trial a number of licensed, school-led excellence networks, in particular regions of the country, designed to develop capacity and ensure support for all schools that need it.
- Both local and central government should encourage the federation of primary schools without an immediate emphasis on academy status.

### Key recommendations: academy freedoms

- The government should articulate the case for innovation and a vision for learning in the twenty-first century that draws on a full understanding of the knowledge, skills and dispositions that young people will need for life and work.
- The DfE should pump-prime the establishment of a Royal College of Teachers that would be independent from, but work with the government, to promote teachers' professional development, provide evidence to inform education policy, align practice and research and promote peer-to-peer collaboration.
- Teachers should be expected to engage with research as an integral part of their daily work, and providers of initial teacher

education should encourage trainees to see the links between the latest research and the improvement of classroom practice. Providers should also ensure reflection and evaluation are developed as part of the repertoire of good teaching skills.

### **Key recommendations: admissions**

- The Secretary of State should identify an organisation that is well-placed to provide an independent appeals service, to be instigated and run in a quasi-judicial manner.
- The Chief Schools Adjudicator should hear and determine all appeals against directions, and complaints against variations and derogations from the School Admissions Code.
- The Local Government Ombudsman's powers should be extended to hear complaints concerning the maladministration of admissions and admissions appeals of *all* admissions authorities.
- The DfE should require all schools and academies to publish data on applications and acceptances for school places in relation to free schools meals (or other socio-economic data). These data should be scrutinised and reported on by the Office of the Schools Adjudicator with a particular focus on identifying any growing risk of socio-economic segregation.

### **Key recommendations: the impact of academisation on local provision**

- Local authorities should embrace a new role in education, not as providers of schools or school improvement services, but as champions for children. This would mean articulating a local and aspirational vision for education. As champions for children, the local authority would capture local knowledge and intelligence by undertaking some scrutiny of education provision to ensure it is meeting the needs and interests of children and young people in the area.
- As champions for the needs of local children in an academised system, local authorities should report annually to the Secretary of State on the quality of local provision so he receives early warning of any emerging issues and addresses these through his relationships with academy trusts.
- The government should set out a coherent framework for the planning and commissioning of school places. This should acknowledge and clarify the primacy of the local authority as the lead body responsible for planning and commissioning sufficient school places to meet local need.
- Individual academies and groups of academies should embrace a new relationship with local authorities to ensure they all contribute to local planning, review and development that support both sufficiency and quality, and the needs of all children.

*The DfE should act to increase understanding of the pivotal role of governors in an academised system*

### **Key recommendations: school governance**

- The DfE should act to increase understanding of the pivotal role of governors in an academised system. This should include a focus on their responsibilities not only as company directors of charitable companies but also for wider system improvement.
- Using the National College, the DfE should take steps to support the capacity of governing bodies, and in particular the quality of the Chair.
- Schools should advertise the appointment of new Chairs as part of an open recruitment approach and involve at least one independent person in the appointment process.
- Using the National College, the government should find more ways to increase school-to-school collaboration across governing bodies, to encourage capacity-building through development and training, and to secure better value for money through shared procurement.
- To encourage engagement and to support local accountability, academy trusts should publish an annual report and provide a forum for its open discussion with stakeholders.

### **Key recommendations: central government**

- The DfE should provide a clearer structure for enabling entry into and exit from the education market, including:
  - ending the practice for appointing sponsors, commonly known as the ‘beauty parade’. The DfE should ensure that the selection of sponsors is open, fair and rigorous, and supported by clear criteria
  - continuing to develop and make publicly accessible its monitoring of performance across different chains, and sharpening its role in intervention
  - charging the Office of the Schools Commissioner with producing an annual report on the comparative performance of sponsors
  - reducing funding agreements for sponsorship from seven years to five
  - intervening to terminate funding agreements (sponsor removal) on the basis of data shared with and recommendations from the local authority.
- The DfE should take steps to hold converter academies to account for their commitment in their application for academy status to give support to the improvement of other schools.
- Using the Education Funding Agency, the DfE should continue to tighten systems of financial accountability and transparency, ensuring there is capacity for a proportion of routine visits to schools to be undertaken and for investigation of compliance in order to deter bad practice.





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# 1. Background

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This chapter explains the purpose and remit of the Commission, and the methodology underpinning this report. It sets out the limitations of the Commission, including noting the areas not covered – or not covered in depth – and clarifies the terminology used in the report.

## The Commission's remit

Good schools are vital for our individual and collective well-being and prosperity, and for the foundation of a fair and cohesive society. Strong schooling enables us to cope with the uncertainties of life, develop our potential, and extend our opportunities. Good schools also work to correct inequalities and to advance other shared social and economic objectives.

The Academies Commission is the first significant inquiry into whether the increasing academisation of our schools advances these goals. This Commission follows the rapid increase in the number of schools that have become academies.

The RSA and the Pearson Think Tank set up the Commission, collaborating to design, establish and resource it. The Commission has also been supported by the sponsorship of the CfBT Education Trust and The Co-operative.

The Commission posed two principal questions:

- *What are the implications of complete academisation for school improvement and pupils' attainment?*
- *How can improvement and attainment best be secured within an academised system?*

The Commission's remit was to highlight emerging trends, risks, and related questions, concentrating on public interest and drawing, where relevant, on examples of similar systems and cases internationally, to inform analysis and make comparisons. Particular attention has been given to the key issues of **accountability** and **educational outcomes**, and how to advance school improvement in an academised system.

Rehearsing debates about the decision to develop the academies programme was not part of the remit; the Commission focused instead on the consequences of such a programme for children and young people and for the education system as a whole.

## The Commission's 'speed commission' methodology

The Commission's methodology has placed an important emphasis on evidence gathered from written submissions, expert witnesses and

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qualitative data. Appendix 1 provides a full list of the evidence gathered and the witnesses who provided it.

The ‘speed commission’ design constrained the commissioning of additional research. However, two small-scale surveys were carried out by Teach First with Teach First teachers and Teach First ambassadors; the latter comprise practising teachers and those who have previously been Teach First teachers. To ensure that the Commissioners heard evidence from specific individuals and groups, as well as from self-selecting witnesses contributing written evidence, the Commissioners invited witnesses to present evidence. The project team also collected evidence from focus groups and external meetings, including events convened by key stakeholder organisations.

The evidence comprised:

- 62 submissions of written evidence (28 from organisations and 34 from individuals)
- 64 witness statements
- two additional focus groups
- 18 additional meetings and workshops
- survey to Teach First ambassadors (43 survey respondents; plus telephone interviews with two ambassadors)
- survey to Teach First teachers (distributed at a Teach First practitioners event; 477 responses)

#### **The call for evidence**

In the main, the submissions received responded directly to the questions that the Commission posed in the call for written evidence (below):

The Commissioners are asking five questions that they feel need be considered within this enquiry. These are based on key issues, concerns and challenges emerging from a review of current research, experience on the ground, recent policy shifts as well as those on the horizon. These align with the Commission’s central focus on the implications of complete or near total academisation, and its emphasis on foresight:

1. What are the levers and barriers to school improvement within a totally academised system? How can achievement be secured for all pupils within such a system?
2. Research suggests that academies are not yet using their full freedoms. Why is this? And what are the likely implications when academies start to use these to their full extent?
3. What are the implications of an academised system on admissions?
4. What is the impact of diversification and mass academisation on existing academies and schools?
5. What are the key issues concerning governance, accountability and due diligence within an academised system?

## Background

### The current picture

The expansion of the original academies programme under the New Labour government had been gradual since the opening of the first ‘city academy’ in 2002. In May 2010 there were 203 academies. However, the speed of academisation since the Coalition government’s Education Act of 2010 has been astonishing. At the beginning of November 2012, when the Commission began work on this report, 2456 were open (with many more going through the process of academisation). Around half of maintained secondary schools in England are now academies, although this expansion is not uniform or universal across localities. Of these 2456, 536 are sponsored, meaning that over three quarters are ‘converter’ academies, that is, schools judged ‘outstanding’ or ‘good’ by Ofsted that have chosen to become academies. This is important to note, as much public commentary continues to focus exclusively on sponsored academies, albeit they now comprise only a small fraction of the total.

Academisation has had less impact on the primary sector. While take-up of academy status by secondary ‘converters’ since 2010 exceeded government expectations, take-up by primaries has been lower than anticipated by the DfE. Primary academies currently stand at 5% of all primary schools.

### Terminology: academies and chains

The term ‘academy’ takes in schools in different circumstances and with very different histories, as well as a proliferation of different models. These distinctions of history, function, form and status are as important as the single label ‘academy’ and are explored further in Chapter 2 and elsewhere. The Commission uses the term ‘academies’ in this report simply to describe publicly-funded independent schools. However, because of the many different types of state schools that are not academies – community schools, Voluntary Controlled schools, Voluntary Aided schools, Foundation schools and so on – it has been convenient to refer to this wider group of schools as ‘maintained schools’, and to academies as ‘academies’.

The term ‘headteacher’ or ‘executive headteacher’ is used to refer also to principals and executive principals; the term ‘pupils’ refers also to students in secondary schools.

It is useful to distinguish between the different sorts of academy which are referred to throughout this report, namely:

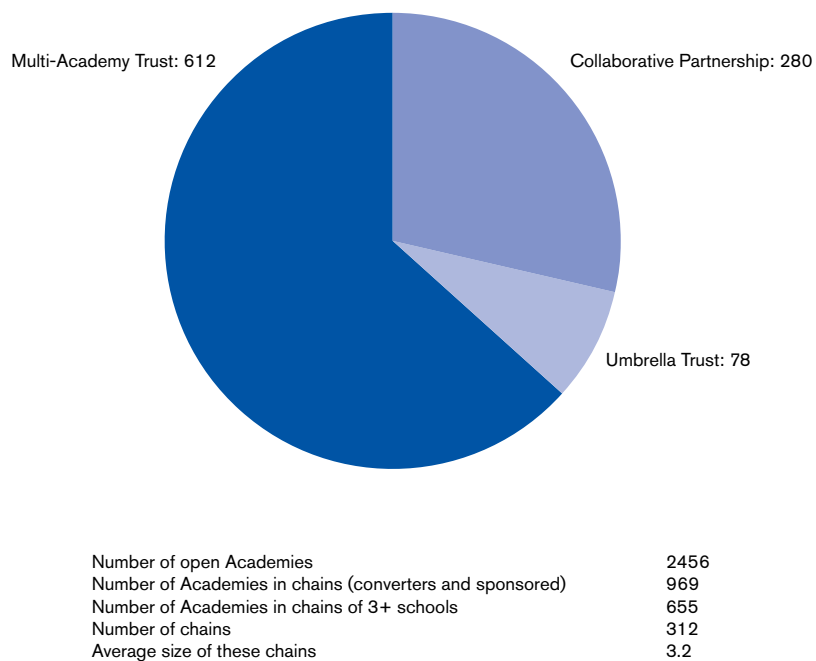
- *sponsored academies*
- *converter academies*
- *enforced sponsor academies*
- *Free Schools.*

The definitions of each are set out in Appendix 2.

The report also refers frequently to academy ‘chains’ – groups of schools. As at November 2012, there are 312 academy chains; this figure includes ‘collaborative partnerships’, where academies work together in an informal chain which may involve only ‘light touch’ collaboration (Figure 1). Thirty nine per cent of academies are in a chain but just 28% if ‘collaborative partnerships’ are excluded.

As with the word ‘academy,’ the definition of a ‘chain’ encompasses a wide range of groups of schools. Of sponsors that work with more than one academy, the majority sponsor just two or three (Hill *et al.*, 2012). At the beginning of January 2012, 91 chains had between two and nine sponsored academies in their chain, and only nine chains included 10 or more academies (Figure 2). Currently, the average size of a chain is 3.2 schools. In referring to chains in this report, we therefore mean simply all academy trusts set up as multi-academy trusts or umbrella trusts.

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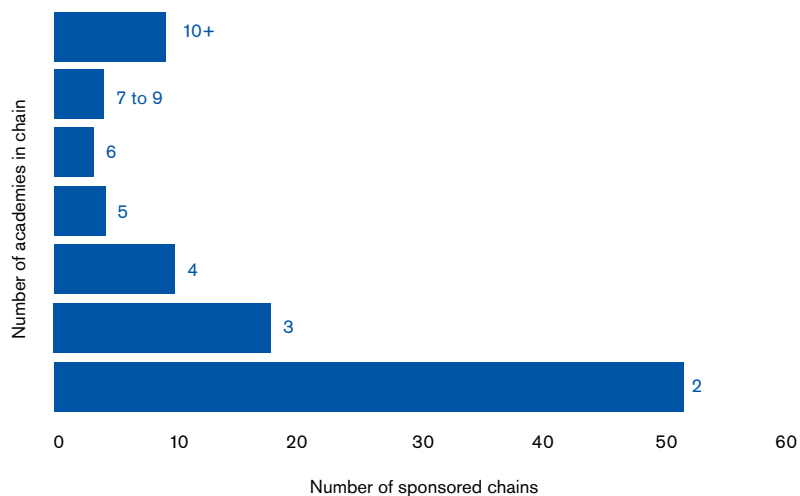
**Figure 1: Academy chains, as at November 2012**


\* Excludes 45 historic sponsored Academies that existed before the concept of Academy chains existed. Work is underway to identify chain types for these Academies.

\*\* Some Academies are in more than one chain (e.g. collaborative partnership with one Academy and a Multi-Academy Trust with another),

Source: unpublished DfE document, November 2012.

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**Figure 2: Number of sponsored academy chains by size of academy chain**


Source: Hill *et al.* (2012).



### **A note on limitations, and areas not addressed**

Although, technically, Free Schools are academies, they are distinct from converter and sponsored academies, both in their role and in the arrangements for their practice. They are newly created rather than existing schools.

The Coalition government sees Free Schools as contributing to its aim to drive systemic improvement through diversification and competition. When the Academies Commission began its work in May 2012, there were only 24 Free Schools. Despite the small number, Free Schools represent a controversial strand of the Academies programme and they raise distinct and complex questions. Given their status as new ‘start up’ schools, the Commission has not considered Free Schools in any depth; they are referred to only in passing in this report. However, in the light of their subsequent expansion – 55 additional Free Schools had opened by the time this report was being prepared for publication in November 2012, with a further 102 due to open from 2013 – and the particular questions they raise, the impact of Free Schools is a key area for further research. This is also true of University Technical Colleges and Studio Schools (which are also academies). Nevertheless, converter and sponsored academies (the focus of this report) together comprise 96% of all academies (EFA, 2012b).

A further limitation has been the stronger focus on secondary rather than primary schools. While much of the analysis in this report can be extended to both phases, the majority of the evidence submitted to the Commission related to secondary schools. At present, the primary sector remains largely non-academised and any movement towards academy status has been relatively slow.

The Commission is aware of the discrete issues facing primary schools. These may hinder the rate and speed of academisation and may also mean that recommendations applicable to the secondary sector in this report cannot be mapped simply onto primary schools. Chapter 2 discusses academies and the primary sector.



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## 2. Academisation and school improvement

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This chapter considers the implications for school improvement of an increasingly academised system. We have interpreted school improvement as a strategy for improving not only learning and outcomes for pupils but also school capacity and capability.

The evidence presented to the Commission indicates that academisation alone cannot be relied on for whole-system improvement. This chapter does not rehearse the key elements of school improvement that are well known and established but seeks to identify the core properties that are essential for systemic change through academies. These properties relate to establishing a school-led, self-improving system that builds professional connections, collaborative activity and learning across schools that are characterised otherwise by their autonomy and independence.

The Commission believes more needs to be done to:

- build a more powerful national vision for change
- strengthen professional ownership of accountability
- make school review in academies more open and inclusive of parents and the local community
- capture the power of collaboration for system change
- support schools in taking responsibility for whole-system improvement
- use Ofsted to support a school-led, collaborative approach to systemic improvement.

### The context

#### Evidence of impact

In considering the future of a substantially academised system, one of the major challenges for the Commission has been the changing nature of academies. The Commission has found it helpful to identify three models.

*Academies Mark I* were introduced by the Labour government in 2002 with the opening of three academies. The first city academy, Business Academy, Bexley, was one of a new generation of schools intended to transform performance in areas of profound social and educational challenge.

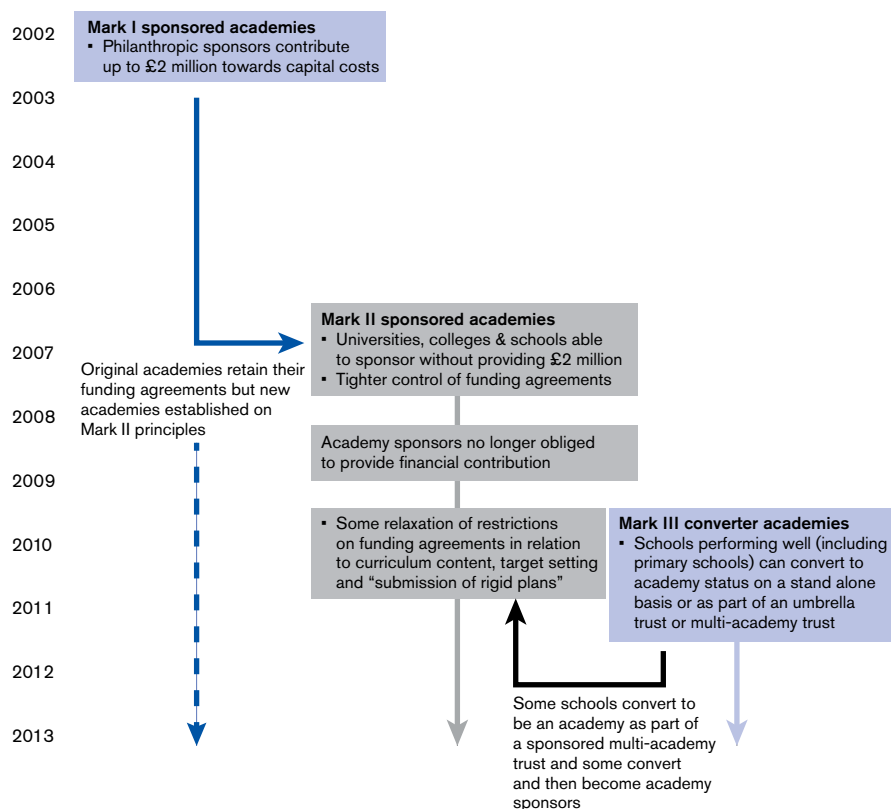
The model and mission were clear: the original and failing school was closed and a new school was opened, sponsored by a philanthropist or business partner, keen to make a difference to the lives of poor children

*Academies Mark I were introduced by the Labour government in 2002 with the opening of three academies*

and young people in deprived areas. The ambitious vision and business acumen of the sponsor were seen as key in establishing an ambitious new school, outside any governance by the local authority and in radically transformed buildings with highly paid headteachers. The new academies were considered strategic investments in change. They had start-up funds and freedoms to vary the curriculum, school year, staff pay and conditions of service.

Over the next eight years, the Labour government rolled out these academies across the country, seeking to transform educational outcomes for children and young people in weak schools. In the process the original model shifted to *Academies Mark II*. This model allowed organisations such as universities, charities and even some schools and local authorities themselves to act as sponsors. Start-up funding was abolished, more conditions were specified in academy funding agreements and few academies had as much investment in their buildings as the original ones. By May 2010, 203 of these *Academies Mark I and II* were open and another 60 or so were planned.

**Figure 3: Timeline of the development of Academies Marks I, II and III**



Source: Academies Commission.

Considerable debate has taken place about whether academies have been successful in driving improvement and improving outcomes for pupils. The Commission considered a range of evidence about the impact of *Academies Mark I and II*. Certainly some, including the widely cited Mossbourne Academy in Hackney, have demonstrated stunning success, but this is not common. Indeed, Stewart (2012) suggests that many previously poorly performing schools in disadvantaged areas have done just as well as those which embarked on the academy route.

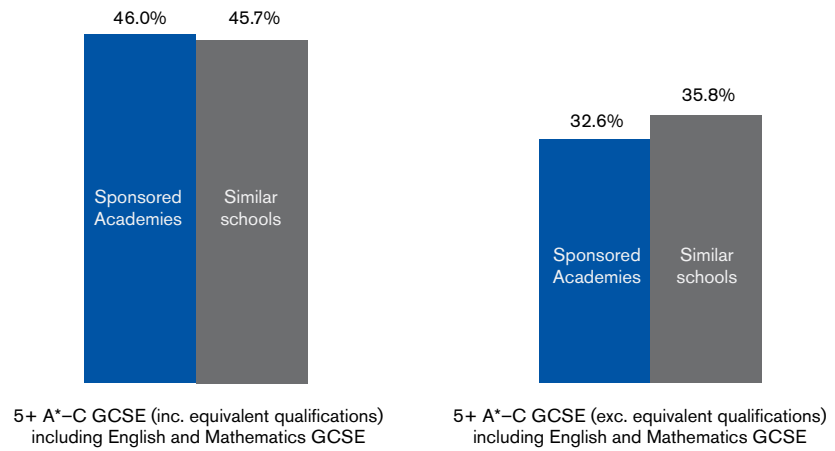
Several evaluations of *Academies Mark I and II* have shown some modest improvement in pupil performance (PricewaterhouseCoopers (PwC), 2008; NAO, 2010). For example, PwC's five-year evaluation report found a higher percentage point increase in the GCSE results of academies compared to the national average, although it concluded that there was 'insufficient evidence to make a definitive judgement as a model for school improvement'. Of course, as these schools were typically the lowest performing, their percentage point increase was likely to be higher than that of better-performing schools. The NAO Report (2010) found significant improvements in the proportion of pupils achieving GCSE A\*–C grades and in attendance at school compared to a comparison group, but it also noted that Ofsted had judged some academies to be inadequate. A number of researchers (Curtis *et al.*, 2008; Wrigley, 2008; Machin and Veroit, 2011) caution that improvements in performance cannot be disentangled from the changing intake in these schools; they point to a decline in the proportion of disadvantaged pupils in some academies.

Machin and Veroit (2011) conclude that academies 'can deliver faster gains in GCSE performance than comparable schools'. They warn that benefits can take time to materialise and that further work was needed to explore the benefits and costs of academisation, both for individual academies and other schools.

The complexities of comparing the performance of even a small group of sponsored academies with other schools is reflected in the DfE's publication, *Attainment at Key Stage 4 by pupils in academies 2011* (DfE, 2012d). Results in 2011 for pupils in sponsored academies were broadly the same as in a group of similar, statistically matched, schools. However, if equivalence qualifications are excluded, results in sponsored academies were slightly lower than in a group of similar schools.

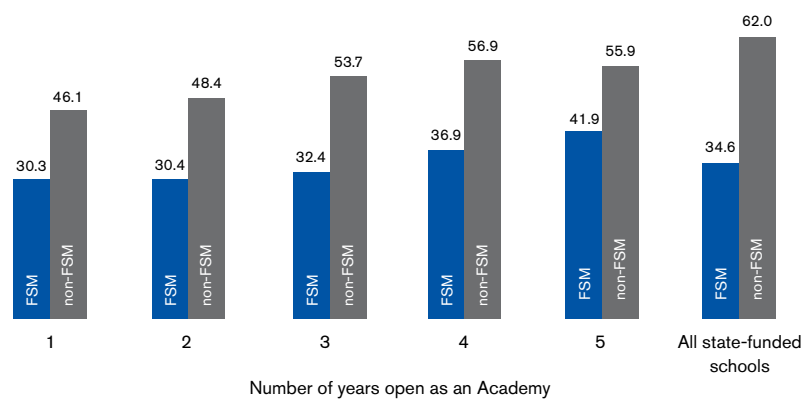
The clearest improvement in performance can be seen in a small group of 33 sponsored academies open for at least five years. Between 2006 and 2011, results in these academies improved at a faster rate than those of a group of comparator schools tracked over the same period. Attainment was higher the longer a sponsored academy had been open (Figure 5). Pupils' progress, as measured by value added, was on average greatest for those sponsored academies that had been open the longest. There was the positive finding too that pupils eligible for free school meals who were in academies that had been open the longest achieved higher results than similar pupils in other state-funded schools. The message here is that change takes time.

**Figure 4: Percentage of pupils in sponsored academies and in a group of similar schools that achieved 5+ A\*–C (including and excluding equivalent qualifications and including English and mathematics GCSE)**



Source: DfE Performance Tables, quoted in *Attainment at Key Stage 4 by pupils in Academies 2011* (DfE, 2012).

**Figure 5: Percentage of pupils in sponsored academies that achieved 5+ A\*–C (including equivalent qualifications and English and mathematics GCSE) by Free School Meals eligibility and number of years the school has been open as an academy**



Source: National Pupil Database, quoted in *Attainment at Key Stage 4 by pupils in Academies 2011* (DfE, 2012).



*The Commission believes that these early academies revitalised the system, including initiating a shift in culture, and that the debate about their impact is a healthy one*

The Commission accepts the evidence of some improvements in *Academies Mark I and II*, although believes, too, that the impact is variable and that, in terms of qualifications, there was considerable reliance on GCSE equivalence (Burgess and Allen, 2010). At the same time, the Commission also accepts the warning by Curtis *et al.* (2008) that ‘academies are in danger of being regarded by politicians as a panacea for a broad range of educational problems’.

Even with these early academies, the move to academy status itself was not an automatic route to school improvement. Hutchings *et al.* (2012) conclude that many sponsored academies did not have effective school improvement strategies between 2008 and 2011. Her research indicates that ‘the only sponsored academies that improved more than non-academies in the same quintiles of attainment were those that had already benefited from City Challenge improvement strategies’.

The Commission believes that these early academies revitalised the system, including initiating a shift in culture, and that the debate about their impact is a healthy one. Some of them showed just how much could be achieved with high aspirations, determination that young people would achieve well, and a rigorous and consistent approach to school improvement. They raised expectations locally and stimulated competition that led to better outcomes for pupils in the area.

*Academies Mark III* (see Figure 3) were introduced after the 2010 general election. At this point, academy status was opened to all schools that Ofsted had judged to be outstanding, and to some judged to be ‘performing well’, on a single vote by the governing body. Because such schools typically contain lower proportions of disadvantaged pupils (Francis, 2011), academies now have significantly lower percentages of pupils eligible for free school meals (FSM) and significantly better attainment at GCSE level. There are, therefore, problems in looking to the academy programme before 2010 to learn lessons for the future. Machin, in particular, has openly criticised the way his work has been used to validate the current academies programme. Machin (2012) warns that:

‘... it may be, in due course, that these new academies do deliver performance improvements. But we know nothing of this yet, and translating the evidence from the old programme over to the new, without appropriate reservations about whether the findings can be generalised, is, at the moment, a step too far.’

### **The new context – and Academies Mark III**

Several different types of academies now cluster under the *Mark III* umbrella:

- a. sponsored academies that follow a model somewhere between *Mark I* and *Mark II*. Funding agreement requirements have been relaxed. As explained in Chapter 4, one of the first acts of the new Coalition government was to restore ‘autonomy and freedoms’ for academies that it considered had been eroded since 2007. It removed requirements, which it described as having been ‘shoe-horned’ into the model academy funding agreement,

including ‘unnecessary central prescription about curriculum and qualifications, target-setting and the production of rigid plans’ (DfE, 2010).

- b. free standing converter academies that are either ‘outstanding’ or ‘performing well’
- c. schools that have converted to academy status and joined a chain of schools – either because the DfE has used this route to avoid the protracted process for closing and opening a school, or because a school has jumped into the arms of a sponsored chain before being pushed, or because of a wish to work with other schools through association with a particular chain.
- d. schools that have converted to academy status but, as part of the conversion process, are required to work with or be supported by another school because they are not performing sufficiently well on their own
- e. schools that have converted as a federation and form a multi-academy trust
- f. schools that have converted, either individually or as a group, and join an umbrella trust, typically a faith grouping, where schools have an individual funding agreement with the Secretary of State but one, or more, of their trustees is nominated by a central charitable body, such as a diocese
- g. schools that have converted to academy status individually but have agreed to work with others in a soft partnership or collaboration.

As at November 2012, there were 536 sponsored academies. These were academies set up pre- and post-2012 that had been targeted as needing improvement and were being sponsored by another school, individual or organisation, with the agreement to do so set out in a funding agreement with the DfE. The Commission heard from a number of schools, many of which (but not all) had below-average attainment levels, who felt forced by the DfE into becoming a sponsored academy. Nevertheless, the rationale for becoming a sponsored academy remains transformational improvement.

A key concern of the Commission about sponsored *Academies Mark III* is that the centralised process for selecting sponsors and driving change is no longer rigorous. The Commission heard much critical evidence. This lack of focus is exemplified by the ‘beauty parades’ which currently allow weak schools to choose their own partners as sponsors, although the Secretary of State retains the right to make the final decision, as he did in the case of Downhills Primary School in the London Borough of Haringey. This is explored more fully in Chapter 7.

At the same date in November 2012, there were 1920 converter academies. These schools already have above-average results and, in the secondary sector, score higher on the EBacc measure than other schools. In 2011, 77.1% of their pupils achieved 5+ A\*–C GCSE, including English and mathematics, compared to 58.2% pupils across all state-funded schools (DfE, 2012a). They have fewer pupils eligible for free school meals and fewer Black and minority ethnic pupils than the national average.

The government’s message to these schools is not one of transformational improvement. Instead, they are asked to keep doing

what they were doing, including improving, and they enjoy greater freedom and resources as independent academies. As Francis (2012) suggests, the risk of complacency slowing improvement is stark, particularly now that Ofsted no longer has a statutory duty to undertake routine inspection of outstanding schools. To be fair, the government expected converter academies to play a key role in supporting other schools, even acting as sponsors themselves; this is set out as a clear expectation by the DfE, and commitments to such activities have to be specified by schools in their applications for academy conversion. The evidence before the Commission suggests relatively few have taken on the supportive roles expected. Some schools told the Commission that the pressure in terms of public accountability to achieve good results and good judgements from Ofsted prevented them from taking on the accountability and responsibilities associated with sponsorship.

A number of converter academies reported keen local competition from other schools and indicated that they did not want collaboration with and support for other schools to divert them from individual success. The headteacher of a highly successful school in an Outer London Borough told a Commissioner that he saw his main competition as coming from independent schools in the area and that this stopped him from spending time supporting other schools.

The Commission saw positive indications of support and greater collaboration emerging from a number of converter models:

- schools converting in groups and supporting each other through ‘soft’, but still useful, school improvement partnerships
- some schools converting as part of an umbrella trust, such as faith schools in a diocese. Each academy retains its independence but schools share common values and there is potential for collaborative activity
- some converters converting as part of a hard federation, a multi-academy trust, such as a secondary school and some of its primary schools
- the emergence of more school-led chains. The government is now strongly encouraging high-performing schools to become sponsors. 74 converter academies, or 3.85% of the 1,920 converter total, are now acting in this way and we are seeing the growth of new school-led chains such as the Park Federation or Altrincham Grammar School for Girls
- primary schools converting as a cluster to support one another.

The learning from *Academies Mark I and II* is that to engender real change the move to academy status has to be supported by a rigorous and coherent approach to school improvement. The converter academies from *Academies Mark III* have huge potential to be at the vanguard of a school-led model of school improvement and more incentives need to be found to encourage this.

The Commission heard evidence that the headteachers of converter academies prized their autonomy and independence. However, as the OECD (Pont *et al.*, 2008) suggests, at least two conditions are necessary for autonomy to result in beneficial impact: leaders must be focused on

education and learning and adequate professional support is needed, including effective training and development. Each converter academy needs to articulate and implement an approach to school improvement that will ensure school capacity improves and pupils' progress is accelerated.

### Case study: The Park Federation

#### A primary multi-academy trust and a school led chain

In 2009, the head of Cranford Park Primary school, a large and ethnically diverse primary school in the London Borough of Hillingdon, was asked by the local authority to start supporting another nearby large primary school that had been given a 'notice to improve' by Ofsted. Along with other leaders and staff at the school, the head, Martin Young, a National Leader of Education, worked with teachers at Wood End Park to introduce the systems and approaches that had made Cranford Park a very successful school. In November 2009, the governors of both schools agreed that the schools should become part of a single federation, with the head of Cranford Park becoming the Executive Head with overall responsibility for 1,500 pupils and more than 200 staff.

By summer 2010, Cranford Park had been assessed by Ofsted as outstanding and Wood End Park was improving fast and no longer classified as inadequate. Later that autumn, the federation started to provide support through a partnership agreement with a primary school in Slough (30 minutes down the road from Hillingdon) that had been placed in special measures.

In 2012, the governors and leaders of the federation carefully weighed the pros and cons of moving to academy status and, in September 2012, it became a multi-academy trust known as the Park Foundation.

The school in Slough, James Elliman, has also come out of special measures and is expected to join the academy trust early in 2013. The governors of the trust see the scope for expansion of the federation but are careful to apply due diligence before taking on each school improvement assignment.

### Looking forward

In an increasingly academised system, the Commission believes greater attention should be paid to identifying the distinct system features or 'properties' of school improvement. Levin (2012) argues that the most successful countries give more attention to system properties than they do to autonomy for individual schools. As Glatter's evidence (2012) to the Commission suggests, autonomy needs to be set within a clear framework and a strong infrastructure of support if school improvement is to be accelerated (see also Hutchings *et al.*, 2012).

The Commission considers academisation should be used to inject new energy into school improvement to effect more fundamental change across the whole system. It therefore makes **six recommendations** that should lead to accelerated and sustainable improvement in an increasingly academised system:

- Build a more powerful national vision for change.
- Strengthen professional ownership of accountability.
- Make school review in academies more open and inclusive of parents and the local community.
- Capture the power of collaboration for system change.
- Support schools in taking responsibility for whole-system improvement.

- Use Ofsted to support a school-led, collaborative approach to systemic improvement.

These recommendations are discussed below.

### **Recommendation: Build a more powerful national vision for change**

*Two pupils in every ten still leave primary schools without the literacy skills they will need to thrive in secondary schools*

The academies programme originates in the goal of transforming the lives of children and young people who are growing up in the poorest parts of the country. A number of academies are succeeding in doing this but not in sufficient numbers to ensure all pupils get a good deal from the education system in England.

David Albury, the Director of the Innovation Unit and Design and Development Director for the Global Education Leaders' Program, told the Commission:

'International evidence and experience of innovation, reform and transformation in education and in other state sectors demonstrate the importance of establishing and widely communicating a powerful and compelling "case for change".'

Such a case for change should be rooted in an analysis of evidence but also in how the current education system continues to fail many young people. Two pupils in every ten still leave primary schools without the literacy skills they will need to thrive in secondary schools – let alone beyond. The gap between poor and rich children remains shockingly inequitable with just 34.6% of young people eligible for free school meals achieving five GCSEs at A\*–C, including English and mathematics, compared to 62% of those from wealthier backgrounds (DfE, 2012n). The Secretary of State should set the case for change within a vision of the knowledge, skills and dispositions young people will need for life and work in the twenty-first century.

A vision of such learning might be rooted in goals such as:

- developing the skills and motivation for genuine lifelong learning, ready access to knowledge and resources anywhere and anytime (Cisco Systems, Inc., 2010)
- collaborative as well as competitive working
- use of new technologies to increase possibilities for learning outside classroom settings
- performance-based assessment.

It would then be left to schools to use their freedom to create learning experiences locally that engage and educate all their pupils.

### **Recommendation: Strengthen professional ownership of accountability**

The autonomy of English schools is not matched by that of many other countries, but schools in England also work within a strong framework of accountability that has been in place for over 20 years. The three core elements of national tests and examination results, published

performance tables and school inspection give parents information that enables them to make informed decisions about schools. The Commission heard considerable evidence that the current accountability framework inhibits change and innovation. Nevertheless, the Commission is aware of the strong support from many parents for all three elements of it.

The national framework is a model based on performance and productivity, with accountability mainly to central government and the market. If a self-improving system is to work in support of independent state schools, a greater focus is needed on the moral and professional accountabilities of staff because these offer more leverage for change and innovation.

The Commission recognises the strong correlation between where an education system sits on the improvement continuum and the level of prescription. Systems at the poor end exercise tight control while good systems, as Mourshed *et al.* (2010) point out, provide ‘only loose, central guidelines for teaching and learning processes, in order to encourage peer-led creativity and innovation inside schools, the core driver for raising performance at this stage’. Such systems, to use Joel Klein’s phrase, ‘prescribe adequacy but unleash greatness’ (cited in Barber *et al.*, 2010).

Our centralised national accountability framework provides control; some would say it prescribes a basic adequacy. To achieve transformational improvement, however, schools need to be encouraged to move beyond these constraints. At school level, individual teachers’ moral and professional accountabilities are inextricably linked and felt most strongly in relation to the pupils they teach (Gilbert, 2012).

Good school leaders build on this so that these feelings become collective and an integral part of the thinking and practice of the school. In these schools, teachers see themselves as responsible for the quality of their teaching and its impact on pupils’ learning. They see learning from each other as a routine part of their work. They welcome opportunities to plan and work collaboratively to develop knowledge and skills. The Commission recommends that a culture of classroom observation, learning and development should be better supported in an increasingly academised system. It is the most effective form of professional development and the Commission urges teacher associations and unions to support it more actively.

Better supported practice, related professional development and, in particular, peer learning, require resourcing. If deeply embedded practice is to change, time has to be found for teachers to work together, to reflect on the detail of their teaching and its impact on pupils’ learning. This is, of course, separate from the school’s formal performance management processes, although it may feed into them. A number of academies explained to the Commission creative ways in which they had built time into the school week and, indeed, the school year, for reflection and development.

The Commission received submissions emphasising the importance of using evidence to strengthen professional accountability and development. For example, the Education Endowment Foundation’s submission referenced three recent reports indicating that the pupil premium may not be being spent in ways that will maximise its impact on attainment. As this is a key lever being funded by the Coalition



government to raise the attainment of disadvantaged pupils and, by extension, to narrow the attainment gap between rich and poor, the importance of using the evidence in the reports as a professional tool for accelerating improvement is clear. A number of academies, such as the Lampton School in Hounslow, presented evidence about the value of linking current research to classroom practice. In a fully academised system, organisations such as the Education Endowment Fund (EEF) are likely to fulfil an ever more valuable role, not only in reporting what works but also in building up the skills of teachers themselves in research and evaluation through funded projects. The Sutton Trust/EEF Teaching and Learning Toolkit (Higgins *et al.*, 2012) is an excellent example of an accessible compendium of well researched practical strategies that schools can undertake at relatively low cost and be assured of high impact.

*Too many witnesses provided evidence of some academies' insufficient responsiveness to parents and the local community*

### **Recommendation: Make school review more open and inclusive, particularly of parents and the local community**

The best academies know themselves well. In some federations and chains, the Commission saw impressive examples of sophisticated monitoring and evaluation that were central to school improvement strategies. However, rigorous self-evaluation demands the engagement of key stakeholders. This sort of challenge is particularly important in a system of autonomous and independent academies. Too many witnesses provided evidence of some academies' insufficient responsiveness to parents and the local community. Schools that take professional learning seriously understand their accountabilities to parents and their communities. They find ways of engaging all parents effectively and use such processes to support school improvement. The Commission recommends that school review and self-evaluation are given a higher profile in an increasingly academised system. The views of pupils, parents and the community should inform thinking and influence planning and action for improvement. Accountability is discussed further in chapters 6 and 7.

If stakeholders are to be involved in an individual school's self-evaluation and improvement planning, clearer data to support this are necessary. The Commission endorses the need for the DfE to produce a clear and simple performance profile for each school, focused on key data. This has already been suggested by a group of headteachers involved in the Fellowship Commission on good governance (National College, 2012). A 'data dashboard' produced by the DfE for each school would support not only parents' understanding but also collaborative work across schools, most particularly peer review. The Commission was attracted by some aspects of the model offered by New York's progress reports.<sup>1</sup> These offer a simple evaluative report for parents and the wider community: a report presents a picture of a school's performance relative to that of other schools but also highlights progress, and feedback from students, parents and staff.

1. <http://schools.nyc.gov/Accountability/tools/report/FindAProgressReport/default.htm>

*Federations and some academy chains provide a ready base for professional collaboration and lateral accountability and the Commission saw many examples where this was well supported through governance and the work of the executive leadership. In every successful example, the CEO or executive headteacher retained a strong personal focus on the development of teaching and its impact on learning*

### **Recommendation: Capture the power of collaboration for system change**

Autonomy and independence are fundamental elements of academisation but they should not mean isolation. Academies need to learn from each other if improvement is to be as strong as it needs to be. This is particularly important since education, like medicine, requires high knowledge and high professional skills. The focus on skills-based practice is central to effective school-to-school collaboration and development.

#### **Sponsored chains and federations**

The Commission took evidence from a number of chains and federations, and was persuaded that many of them, although far from all, make an important difference to the quality of education. When working well, as Hill *et al's* research (2012) shows, they have an impact on the quality of education and raise standards for young people by:

- establishing consistent models of best practice for school management
- ensuring effective challenge and support for school improvement, including peer-to-peer collaboration across the group
- using rigorous performance management and consistent quality assurance processes across the chain
- providing opportunities for economies of scale
- using focused and high-quality governance to support improvement.

Hill *et al's* research findings mirror those of the National College's study (Chapman *et al.*, 2011) of the impact of federations on outcomes for pupils. The study identified four key factors associated with the improved performance of federations:

- purposeful leadership
- increased collaboration
- improved efficiency
- high-quality continuing professional development (CPD).

Several chief executives from academy chains told the Commission that their ability to get things done was stronger than that of Directors in local authorities as the managerial line was much clearer. They could get things done more quickly and were able to tackle weaknesses more directly.

The 2012 Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills (Ofsted, 2012 a) reports that academies in chains perform better than standalone, sponsored academies in terms of inspection judgements: 'Of the 204 inspected, 25% of those in chains were judged to be outstanding by end of August 2012, compared with 8% not in chains. The best are intolerant of failure and impatient for success.'

Federations and some academy chains provide a ready base for professional collaboration and lateral accountability and the Commission saw many examples where this was well supported through governance and the work of the executive leadership. In every successful example,

the CEO or executive headteacher retained a strong personal focus on the development of teaching and its impact on learning. In the Cabot Learning Federation, for example, the Executive Principal commits an impressively large proportion of his time to lesson observation. He manages to see between eight and ten lessons a week, approximating to 100 each term.

The Commission received evidence suggesting a degree of caution from some of the most successful chains in not increasing their numbers of academies too quickly. Commissioners were persuaded by the argument that it was wise to expand slowly so this did not divert attention from supporting some of their current schools where improvement was still very fragile.

The Commission was unconvinced that some chains could meet the responsibilities they had been given. They seemed to lack an agreed approach to school improvement and, in particular, understanding about how they could improve teaching and learning across the academies in their groups. The Commission also heard complaints about ‘the centre’ from some of the academies in these chains in ways that schools might previously have complained about local authorities. Given the growing number of academies within some of the chains, the DfE should pick up performance issues urgently and act swiftly to tackle emerging problems. We argue later, in Chapter 5, that local authorities should stop providing school improvement services but continue to have a key role as champions for children. This role might involve light-touch monitoring, scrutiny of provision and reporting locally and to the DfE.

### **Collaborating across schools**

‘System leadership’ encompasses a range of different collaborative activities across schools. The Commission heard evidence from a number of school leaders who saw system leadership as an essential part of their role and central to their professionalism. In a system grounded in autonomy and independence, lateral collaboration would build individual and collective capacity to sustain a self-improving system. From the evidence presented to them, the commissioners were convinced that this system has the potential for pushing the boundaries of good and outstanding practice – much more so than the centralised model of accountability.

Commissioners are aware of the increasing numbers of system leaders giving focused school-to-school support in the roles of National Leaders of Education (NLEs), Local Leaders of Education (LLEs) and, more recently, Specialist Leaders of Education (SLEs) and National Leaders of Governance (NLGs). Even when giving intensive support to a school in difficulties, NLEs and LLEs report reciprocal benefits for the work of their own schools.

Teaching Schools are a positive force for collaborative work across autonomous and independent schools. These schools, which should increase to 500 by 2014/15, all have a record of developing teachers. They have taken on greater responsibility for nurturing new teachers, leaders and other colleagues, in alliance with other schools. The Commission saw evidence of Teaching Schools using their networks to support schools facing challenging circumstances and contribute to professional

development, in some cases generating innovative practice. All the Teaching Schools who presented evidence saw professional development and school improvement as inextricably linked.

Several leaders presenting evidence to the Commission emphasised the need for professional collaboration to go beyond just the leadership of the individual academy. It was clear that many of the leaders had not only extended the base of their moral and professional accountabilities, but many of the staff in their schools had done so too. In doing this, they could point to their impact on improving schools across the system.

The Commission believes that a more systematic approach to communicating emerging and successful collaborative practice is needed. For example, some chains of academies are working innovatively across their groups and in ways that add value to each individual academy and, most particularly, to the learning of individual pupils. Capturing this knowledge more quickly and systematically would be of benefit to the development of school-led and sustainable improvement.

Many academies told the Commission that if practice is to be informed by the best knowledge and understanding, lateral interaction is essential. Identifying and communicating practice, even if just at the level of signposting, would also be of particular value to primary schools who, to date, are not as involved in collaborative activity as secondary schools. Proposals to establish an independent Royal College of Teaching, led and managed by the profession, suggest this might help in promoting teachers' professional development, in aligning practice and research and in providing evidence to inform policy and classroom practice (Exley, 2012b).

### **Primary schools**

Mass academisation in the primary sector is by no means a 'done deal'. While the numbers of primary academies continue to rise, the Commission found far less appetite among primary schools for academy status. Numbers stand at 864 in November 2012, representing 5% of all primary schools (NAO, 2012). The optimism which emerged in evidence from both the Minister and DfE officials who gave evidence to the Commission might be misplaced without the introduction of much stronger, more radical initiatives to drive forward academisation in this sector.

In primary schools, the financial attraction of academy status is not the driver it has been in the secondary sector. In addition, more primary schools than secondary schools appear to have better relationships with their local authorities; they also appreciate the services offered by economies of scale. Some primary school headteachers emphasised the role of their local authority as 'backstop' – someone who is always there in case of an emergency. Primary headteachers value the collaboration with other primaries which many local authorities are seen as facilitating. Even for those who saw many positive aspects of academy status, the disadvantages seemed off-putting. One primary academy headteacher, however, told the Commission that her school budget had risen significantly and her work had reduced as she no longer had to respond to local authority requirements. In some recognition of this, the government has put in place a small financial incentive, in the form of a one-off grant, for primary schools to cluster into academy trusts, and it may be that, as early models develop, this proves a more attractive model over time.

The Commission heard evidence from headteachers of primary academies who relish their academy status. They told the Commission that they appreciate both their independence from the local authority and the innovative practice that their new status had enabled. These headteachers recognised that there is currently little interest in academy status across the sector more broadly but they believed this would change as awareness and confidence developed. Primary headteachers told the Commission that although some schools had moved to become academies ‘ahead of the game’, others were waiting to see what the government would do next to encourage greater interest.

#### Underachievement

The key factor holding back England’s achievement of world-class status in education is the substantial underachievement of a quarter of its pupils. Research evidence shows clearly that this underachievement maps closely on to social inequality, and that our education system does not close the achievement gaps between rich and poor (Lupton, 2011; Francis, 2011; Clifton and Cook, 2012). In the UK, disadvantaged children are behind on entry to the school system and do not catch up by 11. If pupils leave primary school with an inadequate grasp of literacy and number, they are likely to be already disengaged from education, besides facing a greater challenge to catch up in secondary schools. It is therefore in primary schools that this challenge needs to be particularly tackled. While large numbers of primary schools provide outstanding education and a strong foundation for pupils’ later learning, many others fail to do so.

It is also the case that ‘...the biggest challenge facing the school system in the next decade is how to cope with an increase of around 700,000 extra pupils in the primary sector between 2011 and 2020’ (Howson, written evidence). Securing better quality provision in primary schools is, therefore, an urgent priority for the government.

The Commission recommends that the federation of primary schools be encouraged without an immediate emphasis on academy status. This should not be simply about federating to secure economies of scale in purchasing, but should be based on principles of professional collaboration for school-to-school improvement and for better development of practice. In particular, struggling primaries should join federations with outstanding schools for the purposes of school improvement.

The Commission challenges local authorities as well as the government to take the initiative in driving this forward immediately. Some local authorities are already working productively to secure school-to-school improvement across their local primary schools. However, others are more complacent and some are incapacitated by political in-fighting. This is unacceptable, given the moral imperative for action. As was pointed out in evidence from the DfE, it is perfectly possible for local authorities to be *more* demanding than central government concerning acceptable floor targets and the quality of provision.

If the government wishes to drive forward academisation in the primary sector it will need to be mindful of the following:

- the school improvement strategies that work within the secondary sector are not necessarily appropriate for the primary sector (NAHT, written evidence)
- economies of scale are more difficult to achieve in primary schools
- governance capacity may be a particular challenge in the primary sector.

### Case study: Best Start Federation

The Best Start Federation is a federation of five primary schools, including a Teaching School, in North and East London. It is led by Executive Headteacher, Greg Wallace. Having turned around his own school from 'serious weaknesses' to 'outstanding', and become one of the first National Leaders of Education (NLEs), Greg worked with the Learning Trust in Hackney to broker federation with four other, then failing, schools. The Learning Trust took a key role in corralling these schools into the federation. The federation has an over-riding focus on the quality of teaching and learning, and has used its size to secure economies of scale both in backroom services and innovative systems to promote excellence in teaching. Another school in the federation has now secured the judgement of 'outstanding' from Ofsted, and the national test results of the third school have improved dramatically. Rapid improvement is also evident in the two newest schools.

### Recommendation: Support schools in taking responsibility for whole-system improvement

Academisation is rooted in notions of school autonomy and independence set within a framework of strong centralised accountability. As discussed earlier, the Commission found evidence of transformational change in some academies but the evidence of substantial impact on the whole system is far less strong. If change is to take place as quickly as it is needed, schools themselves must establish, drive and be responsible for a self-improving system. This means ensuring that not only should all schools have the school-to-school support they need, but also that schools collaborate professionally to improve and, indeed, create new practice. Hargreaves (2010; 2011) sets out a strong model of schools working in partnership to improve teaching and learning for them all. He emphasises a focus on mutual observation, coaching and learning-by-doing which not only shares good practice across schools but also creates it:

'Joint practice development (JPD) is a term that captures the essential features of this form of professional development:

— It is a **joint** activity, in which two or more people interact and influence one another, in contrast to the non-interactive, unilateral character of much conventional "sharing of good practice".

— It is an activity that focuses on teachers' professional **practice**, i.e. what they do, not merely what they know.

— It is a form of **development** of the practice, not simply a transfer of it from one person or place to another, and so a form of school improvement.'

**Hargreaves, 2012**

In a fully academised system, it is this sort of approach that will generate real change.

*In terms of school improvement, councillors recognise the importance of education not only to parents, but also to the regeneration and life of a local area*

### **The local authority and school improvement**

It is clear from the evidence presented to the Commission that local authorities are responding to a more autonomous system in a range of different ways.

In terms of school improvement, councillors recognise the importance of education not only to parents, but also to the regeneration and life of a local area. As suggested later in chapter 5, the Commission believes that the government should clarify the role of the local authority. This would include reinforcing the role of the local authority as a guardian of education, shaping and raising aspirations in school improvement. It is right that their democratic base gives local authorities this leverage. Acting as champions for the interests and needs of children in their area and as corporate parents for those in public care, the local authority should articulate concerns about the quality of school provision. The Commission recommends that local authorities should do this annually through producing a report on the quality of education in their area which is presented formally to the DfE and placed on the Council's website. The report would be on the model of that required annually on admissions by the Chief Schools Adjudicator. Individual academies, or chains, would also be able to use the report to inform their self-evaluation, development planning and action.

It should no longer be assumed that local authorities are providers of school improvement services. Some continue to provide services but many have stopped. However, they support schools, particularly primary schools, to take greater ownership and responsibility themselves.

#### **Case study: Education Richmond**

Education Richmond has been developed to maintain excellent outcomes for all children and young people in Richmond Borough schools. The partnership:

- embraces the government's vision for greater autonomy to schools
- develops and uses the rich pool of expertise and experience of our school professionals and others
- creates a sustainable model of school improvement for the future.

The partnership includes the Richmond Teaching School Alliance, managed and run by Waldegrave School, one of 100 National Teaching Schools in the country.

In order to sustain the partnership, the local authority and all its schools have agreed to commit match-funding and resources to support various school improvement initiatives. The partnership is led and managed by seconded headteachers. The Management Board is made up of local headteacher representatives and local authority officers. This Board has agreed five areas of focus for the partnership in 2012/13:

- pupil achievement and engagement
- workforce training and professional development
- curriculum development
- project development and research
- business development.

Source: London Borough of Richmond, 2012.



The Commission recommends that, over a transitional period of no longer than three years, all local authorities devolve current school improvement resources to school partnerships and no longer hold these at the centre. This would enable a clearer focus on their role as guardians and champions.

As guardians and champions of the needs and interests of children in their local area, the local authority should retain, however, a slim resource to capture local knowledge and intelligence about all schools, including academies, in its locality. It would complement the national ‘data dashboard,’ proposed earlier for each school, with both hard and soft local intelligence. This work would enable local authorities to refer concerns to the DfE or connect a school to one of the Excellence Networks mentioned below. In other words, the local authority would take the initiative in preventing failure. The resource would also enable each local authority to produce its annual report on the quality of local educational provision.

### **School-led partnerships**

#### **Challenge Partners**

The Commission received evidence from active school-led partnerships. Challenge Partners,<sup>2</sup> for example, make up a collective of schools that not only challenge each other to do better but also support weaker schools to improve. The schools involved pay a fee to be part of the Challenge Partner collective, based on the number of pupils on roll. The staff involved are explicit about their moral and professional accountabilities, although there is still an element of competition between schools. The collaborative activity provides a source of professional aspiration for both leaders and teachers.

Challenge Partners use peer inspection, based on Ofsted’s school inspection framework, as a way of raising aspirations and driving professional accountability. The Commission recommends that peer review is extended as a support for systemic improvement. Those presenting evidence to Commissioners about their experience of peer review were universally positive about its benefits. Nevertheless, the Commission also picked up anxiety about schools opening themselves up to this form of scrutiny. If Ofsted were to take a different approach to inspecting schools that had undertaken rigorous self-evaluation, including peer review, the Commission believes change would be dramatic. This is discussed later in this chapter.

Not all collaborative activity is rooted in fixed working partnerships. The commissioners received evidence about academies operating collaboratively in a variety of ways. One of the fascinating aspects of collaboration as it has developed across schools is its bureaucratic messiness. These collaborations were not always organised neatly or logically, although this did not seem to detract from their effectiveness. Some collaborative working stemmed from an accident of history, such as a long-standing professional relationship between senior leaders.

2. For further information on the role and organisation of Challenge Partners see: [www.challengepartners.org](http://www.challengepartners.org).

Some of it reflected schools' reluctance to expose weaknesses to near neighbours. If professional collaborations are working well, with positive outcomes, they should be allowed to continue, however untidy they may seem.

#### Excellence Networks

As reflected in this chapter, the Commission heard evidence about a range of collaborative work: in federations and academy chains; in other less formal alliances and networks; in Teaching Schools; and within local authorities. It became clear that such work does not yet involve the majority of schools. Secondary schools are far more engaged in collaborative activity to support improvement than primary schools. Lack of engagement in any external professional learning partnership carries with it the risk of isolation, with the weakest schools lacking the confidence to invite support, still less challenge, from their peers. It may well be that Ofsted's new approach to schools requiring improvement gives these schools greater impetus to work with others to accelerate improvement. Academies must also be clear where they can find support when they need it. The Commission recommends the designation of a number of Excellence Networks covering all areas of the country, perhaps based on the areas already used by the National College to allocate licences for specific leadership training and development.

Excellence Networks would be school improvement networks charged with improving school performance and capacity across a region. They would be accountable contractually to the DfE through the National College. They would not seek to replicate school improvement provision but would raise awareness of what was available – for example, through local Teaching Schools and their alliances – and would broker connections. They might, however, set up arrangements for peer review for any school wanting it. As Gilbert (2012) suggests, Excellence Networks could:

- offer all academies access to a professional learning partnership rooted in peer learning and development and providing opportunities for working laterally
- build knowledge, capacity and practice across the region, using all available resources
- ensure training is available in the methodologies and quality assurance processes that are needed for school-to-school work
- broker partnerships for peer review, as required
- ensure underperforming academies received targeted support (for example from an NLE and national support school, from a Teaching School alliance, from a chain or federation, or a more informal network)
- ensure schools in a region improve.

Academies selected for targeted support might be identified by self-referral, by the local authority, the DfE, Ofsted or by routine scrutiny of up-to-date data by the Excellence Network itself.

School-led partnerships, able to evidence experience and quality, could bid to apply to run these Networks for a fixed term on a contractual basis. Bids might come from Teaching Schools, from National College licensees

in the area who saw it as an extension of their work, from federations or chains, or from groups of schools with other private, public or third sector partners. The Commission was impressed by the attention given to continuing professional development by the professional associations and teaching unions and urges them to become more involved in supporting collaborative development. Engaging them in leading and managing some of these Excellence Networks could provide an important impetus to the development of a school-led system of improvement that connected autonomous schools.

**Recommendation: Use Ofsted to support a school-led, collaborative approach to systemic improvement.**

In an academised system, Ofsted inspection would remain a major strand of the central accountability framework. While the Commission shares the concerns of some witnesses that routine inspection no longer applies to outstanding schools, it feels that annual risk assessment should be some mitigation of this. The Commission welcomes more frequent inspection of schools ‘requiring improvement’ and considers that two years between inspections, punctuated (as it would be) by regular visits from HMI, is now short enough to compensate for the gap left by the diminution of a local authority’s role in school improvement. At the same time, such schools should be supported by local school-to-school support.

Much evidence to the Commission emphasised the need for Ofsted to guard its independence and to combat the perception of politicisation since this would ultimately undermine its role and function. Witnesses stressed that Ofsted’s judgements must be rooted in the evidence it was seeing on the ground.

Ofsted’s inspection is widely seen as a powerful driver of behaviour in schools and classrooms. The Commission considered this influence should be used to give stronger recognition to the value of schools playing an active role in system leadership and in collaborative activity across schools. The Commission recommends that Ofsted’s evaluation schedule for school inspection should be re-drafted so that a school’s leadership can be judged to be ‘outstanding’ only if a contribution to system-led improvement can be evidenced.

In terms of self-evaluation, the Commission recommends that Ofsted ensures all key partners, particularly parents, feel engaged in and are positive about the academy. This is even more important now that Ofsted no longer requires a questionnaire to be sent home to parents as soon as the inspection is announced. This could build on current inspection requirements. For example, the advice to inspectors set out in the inspection handbook, introduced to support the new inspection framework from September 2012, already indicates that inspectors ‘should consider ... how effectively the school promotes the confidence and engagement of parents and works in partnership with other schools, external agencies and the community, including business, to improve the school, extend the curriculum and increase the range and quality of learning opportunities for pupils’ (Ofsted, 2012c).

The Commission recommends that Ofsted should consider moving to quality assuring the self-evaluation of good academies rather than inspecting them all. This would be a strong acknowledgement of the

*Ofsted’s inspection is widely seen as a powerful driver of behaviour in schools and classrooms. The Commission considered this influence should be used to give stronger recognition to the value of schools playing an active role in system leadership and in collaborative activity across schools*

value of professional accountability. The expectation would be that all self-evaluations had already been subject to external scrutiny by peers. For good academies, Ofsted might spend half a day in school testing the rigour of its self-evaluation and the processes underpinning it. Should any concerns about judgements or process emerge, inspectors would undertake a full inspection.

The Commission recommends that a similar approach be introduced for outstanding academies every five years so parents could be reassured that a judgement of ‘outstanding’ for overall effectiveness is still current. This would also enable Ofsted’s inspectors to build knowledge and understanding of the very best practice and share that across the system.

The Commission heard a number of calls for Ofsted to inspect federations and chains as groups. Children and parents, however, relate to an individual school and it is hard to see how a group inspection report would meet their needs. The key unit within the centralised accountability framework remains the individual school.

It is right that any group of schools taking on responsibility for sponsoring others should be subject to a due diligence process. This should entail scrutiny of a range of factors, including the group’s capacity to effect improvement as judged by Ofsted. Beyond this, the Commission did not believe that chains or federations should be subject routinely to additional inspection. However, should one or more schools in a federation or chain receive a poor Ofsted report, the DfE might wish to ask Ofsted to evaluate performance in the academies across the group. This might result in an explicit criticism of a chain, federation, network or local authority.

### **In conclusion**

There are examples of stunning success within the early academy models, and the academies programme itself has led to some revitalisation of the school system. However, even though significant resources and attention were focused on just under 200 schools, they have not, as a group, performed markedly better than similar schools. Academisation alone does not guarantee improvement. The academies that have seen the greatest success have used their academy status to strengthen their approach to ambitious school improvement.

*Mark III* academies represent a dramatic increase in numbers but greater independence and freedom are not sufficient in themselves to secure improvement. Commissioners are concerned that collaboration across schools, in particular school-to-school support, has not been given greater momentum by holding schools more explicitly to account for the commitment they have given to this in their applications to convert to academy status.

A fully academised system – indeed, even just an increasingly academised one – needs to be supported by a relentless effort to change the practice of teaching so the impact on pupils’ learning becomes greater. It needs an implementation plan which is supported by all involved in education. At the heart of this plan is the development of a self-sustaining, self-improving system where leaders and teachers extend their moral and professional accountabilities to schools beyond their own. It is this that will create *Academies Mark IV* with the potential for transforming our schools.

## Recommendations

- The government needs to support academisation with a detailed implementation plan, linking it more closely to the acceleration of school improvement and, in particular, the quality of teaching and learning.
- More academies should recognise the value of establishing a collaborative culture, both within and across schools, which recognises the importance of professional development focused on practice in classrooms and of learning in context, and resource it accordingly.
- The teaching profession should support the development of a culture of classroom observation, involving peer support and challenge, as a stimulus to better learning and improved practice.
- Academies, and in particular their governing bodies, should take greater ownership of accountability, thereby making themselves more open and transparent, by acknowledging the importance of teachers' individual and collective accountability, and by ensuring pupils, parents and the local community play an active part in school review and development planning.
- Both local and central government should encourage the federation of primary schools without an immediate emphasis on academy status.
- As a tool to support improvement, the DfE should produce a clear and simple performance profile for individual schools, providing key data.
- Ofsted should support a school-led, collaborative approach to systemic improvement by recognising the importance of collaborative development as well as individual excellence. It could do this by:
  - judging school leadership outstanding only if a contribution to system-wide improvement can be evidenced
  - reducing inspection if inspectors' quality assurance of a school's self-evaluation demonstrates it is sound and underpinned by rigorous, external peer review.
- The DfE should invite the National College to trial a number of licensed school-led excellence networks, in particular regions of the country, designed to develop capacity and ensure support for all schools that need it.
- To enable a clearer focus on their role as guardians and champions of the needs and interests of children and young people in their area, local authorities should phase out their provision of school improvement services and devolve them to school-led partnerships.
- Both local and central government should encourage the federation of primary schools without an immediate emphasis on academy status.





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## 3. Academies and their freedoms

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*The reality is that the increased freedoms are not nearly as substantial as is often suggested, but many school leaders feel a general sense of liberation with academy status*

Increased freedom and autonomy have been at the heart of the academy project under successive governments. The reality is that the increased freedoms are not nearly as substantial as is often suggested, but many school leaders feel a general sense of liberation with academy status: it provides a sense of ‘grown up’ responsibility and agency, and ‘permission’ to innovate.

However, use of the specific academy freedoms has not been widespread. This chapter examines the barriers to innovating and using these freedoms, drawing on evidence given to the Commission. It describes how opinion is split between those who fear fragmentation of the school system if the freedoms are taken up more widely and those who see school autonomy as bringing a more dynamic and innovative approach to school improvement.

The Commission builds on submissions that argue for a greater focus on the vision and purpose of autonomy. The Commission argues that innovation should focus on improving the quality of teaching and learning, since investing in that area makes the greatest impact on pupils’ learning and achievement.

### The drive for autonomy

Providing schools with greater autonomy and freedom has been a consistent theme of government education policy for the last 25 years. Local management of schools has given schools increasing control of their finances, staffing and buildings. Headteachers in England (and the UK more generally) judge themselves to have substantial autonomy in these areas compared with leaders in other developed countries (Schleicher, 2012a).

The move towards increased autonomy was also pursued through introducing new types of independent state schools, such as City Technology Colleges, Grant Maintained Schools and Foundation Schools. These schools were established more or less outside the control of the local authorities. Establishing academies represents the fullest expression of the government’s commitment to autonomy.

Academies have the freedom to:

- set their own curriculum, subject to teaching a broad and balanced curriculum that includes English, mathematics, science and religious education
- set the length of their school day and term



- appoint their own staff and set their own staff pay and conditions of service, subject to complying with employment law
- set and manage their own budgets, subject to certain restrictions<sup>3</sup>
- act as their own admissions authority and set their own admissions criteria, subject to following the School Admissions Code
- determine their own governance structures, subject to the inclusion of two parent governors.

The rationale behind the move to greater autonomy is that headteachers have the freedom to break away from national rules or the rigidities imposed by area-wide local service contracts, enabling them to innovate and shape what they offer to respond to the needs of the pupils and parents in their area. The government argues that freeing schools to innovate, organise and attract parents and pupils as they think fit helps to improve schools and raise standards. The Secretary of State for Education, Michael Gove, told a conference in July 2012:

‘Freedom and autonomy for school leaders is the key to successful education systems...has driven standards up...[and] is the route to genuine and lasting school reform.’

**DfE, 2012m**

The government cites various academic studies to support its case.<sup>4</sup>

Following the election in May 2010, the Coalition took two early steps to extend the breadth and depth of freedom and autonomy. First, as described in chapter 1, academy status and the associated freedoms were made available to ‘outstanding’ schools and then all schools ‘performing well’. Second, the government restored the autonomy and freedoms for academies that it considered had been eroded since 2007. It removed requirements which it described as having been ‘shoe-horned’ into the model academy funding agreement, including ‘unnecessary central prescription about curriculum and qualifications, target setting and the production of rigid plans’ (DfE, 2010).

### **Valuing an autonomous environment**

Chapter 7 describes how financial incentives have played a major role in secondary schools’ decisions to apply to convert to academy status. Substantial capital funding and relatively generous start-up funding were, until 2010, also part of the incentive to sponsor an academy.

However, additional freedoms have also been an attractive and motivating prospect in establishing both sponsored and converter academies. A study of these in 2011 (National College, 2011) identified a range of freedoms that were valued as part of establishing a sponsored academy. These included:

- freedom from local authority control in order to challenge what had become accepted poor performance

3. This freedom is subject to three conditions: an expectation of running a balanced budget, a requirement not to generate a surplus of more than 12% of income, and acting in compliance with the Academies’ Financial Handbook.

4. See section 3 of the Academies Annual Report, 2010/11, published by the DfE (DfE, 2012a).

- the freedom of a fresh start to create a new vision and ethos, bring in new leadership and raise the expectations of staff and pupils
- the freedom to plan budgets and manage resources over a longer period
- freedom to change the timetable or adopt a different approach to the curriculum
- freedom to secure better value for money through changing the way services previously supplied by the local authority were provided or procured.

It may be the case, as discussed below, that it is not necessary to be an academy to do any or all of these things; it may also be the case that these freedoms have not been used to any significant extent. However, they were *perceived* as associated with academy status. Becoming an academy has provided ‘a sense of liberation’ for many academy leaders, as the Independent Academies Association (IAA) said in its evidence to the Commission. Headteachers now have what they regard as permission to make changes that might have been possible as maintained schools but ‘which felt more difficult and constrained because of local authority pressures’. In other words it was ‘freedom from’ as much as ‘freedom to’ make changes that was significant.

A more recent survey of academies by Reform and The Schools Network (Bassett *et al.*, 2012) has confirmed the link between academy status and an enhanced sense of autonomy. Around a third of all academies (478) that were open at the time of the survey reported both their reasons and their primary reason for becoming an academy. Additional funding scored mostly highly in both categories – confirming its role as the prime motivator for schools in seeking academy status. Over three quarters of academies cited it as one of their reasons and just two fifths as their primary reason.

However, a general sense of educational autonomy also featured strongly – over 70% of respondents cited this, along with a general sense of financial autonomy, as one of their reasons for becoming an academy. Over a fifth cited the sense of educational autonomy as their primary reason. In its evidence to the Commission, the CfBT Education Trust identified this pull towards a mindset of autonomy as valuable, even if specific freedoms were not being used:

‘It may well be that some academies will be significant successes without recourse to these freedoms. Success may come about because the process of taking on full responsibility for their own affairs will itself be conducive to schools developing a greater sense of responsibility and focusing more on the task in hand. To some extent this happened in the early days of the Specialist School Programme when the process of gaining specialist status was at least as effective as the status itself.’

Set against a backdrop of substantial top-down reform for schools over the last 20 years, the sense of permission to lead and innovate that academy status enables is significant. It indicates potential energy and ambition for change and reform.

### How much innovation have academies brought?

At one level, academies can be said to have brought considerable innovation. For example, the development of academy chains can be seen as a significant by-product of the sponsored academies movement. The most effective chains have:

- introduced innovative models of governance and leadership and a distinctive approach to leadership development and school improvement
- implemented their own arrangements for pay and conditions
- used economies of scale to increase financial efficiency (Hill *et al.*, 2012).

*Taking the academy sector as a whole, the evidence suggests that the take-up of freedoms has been piecemeal rather than comprehensive*

However, a relatively small proportion of schools are part of a chain and not all chains work effectively.

Other forms of innovative partnerships have also emerged, such as Challenge Partners, discussed in Chapter 2. There are also examples of chains and groups of schools using their freedom from local authorities to make innovations in terms of back-office functions (such as human resources, finance and payroll) and the organisation and procurement of pupil-related services such as information, advice and guidance, education welfare, training for newly qualified teachers, and school-to-school support (Hill *et al.*, 2012).

The Secretary of State for Education argues that academies are making a real difference:

‘Longer school days; better paid teachers; remedial classes; more personalised learning; improved discipline; innovative curricula – these are just a few of the things that academy heads are doing to give the children in their care the best possible education.’

**DfE, 2012I**

The government’s annual report on academies for 2010/11 (DfE, 2012a) cites various examples and case studies of how academies are using these greater freedoms and flexibilities to help improve standards.

However, taking the academy sector as a whole, the evidence suggests that the take-up of freedoms has been piecemeal rather than comprehensive. For example, the fifth and final evaluation of the sponsored academies programme found that although the curriculum in academies was seen by teachers as being more flexible and innovative than in the maintained sector, it was in general:

‘... operating in similar ways to improving schools in the LA maintained sector, namely monitoring and improving the quality of lessons, ensuring appropriate continuing professional development, and tracking and monitoring pupil progress.’

**PricewaterhouseCoopers, 2008**

The evaluation also found that there had been some ‘pulling back on some of the earlier curricular innovations’ as academies focused on getting the basics right.

This finding is reinforced by the more recent Reform and Schools Network survey mentioned above (Bassett *et al.*, 2012). It indicates that academies have been cautious:

- only a tenth of academies had extended the school day, with a further 7% planning to do so
- only 12% of academies had changed terms and conditions of service, although a further 10% were planning to do so
- just under a third were using curriculum freedoms, with nearly a further third saying that they were planning to do so.

Very similar results emerged from a survey of headteachers of schools that had converted to academy status (Ipsos MORI, 2012) – the only significant difference being that in the Ipsos MORI survey a higher proportion of academies (50%) reported using curriculum freedoms.<sup>5,6</sup> This suggests that, although a degree of change has been triggered by academisation, widespread innovation has yet to take hold across the sector.

### **Why have the academy freedoms not been more widely used?**

The Commission invited evidence about why academies were not making greater use of the freedoms available. A number of themes emerged:

- It's early days.
- Schools already have considerable freedoms.
- Academy freedoms are constrained.
- The school accountability system inhibits risk-taking.
- The need to innovate is not universally shared.
- School leaders may not have sufficient skills and support to use academy freedoms fully.
- There are potential implications if academies start to use their freedoms more fully.

The themes are discussed in turn below.

#### **It's early days**

Although the early sponsored academies have been in place for around 10 years, academy status is relatively recent for schools that converted. Their initial focus tended to be on the process of conversion and only when they achieved academy status did they start to consider how they might use their academy freedoms. A primary headteacher commented to the Commission: 'Currently, academies are in many cases emerging institutions with tentative steps towards increased autonomy.'

5. The survey was conducted for Browne Jacobson LLP and the findings were based on 151 interviews with headteachers of schools that had converted to academy status since August 2010. A total of 76 interviews were conducted with secondary school headteachers and 75 with primary school headteachers. The sample was drawn from the DfE's published list of 'All open academies'.

6. It is likely that many of the curriculum freedoms did not require academy status and that what academies are registering is their decision to make curriculum changes after they have acquired academy status.

The Service Manager of the Devon Parent Partnership told the Commission:

‘It takes time for changes to be developed and implemented. Skill and experience of school management and governance in new freedoms [are] not yet fully developed.’

The view that it may be simply ‘a matter of time’ was echoed in a number of other submissions. The IAA, drawing on its experience of the longer-established academies, concluded that the ‘opportunities [of academy status] are more likely to be grasped as the academy develops...converters are likely to use flexibilities as they develop.’

Part of the reason for the relatively slow growth in the use of academy freedoms could be related, suggested NASEN, to headteachers not wanting to ‘rock the boat’. Given that some of the freedoms involve ‘radical change,’ many headteachers may be ‘waiting to see what others do’.

The Freedom and Autonomy for Schools – National Association (FASNA) provided another explanation about why there might be a time lag in using the freedoms: changing terms and conditions of service, described by one of its members as a ‘huge’ undertaking, would need to be planned for carefully and change, therefore, would come later.

### **Schools already have considerable freedoms**

As noted earlier, schools in England are already relatively autonomous. Many maintained schools, for example, work within the framework of the National Curriculum but are able to adapt their curriculum to meet the needs of their pupils. Schools that are Voluntary Aided or have Foundation status have nearly the same degree of financial control of their budgets and assets as an academy (leaving aside the additional funding that may come with academy status).

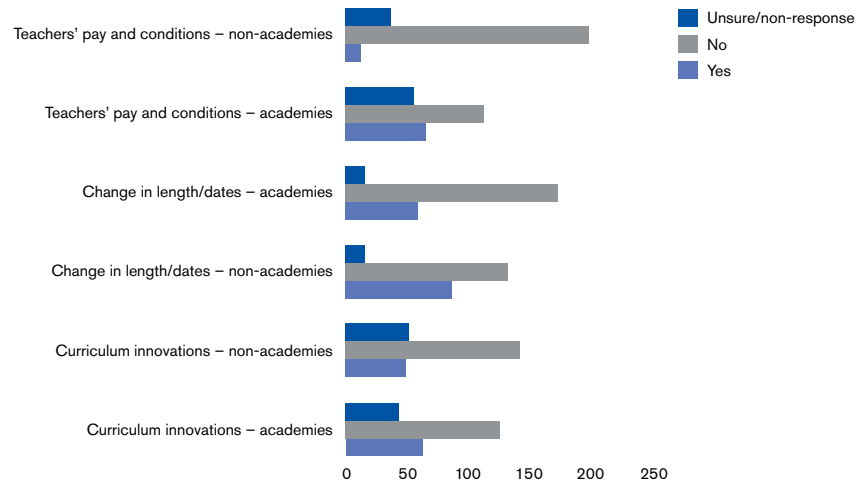
One submission to the Commission described the freedom to set the school day and term length as ‘very much a “so what”’ freedom. In practice, maintained schools already can and do achieve the same result, that is, an extended day, if they consider it appropriate, through running breakfast and homework clubs and revision classes.

Interviews with leaders of early converter academies (National College, 2011) suggested that they proposed to use academy freedoms in due course. However, they could have implemented the innovations they were considering (mostly in the area of curriculum development) as a maintained school. This reinforces the idea that it is the sense of permission that academy status brings rather than specific freedoms that may be the more significant driver of change.

A similar picture emerges from a survey of nearly 500 Teach First teachers that was carried out for the Commission. The survey responses were almost evenly matched between those working in academies (49%) and those not (51%). The respondents were asked whether various freedoms were being used in their school (see Figure 6). For curriculum freedoms and changes to the working day and school term, the proportions are broadly similar, irrespective of whether the school is an academy. Leaders in between a fifth and two fifths of schools have felt able

to innovate. A more marked difference is in the extent of innovation in terms of teachers' pay, where academies are more likely to offer their own terms and conditions of service.

**Figure 6: Use of academy freedoms as reported by Teach First teachers working in academies and non-academies.**



Source: Teach First survey, 2012.

Note 1: 477 survey responses. Note 2: 'Innovations with pay and conditions of service' was interpreted as relating to performance-related pay and/or other incentives

In short, many maintained schools have, in the words of the Secretary of State, introduced extended school days, remedial classes, more personalised learning, improved discipline and innovative curricula, to give their pupils the best possible education. In other words, most things an academy can do, a maintained school can also do.

In some respects the government is reinforcing this approach by giving greater freedoms to all schools – for example, to streamline governance arrangements.

### **Academy freedoms are constrained**

For some academies, becoming an academy, of course, has meant *less* autonomy: sponsored academies in many chains have to subscribe to centrally mandated systems and practices (in terms of governance and/or management, monitoring and teaching practices) (Francis, 2012). This has been seen as central to improvement, most of those concerned having been struggling schools before academisation.

But for all academies, the academy freedoms described at the beginning of this chapter all came attached with conditions – such as to abide by the Schools Admissions Code, to include key subjects within the curriculum, to implement employment law in areas such as the Transfer of Undertakings (TUPE) and health and safety and to follow set financial procedures. As one headteacher put it in his submission to the Commission:

‘The freedoms are a slight misnomer. The curriculum of a secondary school is ultimately driven by the exam system and financial freedoms only exist within the existing restrictions surrounding public money.’

In addition, the Academies Act 2010 made all academies subject to the provisions of the Freedom of Information Act. These constraints seem to be acting to reinforce each other, as the Reform/ School Network survey report explained:

‘Academies are finding the complex and overlapping legal requirements of charities law, companies law and education law to be a considerable constraint and source of uncertainty. This complexity is causing many academies to run up legal costs and spend leadership time which they would prefer to employ elsewhere ...

In addition to the legal paperwork, financial uncertainty around new reporting requirements, banking arrangements, financial years, capital investment and VAT are also causing problems for headteachers of converting schools and their business managers.’

**Bassett *et al.*, 2012**

An academy chain provided the Commission with an example of this maze of reporting requirements:

‘There is a lot of legislation that has not caught up with the academies’ legislation. For example, the fixed penalty for a child not attending a school still has to go through the local authority. Whilst the sponsor is responsible for attendance in schools, they have to apply to the local authority to issue a fixed penalty. There are many examples of this sort of legislation, and until it is fixed academies will always have more freedom in principle than they have in practice.’

*‘some converters had underestimated the greater financial and audit responsibilities that come with greater financial autonomy’*

The IAA was of the view that some of the concern and confusion about the financial aspects of working as an academy had arisen because ‘some converters had underestimated the greater financial and audit responsibilities that come with greater financial autonomy’ (a point discussed in more detail in chapter 6). Several submissions pointed out practical constraints on using the freedoms. For example, changing the length of the school day or term is not something that can be determined by a school on its own. It involves consulting and considering the position of parents who have children at other schools, negotiating changes in staff contracts and agreeing changes to school transport arrangements.

#### **The school accountability system inhibits risk-taking**

A number of respondents to the Commission drew attention to the impact of performance tables and Ofsted’s inspections on what headteachers did. One submission succinctly expressed the arguments made by several others:

‘High-stakes inspection regimes which are increasingly tightly drawn through a combination of new testing and the revised Ofsted inspection framework are likely to make schools very cautious in their approach



rather than run risks through innovation. Schools will play safe and follow well-worn routes to ensure their own safety. The responsibilities placed on heads mean that they risk jeopardising their careers, with no back-up for decisions they take. This is likely to make them more risk averse.’

Other submissions pointed out that the emphasis given by Ministers to the EBacc in the performance tables for schools was a further disincentive for secondary headteachers to make innovations to the curriculum.<sup>7</sup> In the words of the National Governors’ Association, the effect of the EBacc is ‘possibly [to] act to encourage homogeneity’.

The National Association of Head Teachers (NAHT) also drew attention to how exam syllabi, performance tables and other accountability measures made it difficult to exercise curriculum freedoms meaningfully and concluded: ‘Unless and until the accountability measures reflect a broad and balanced curriculum and school ethos and extra-curricular activity, this risk will remain real.’

There is one further aspect to how the accountability system may be inhibiting innovation. Performance tables and inspection focus on individual schools. However, as David Albury explained to the Commission, the complexity of managing innovation is ‘particularly acute’ for individual academies:

‘Groups or networks of academies are more likely to be able to mobilise the necessary resources and capabilities and to pool the risk that is inherent in any exercise of freedom and innovation.’

So, while academy chains and federations have the infrastructure to initiate and support innovation, stand-alone academies (the status of most converter academies) are left to deal with innovation on their own. Such academies may or may not be part of a Teaching School alliance but the accountability system does not encourage them to partner with other schools – particularly where risk is involved. As David Albury concludes, there is ‘an imbalance of focus between individual school and collaborative development’.

### **The need to innovate is not universally shared**

A number of submissions to the Commission argued that converter academies did not necessarily see the need to innovate. If they had converted to academy status to secure extra funding and were already performing well, why did they need to change? As one respondent to the Teach First survey put it: ‘If a head does not see their current system as “broke” then why would they attempt to fix it after conversion?’

This tendency towards conservatism may be reinforced by parental attitudes. Dr Sonia Exley of The London School of Economics and Political Science drew the Commission’s attention to evidence from the 28th British

7. The EBacc, introduced in 2010, is not a qualification in its own right but describes the achievement of five GCSEs at grades A\*–C across a core of academic subjects: English, mathematics, history or geography, a science and a language. The measure is an indicator introduced as part of the government’s commitment in the 2010 schools white paper to make more information available to parents/carers and tax payers on the performance of every school. The EBacc is intended to encourage schools to offer this range of subjects to more pupils.

Social Attitudes survey (Park *et al.*, 2011). This pointed to parents being more interested in their children attending a good local school rather than acting as consumers of a diverse range of schools. In order to continue ‘to meet the needs and desires of all potential users’ and avoid risking the loss of parental support, schools may become wary of ‘diversifying too greatly’ and of using their ‘designated freedoms to their full extent’. In short, parents empowered by reforms to be consumers are not necessarily opting for innovative schools and schooling (Lubienski, 2009).

Academies may also refrain from using freedoms that, at this point, do not command consensus or broad support within the education community. The relatively slow move to using the freedoms and flexibilities on pay and conditions of service is one such example. Practical considerations may also account for some of this slow take-up. For example, as the IAA explained in its submission, converter academies ‘prefer to stick to existing terms and conditions as it can ease the process’ of conversion. Converter academies may also be reluctant to get into another difficult set of negotiations if local unions have fought vigorously against becoming an academy. TUPE regulations also mean that it is not always straightforward to change contracts and introduce academy-based salary frameworks.

However, underlying these practical obstacles is an ‘in principle’ opposition to dismantling or undermining the national School Teachers’ Pay and Conditions of Service Document (STPCD). All the main trade unions submitting evidence to the Commission opposed the erosion of a national pay structure, arguing that although the current system was not perfect there was already sufficient flexibility within the system to address local issues.

The unions were not the only respondents to make this case; their views were also shared by some academy leaders. The Reform and Schools Network Survey (Bassett *et al.*, 2012) captures this combination of practical and principled reluctance. Sixty per cent of respondents said that the national pay and conditions framework made it difficult to use the freedoms on staffing and pay, but 40% also said that there was ‘no need/desire to incentive/reward staff using pay’.

Terms and conditions of service are not the only areas where a policy freedom may be opposed. For example, academy leaders themselves may be opposed to or worried about union opposition to the freedom that Ministers are proposing to give to academies to hire unqualified teachers.<sup>8</sup> The freedom for academies not to follow the nutritional guidelines for school meals is another area that has proved contentious. Academy leaders, therefore, may be cautious of innovation in areas which could cause controversy, distract from their core purpose and open them to public debate.

8. However, it should be noted that the final evaluation of the sponsored academies programme (PwC, 2008) found that academies employed more teachers without qualified teacher status (QTS) (12%) than local authority maintained schools (5%), despite the fact that the funding agreements for the schools sampled by the researchers all required teachers to have QTS.

### **School leaders may not have sufficient skills and support to use academy freedoms fully**

The Association of Directors of Children's Services (ADCS) described to the Commission how schools are facing a 'perfect storm' of rising expectations of performance and multiple changes in education policy. Announcements on inspection, qualifications and accountability have been coming thick and fast – and are set to continue. Such turbulence, argues the ADCS, may make headteachers and governors cautious about implementing change and 'does not make an encouraging environment for innovation'.

Being a leader of an academy may provide 'full permission' to do what is right for pupils but, in a period of policy turbulence, academy leaders require the confidence and systems to devise, implement and monitor innovation effectively. One submission to the Commission suggested that 'headteachers are not equipped or trained to take these freedoms'.

Other submissions, however, took a different view and pointed to examples of how sponsored academies, over time, had developed the 'unconstrained mindset' that resulted in innovation and change.

These two points of view could be interpreted as being incompatible but one submission suggested how they might both be true. Dr David Daniels and Dr Christine Tinkler argued that, in the early days of the sponsored academies, principals had often been chosen because of their 'known expertise and innovative flair in headship together with a successful track record'. Professor Mel Ainscow called them the 'laboratories of innovation'. However, the Daniels/Tinkler submission went on to argue that, with the rapid expansion of the academy sector, there was now 'a potential depletion of suitable candidates for principalship' of an academy. They also said:

'Many new principals are now untrained in the concepts of entrepreneurial activity and even training provided by the National College for would-be principals does not concentrate on this area.'

That view was endorsed by the Schools Commissioner, Dr Elizabeth Sidwell, who agreed that there was an urgent need to develop the capacity of academies to use their freedoms fully. Ron Glatter, Emeritus Professor of Educational Administration and Management at the Open University, drew the Commission's attention to an OECD study (Pont *et al.*, 2008). This research highlighted the need for 'a strong infrastructure of support' with 'relevant forms of training and development' for school leaders as one of the preconditions for using autonomy effectively. This point was reinforced in the submission from David Albury who said:

'Developing innovative, especially radically innovative, models and practices is complex and difficult work. While freedoms are essential ... schools (academies) need support – tools, techniques, frameworks and approaches – to undertake disciplined and robust innovation.'

### **Potential implications if academies start to use their freedoms more fully**

The commission also invited evidence on how things might develop if academies started to use their freedoms more extensively. Essentially, two

different scenarios emerged, reflecting the findings of an OECD (2012a) study that examined potential scenarios for the future of education systems. The OECD hypothesised that an ‘extended market model,’ along the lines of the approach being promoted by the government, on the one hand could bring innovation and dynamism but, on the other, might result in exclusion and inequality. International cases with strong autonomy and weaker accountability than in the UK (for example, charter schools in the US and independent public schools in Chile) have brought some spectacular successes but also some spectacular failures.

A considerable number of submissions expressed concern about possible fragmentation of the system if the take-up of academy freedoms were to become significantly more widespread. The argument was that academy autonomy coupled with growing school diversification and competition might mean that each school acted in its own interests to the detriment of the system as a whole. A primary headteacher, for example, warned of the risk of ‘a highly marketised education system where “dog eats dog”. Teachers’ pay and conditions will no longer be bargained for centrally, the admissions code could be subverted and the curriculum is no longer national’.

A secondary headteacher described a similar scenario:

‘The freedoms around the employment of staff will lead to the situation ... where successful schools will recruit more strongly than weaker schools.’

The National Governors’ Association made the same point, highlighting how the national funding system can lead to significant funding differentials between neighbouring authorities. This results in schools in less well-funded authorities struggling to recruit high-quality staff. The Association of Teachers and Lecturers and the Association of School and College Leaders took a slightly different view. They argued that it was likely that the STPCD would continue to provide the benchmark for schools (as it did for independent schools which were not obliged to follow its provisions) since it was complex, time-consuming and legally risky to develop alternative arrangements.

The National Union of Teachers expressed concern about the implications for equal pay if the national pay framework were undermined. The NAHT was concerned that, over time, increasing numbers of academies would choose to exercise the freedom to employ unqualified teachers.

This fragmentation was seen as being particularly disadvantageous for parents. The Advisory Centre for Education (ACE) was concerned that ‘in the event that academies were to use their full freedoms, this would be very confusing for parents as they could be faced by very different curricula in different schools in their area’. ACE considered that this would further disadvantage families that did not have ‘easy access to education’. In the same vein, another respondent questioned why there had been so little debate about ‘the extent to which it makes sense for the curriculum offer a young person experiences to be entirely dependent on the school they attend’.

However, the Commission also received evidence from those who believed that the OECD’s optimistic scenario was more likely

to prevail. They agreed that that the implications of greater use of academy freedoms would be substantial but saw this in a positive rather than a negative light. They pointed to possibilities for ‘increased professionalisation of the professions in schools’ and to opportunities to radically reform how social care, education welfare, educational psychologists and the health professionals worked together: ‘This is very exciting indeed for our young people.’

A governor who had previously been a headteacher recognised that developing the freedoms might lead to ‘some unacceptable practices’ but argued that overall:

‘Well-managed innovations will bring huge benefits to the learning of pupils and should better facilitate the work of staff.’

Tinkler and Daniels concluded, based on their work with academies, that if all academies were to use their freedoms fully (which they considered unlikely), it would lead to the development of educational provision that was more mature and outward-looking. It would be ‘fit for purpose’, ‘open-minded’, ‘freed from a dependency culture’ and ‘prepared to take significant calculated risks’. This would provide the basis for continuing opportunity and improvement for pupils.

#### **Towards a more strategic use of innovation in the English school system**

One of the assumptions underpinning much of the debate about innovation is that the use of academy freedoms is in itself a good thing and leads to progress and improved standards and outcomes. Some of those providing evidence wanted to challenge this assumption.

For example, the teachers surveyed by Teach First reported that freedoms had only a limited impact on school improvement. Only 16% believed that innovations with terms and conditions of service had resulted in a positive impact (although the figure was higher (28%) for teachers working in academies) and only around a third thought that changes in the school day had contributed positively to school improvement. Around half agreed that innovations in the curriculum had made a positive difference but, ironically, that figure was higher for respondents in non-academies.

Another perspective was taken by a local authority officer who questioned whether there was too much rather than too little autonomy in some parts of the education system, ‘especially with regard to small primary schools where there is a compelling case for trading off some autonomy against greater empowerment to focus on the core business of teaching and learning.’ Culham St Gabriel’s, an independent trust supporting research and development in religious education, said it would welcome a greater use of academy freedoms, but only if ‘it were disciplined innovation, i.e. consisting of developments that were informed by action research and networking rather than based on hunches or folk pedagogies’.

The Commissioners believe that schools have sufficient freedoms to innovate and improve. Accountability measures, such as Ofsted and performance data, strongly limit the operation of some of this innovation in practice yet also mitigate risks of dramatic failures. What is now needed

*The teachers surveyed by Teach First reported that freedoms had only a limited impact on school improvement*

is a drive towards innovation in teaching and learning, and practitioner collaboration to achieve this. The need to focus innovation on improving teaching and learning is one of the main conclusions of an OECD working paper that considered the impact of innovation in quasi-market education systems – such as England (Lubienski, 2009). Relying on new governance structures does not guarantee that ‘changes will substantially impact (or even “trickle down” to) classroom practice’. Quasi-market reforms are more likely to be successful in ‘creating innovations in marketing and management than in generating new classroom practices’. Ironically, Lubienski concludes, it can often be public policy interventions that drive pedagogical and curricular innovation.

David Albury, in his evidence, addressed this challenge. While acknowledging that Ministers had done much to encourage innovation and the development of new models of schools, he argued that what was lacking is the grounding of the debate about innovation in a clear guiding vision of 21st century education. In his experience, he said:

‘Successful and effective reform and innovation programmes are book-ended with a powerful and compelling case for engendering passion and urgency for change at one end, and an inspiring and motivating vision providing direction at the other.’

### **Looking forward**

So what is that compelling case and what is the vision that should drive innovation in the English education system? The report from Pont *et al.* (2008) provides a strong steer. Their study concluded that freedoms are more likely to be beneficial when the role overload on headteachers (that autonomy tends to generate) is avoided, by concentrating the focus of leaders on educational matters. The Commission, too, has concluded that the drive for innovation needs to move away from making change for the sake of it to using freedoms to improve teaching and learning both inside and outside the classroom – and on innovating to develop better pedagogy.

The case for this approach is strengthened by the knowledge that in terms of what schools can do to improve outcomes for pupils, it is teacher quality and classroom practice that have the strongest impact on their achievements (OECD, 2005). Disadvantaged pupils that are taught by highly effective teachers for one year or more are much more likely to close gaps in attainment (Learning Point Associates, 2007). The government knows and understands this. There is, therefore, an overwhelming argument for focusing innovation on improving teaching and learning. That should be the prime test of whether using a freedom is worthwhile and effective.

‘Studies in the United States have shown that an individual pupil taught for three consecutive years by a teacher in the top ten per cent of performance can make as much as two years more progress than a pupil taught for the same period by a teacher in the bottom ten per cent of performance.’

**DfE, 2010**

The focus of innovation needs to shift from structures, systems and timetables (although they may have their incidental place) to what is happening in the classroom. As John Hattie has argued (2012), the motivating vision for using innovation lies in empowering teachers to be learners about the effectiveness of their teaching:

‘The remarkable feature of the evidence is that the greatest effects on students’ learning occur when teachers become learners of their own teaching, and when students become their own teachers...Fundamentally the most powerful way of thinking about a teacher’s role is for teachers to see themselves as evaluators of their effects on students. Teachers need to use evidence-based methods to inform, change, and sustain these evaluation beliefs about their effect.’

It is when Ministers, policy makers, headteachers and teachers act on this truth that we will see advances in the quality of teaching and learning and improved achievement. The Commission believes that the government should articulate the case for innovation based on a vision for improving teaching and learning. This means valuing and supporting teachers as professionals; it also involves teachers in planning, teaching and reviewing their work openly with their colleagues and their pupils. The Commission’s recommendations are therefore focused on academies and schools using freedoms to improve teaching and learning both inside and outside the classroom – and on innovating to develop better pedagogy.

This freedom might be secured by innovations such as the use of social media, but also by ensuring all teachers are involved with research. In outstanding international education systems, teachers are engaged with, and see themselves as, active learners and researchers (Schleicher, 2012a). Reflexivity and active collaboration in exploring and sharing best practice are vital to secure improvement. We believe that the teacher unions, along with a new Royal College of Teaching, would be well placed and could do much to encourage and support this impetus.

The Commission welcomes proposals to establish a Royal College of Teaching, led and managed by the profession (Exley, 2012b). The Commission recommends that the government should pump-prime the creation of this professional body – which would be independent of the government but work with it – to support a vehicle that would promote the professional activities outlined. The Royal College of Teaching could play a vital role in supporting the alignment of research and practice, a more active role for teachers to this end, and provision of CPD to enable these outcomes. This should provide academy and school leaders and teachers with access to coaching, research opportunities and development networks to support them in developing and using freedoms.

Universities and schools also have a role in ensuring that student teachers are equipped with the analytical skills and critical competencies to access, evaluate, and design research. Ensuring teachers know how to research and evaluate the impact of their teaching should form an essential part of initial teacher education.



Meanwhile, it is important that effective innovations are captured as part of a developing evidence base to inform practice in other schools. Innovation needs to be tracked and effectiveness – or otherwise – recorded. The Commission suggests that a Royal College of Teaching would be well placed to create a system and database of evidence to capture schools' imaginative use of innovations and the effectiveness, or otherwise, of these; to be drawn upon by teachers and school leaders across the country (and beyond). This might take the form of an online database that reports the impact of academies' and schools' innovations, along the lines of the Education Endowment Fund's toolkit to help improve the attainment of disadvantaged pupils.

Networks of schools, such as chains, federations and Teaching School alliances should become the hub of innovative teaching and learning. They should undertake disciplined innovation through practising action research and joint professional development across schools. To encourage this, the government needs to change the accountability system to increase incentives for schools to work collaboratively on innovation in the classroom.

Governing bodies should be encouraged to support disciplined innovation. They should have access to advice that helps them to assess and monitor risks and supports leaders involved in making changes. The new modular National Professional Qualification for Headship should include discussion and understanding of how to test and implement innovation properly and work collaboratively on innovative initiatives.

## Recommendations

- The government should articulate the case for innovation and a vision for learning in the twenty-first century that draws on a full understanding of the knowledge, skills and dispositions that young people will need for life and work.
- The DfE should pump-prime the establishment of a Royal College of Teachers that would be independent from, but work with, the government, to promote teachers' professional development, provide evidence to inform education policy, align practice and research and promote peer-to-peer collaboration.
- Teachers should be expected to engage with research as an integral part of their daily work, and providers of initial teacher education should encourage trainees to see the links between the latest research and the improvement of classroom practice. Providers should also ensure reflection and evaluation are developed as part of the repertoire of good teaching skills.



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## 4. Admissions

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The Commission starts from the assumption and principle that fair admissions must be maintained – reflecting the mission of state schooling to provide access to educational excellence for all. This chapter focuses on how this principle and its practice can be ensured and strengthened in an academised system.

It begins by exploring the current arrangements for admissions, including tendencies towards social segregation in the school system in England. It sets out the distinctions between admissions arrangements for academies and those for other maintained schools, assessing the implications for fair admissions practice. It then explores the distinct arrangements for appeals and complaints, and the role of agencies such as the Schools Adjudicator and the Education Funding Agency (EFA). The Commission recommends measures to ensure parity and transparency of practice. It urges a reinvigorated commitment to the progressive purposes of state education: that is, to secure equality of opportunity and social justice and an improving system that addresses the presently scandalous underachievement of the bottom quartile of children and young people (see OECD, 2012b).

### Admissions in an academised system

From the outset, the strength of feeling expressed by witnesses and in evidence to the Commission, typified by the angry anecdotes raised by a journalist parent at the Commission's launch event, meant that it was evident that the topic of admissions would need to be fully addressed by the Commission. It would have been irresponsible to treat the topic lightly. Admissions were therefore included as a topic in the call for evidence.

Our remit is to explore the implications of an academised system for the future, as opposed to analysing current practice. However, we need to understand current practice to make projections.

Myths abound in relation to academies' admissions, and a challenge for the Commission has been to discern, within a complex field, which issues:

- reflect existing facets of the English education system, but which risk exacerbation via mass academisation
- are specific to academies.

The mission of state education is to provide access to educational excellence for all. In practice, the apparent *lack* of equal access has been a long-standing problem. The UK education system is among the most socially segregated of OECD countries (OECD, 2010). This is manifested in socially advantaged pupils being concentrated in the best

*The English education system and its outcomes will never be world class while disadvantaged pupils are held back by poor quality teaching and learning*

schools (see for example, Francis, 2011; Clifton and Cook, 2012) with more teachers (see for example, Schleicher, 2012b; Husbands, 2012), and disadvantaged children are over-represented in poorer quality schools. We acknowledge that the quality of teaching can vary markedly within schools, so that admission to a school that is outstanding overall does not guarantee good outcomes: admissions are only one factor in the systemic underachievement of disadvantaged children. But, nevertheless, they remain important.

The English education system and its outcomes will never be world class while disadvantaged pupils are held back by poor quality teaching and learning.

Arrangements for admissions to academies are different from those of maintained schools in a variety of ways:

- where maintained schools are bound to the Admissions Code by an Act of Parliament (SSFA 1998, Section 88H), academies are bound by their funding agreements with the Secretary of State
- certain ‘derogations’ to the admissions code may be granted within individual academy funding agreements (see below)
- the procedures for academies applying to vary admission arrangements are also distinct from those of maintained schools
- like some other types of school (Voluntary Aided and Foundation schools), academies become their own individual admission authority; for community schools, the local authority is the admission authority.

The 2012 Admissions Code sets out mandatory requirements for school admission arrangements and applies to all schools, including academies. However, as independent schools set up under a Funding Agreement between the Secretary of State and the Academy Trust, the Secretary of State has the power to vary this requirement where an academy can point to a ‘demonstrable need’ (Admissions Code, page 3). Any such derogations from the code that are agreed by the Secretary of State are contained in Annex B of an individual school’s funding agreement.

Table 1 sets out the admission authority for each type of school in England.

The admission arrangements for Voluntary Aided schools (typically, faith schools) and Foundation schools are similar to those of academies. All three categories of schools are able to make their own admission arrangements and manage their own appeals. Any person or body that considers that any maintained school or academy’s admissions arrangements are unlawful, or not complying with the Code or relevant law relating to admissions, can make an objection to the Schools Adjudicator. The Schools Adjudicator’s findings are binding and enforceable on all schools and academies (DfE, 2012k).



**Table 1: The admission authority for each type of school in England**

Type of school	Admission authority	Responsibility for dealing with complaints about arrangements	Responsibility for arranging/providing for an appeal against refusal of a place at a school
Academies	Academy Trust	Schools Adjudicator*	Academy Trust
Community schools	Local authority	Schools Adjudicator	Local authority
Foundation Schools	Governing body	Schools Adjudicator	Governing body
Voluntary aided schools	Governing body	Schools Adjudicator	Governing body
Voluntary controlled schools	Local authority	Schools Adjudicator	Local authority

\* The Schools Adjudicator cannot consider objections in respect of agreed variations from the Admissions Code for academies that have been authorised by the Secretary of State.

Source: The Admissions Code 2012, DfE.

Admission arrangements in England have long been complex and diverse. In 2010, around 6,000 schools were already their own admission authority (that is, about a quarter of schools in England), and the vast majority of these were not academies. But the rapid academisation in the secondary sector since the 2010 Act has intensified this diversity.

This chapter analyses the arrangements for academies' admission procedures and evidence provided to the Commission in order to assess how admissions should best be managed in an academised system.

### **Own Admission Authorities and the potential for selection**

The new Admissions Code came into force in February 2012 and sets out the requirements on maintained schools and academies in England (DfE, 2012k). The new 'slimmed down' code aimed to make the school admission process simpler, fairer and more transparent for all parents.

The Admissions Code states that 'the admission authority for the school must set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied'. While admission criteria for over-subscription must be 'reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation', research and evidence to this Commission indicate that some popular schools (including academies) are setting and using criteria to select and exclude pupils.<sup>9</sup>

The practice of selective admission is not new – that is, selecting pupils deemed to have abilities and/or with dispositions beneficial to the school and excluding those deemed not to have them. Nevertheless, academies' autonomy over admissions has attracted controversy and fuelled concerns that the growth of academies may entrench rather than mitigate social inequalities. For example, research on sponsored academies that

9. See, for example, the body of research by Professor Anne West and her colleagues.

were established in the initial phase of academies (under the Labour government) suggests that these schools, being established mainly in areas of disadvantage, generally had a significantly more disadvantaged intake than the local or national average. However, as noted in chapter 2, the intake tended to change over the course of the academies programme, with a decrease in the proportion of disadvantaged pupils enrolling in these schools, and evidence of corresponding changes in intake in other local schools (Machin and Vernoit, 2011; PwC, 2008; NAO, 2010; Wilson, 2011).

Such patterns should not necessarily be attributed to academies' manipulation of admissions, as some commentators appear to do. A newly resourced and thriving academy may attract local families who would previously have tried to send their children elsewhere. In this sense, such academies genuinely become more reflective of their local community – and encouraging a better social mix is beneficial for everyone (Willms, 2006; OECD, 2010).

Nevertheless, it is important that existing detrimental tendencies towards social segregation in the English school system are not exacerbated, and schools should not be seeking to manipulate their intakes to the detriment of equality of opportunity for all pupils. Drawing on her empirical research findings (Wilson, 2009), Dr Joan Wilson concludes:

'Independence from local authority control coupled with a continued pursuit of academic excellence may encourage newer Academies to adapt their admissions towards a more homogeneous and advantageous pupil intake, a fragmented situation that would further reduce fairness in access to schools, lowering potential attainment and educational opportunity among disadvantaged pupils in particular.'

**Wilson, written submission**

Free Schools, set up and run within the same legal framework as academies, have compounded such controversies. As with academies, Free Schools are required to abide by the Admissions Code. The Free Schools programme is seen by the government as a mechanism for boosting social mobility in areas of disadvantage, as well as promoting parental choice (DfE, 2011a). However, of the 24 Free Schools set up in the first wave, in many cases their admissions appear not to reflect or represent the local demographic profile. Data collected by Gooch (2012) through Freedom of Information requests show that the overall proportion of pupils eligible for free school meals (FSM) at the 24 (then) open Free Schools was 9.4%, significantly lower than the national average of 16.7%. The difference between the proportion of pupils eligible for free school meals in a Free School and other schools becomes starker when Free Schools are compared with schools in their immediate vicinity. All but two of the initial 24 Free Schools are below the local average for FSM when compared with their five nearest schools with the same pupil age-range. The data collected by Gooch (2012) also show that Free Schools tend to have low proportions of pupils who have special educational needs, although, as Gooch points out, identifying such pupils is a continuing process and in new primary schools it may be some time before numbers are settled.

Increasing competition and high stakes accountability, coupled with research showing how over-subscribed schools can manipulate the admissions system, provoke concerns that selective admissions may become more prevalent. As the academies programme becomes more complex – and no longer focused in areas of disadvantage – mass academisation has a significant impact on this landscape.

The ATL asserts in written evidence:

‘Successive reports by the Schools Adjudicator show that the propensity for unfair admissions practices is greater in schools which are their own admissions authority, and academies suffer from a significant accountability deficit. The two factors combined make less fair admissions a certainty.’

Numerous submissions to the Commission suggest some academies are finding methods to select covertly. Given the focus of the Commission, these complaints and concerns were targeted at academies, although the accusations may also be levelled at schools representing other models (see for example, West and Hind, 2003; West *et al.*, 2004; Allen and West, 2009). The new Admissions Code states that schools cannot ‘interview children or parents’ and that when formulating criteria to deal with oversubscription, schools must not ‘give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation’ (DfE, 2012k). However, some witnesses suggested to the Commission that schools, including academies, have ways to get around this, such as by holding ‘social’ events with prospective parents or pre-admission meetings.

Concerns have also been raised that academies are using additional information when making decisions on admissions. While local authorities are responsible for the common application form (CAF) used by schools, schools and academies may use supplementary information forms (SIFs) in addition to the CAF. West *et al.* (2009) found that some SIFs used, principally by schools which are their own admission authority, can be lengthy, involve open questions and sometimes include requests for information not permitted by the code. Such practices can enable schools to select pupils from more privileged families where parents have the requisite cultural capital to complete the SIF in ways that will increase their child’s chances (West *et al.* 2009; West *et al.* 2011).

There is evidence that schools that control their own admissions are more likely to be socially selective than community schools (see West and Hind 2007; West *et al.* 2011; Allen and West, 2009; Allen and West 2011; Barnardo’s, 2010; Allen *et al.* 2011). Allen and Vignoles (2006) found an association between local authorities with higher proportions of pupils in schools that controlled their own admissions or have explicit selection by ability, and the level of FSM segregation. Research by Rudd *et al.* (2010) into local authority approaches to admissions processes found that 38% of respondents in a survey of local authority admissions officers said that schools that were their own admission authority ‘caused problems’ for them. Where the ‘problems’ were specified, they tended to relate to understanding of or compliance with the code. (See also Noden and West, (2009).) A report by the children’s charity Barnardo’s (2010) shows



a link between schools that are their own admission authorities and unfair admissions practices.

Such practices were resulting in schools with skewed intakes that do not reflect their neighbourhoods. Commenting on the findings of the Barnardo's study in *The Guardian* in August 2010, the then Chief Executive of Barnardo's, Martin Narey, said:

'We are seeing impenetrable clusters of privilege forming around the most popular schools. Allowing such practice to persist – and almost certainly expand as increasing numbers of schools take control of their own admissions – will only sustain the achievement gap in education and undermine the prospects of the most disadvantaged and vulnerable children.'

He noted further that many working class parents do not understand, or feel unable to participate in, the 'complex game' that is being played with admissions.

As the pace and scale of academisation lead to a rapid rise in the number of schools that are their own admission authorities, there is a risk that admissions 'game playing' may be extended further. This has important implications. The current emphases on choice and diversity may go some way to improving the school system in England, but they are likely to hit a ceiling because of the lack of engagement with (or even negative impact on) disadvantaged families. These families correlate closely to the 25% of pupils significantly underachieving in schools in England. As the OECD (2012b) insists, it is this comparatively significant underachievement of the bottom quartile that has a negative impact on outcomes at a system level.

### **Parents' understanding of and access to academies' admission processes**

The admission processes for schools which have autonomy over their admissions have become increasingly and unduly complex over the past 10 years (West *et al.*, 2009). Research conducted before the new Admissions Code was introduced shows that parents, especially those from lower socio-economic groups, struggled to describe the different ways that school places were allocated. Professor West and her colleagues argue that the admissions system does not simply *appear* complex to some parents but *is* complex (2009). The Sutton Trust (2007) found:

'School admissions are so complex that many [parents] do not feel they understand the issues sufficiently to make a judgement on the use of different criteria... A concern is that this apparent ambivalence towards school admissions policies is particularly pronounced among those from lower social class groups – the very people intended to benefit from reforms.'

Making admissions easier for parents to understand was central to the government's subsequent revisions to the Code. The new Code states clearly that admission arrangements must be clear and accessible for parents:

*Making admissions easier for parents to understand was central to the government's subsequent revisions to the Code*

‘In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.’

**DfE, 2012k**

However, despite this attempt to simplify admission arrangements and ensure they are accessible, evidence to the Commission from Professor West and a focus group of parents suggests that parents are still finding it difficult to navigate the system.

Complex admission arrangements are not unique to academies. However, because they are their own admission authorities (and, additionally, are able to agree derogations to the Admissions Code with the Secretary of State), there is potential for academies to have more complex arrangements than community schools. According to the 2011 Report of the Schools Adjudicator, 17% of objections to admission arrangements relate to academies, despite the fact that they made up only 4% of all schools at that time. The 2011 report also indicates that some local authorities encounter problems in working with academies to coordinate local admissions. Some authorities found academies reluctant to share data; this inhibited the effective coordination of local arrangements for admissions.

Evidence submitted to the Commission suggests that parents encounter complicated jargon about admissions on the websites of academies and are finding it difficult to understand what schools their child may have access to. The Commission was shown examples of misleading information that individual academies had provided to parents; these illustrate the potential for confusion. In written evidence to the Commission, the ACE said:

‘Many parents, especially those who are less educated or less confident, find the present admissions system complex and this will not be helped by an increase in the number of ‘own admission authority’ schools setting different admission arrangements to those of the local authority community schools. Giving more schools the ability to set their own admission arrangements will make the system harder for parents to navigate.’

A lack of readily available information on schools’ admission arrangements can be a problem specific to academies because, while academies are required to publish their admission arrangements online, the finer details – including derogations from the Code – are contained in Annex B (or D) of individual academy funding agreements and these are not always easily accessible for parents.<sup>10</sup>

<sup>10</sup>. Funding Agreements used to be available centrally on the DfE website but were recently removed (Wolfe, 2012a). These now appear to be available through rather complex searches for individual schools on the DfE’s database (which can take time) or, alternatively, by a Freedom of Information request. However, DfE officials report that the intention is for funding agreements to be accessible on the DfE’s website.

## Academies' admissions arrangements and derogations from the code

The derogation arrangements described at the beginning of this chapter mean that academies are permitted to have admissions arrangements that would normally not be allowed in the Code for community schools. DfE officials explain that Ministers have been clear that 'academies must comply with the School Admissions Code except where to do otherwise would better support fair access for pupils and parents', and that 'consequently derogations are very limited in nature'.

The various derogations that have currently been applied are as follows:

- A small number of free schools are permitted to give **priority for admission to the children of a core group of parents** who first set up the school; such parents are to be named in the funding agreement.
- Academies are permitted to give **priority for admissions to children attracting the Service and Pupil Premiums**, where their funding agreements allow this.
- All Free Schools, University Technical Colleges and Studio Schools can choose to be **outside the local coordination of admissions in the first year they are set up**, in recognition of the accelerated timescales involved in establishing such schools. (The DfE explains that to require such schools to be within a locally coordinated scheme in the first year could delay the opening of a school unnecessarily.) They must be fully within the system from the second year.
- Some University Technical Colleges offer technical disciplines that require access to large machinery and so on. Because space will be limited, such schools are allowed to have admission numbers for each subject stream.

The Pupil Premium attaches an additional sum of money to each pupil who is eligible for free school meals to support their education and to provide incentives or rewards for good schools that admit these pupils. In this sense, it encourages the admission of disadvantaged pupils to schools of their choice.<sup>11</sup> Nevertheless, the distinctive arrangements for academies have fuelled suspicions in some quarters that academies will be allowed to apply selective criteria that bolster their market position.

According to the DfE, the Secretary of State has not exercised his derogation powers for any converter or sponsored academy opened under the Coalition government, except to allow them to give priority to pupils entitled to the Service and Pupil Premiums. He has allowed Free Schools, University Technical Colleges and Studio Schools to use the derogations listed above.

11. Researchers and some headteachers are sceptical about whether the amounts of money concerned are sufficient to encourage many schools to take additional pupils who are eligible for FSM, given the counter deterrent of accountability measures such as performance data. Nevertheless, the thrust of the policy is popular across political parties and the education sector, since it aims to ameliorate social inequality.

The DfE explains that ‘derogations are not common because of the fact that Code compliance is the main means of ensuring that academies have fair admissions’ (DfE correspondence; see also Gibb, 2012).

Where derogations have been made, it is not easy to access the judgements. The Commission requested further details of the total numbers of derogations that have been allowed in each of the categories. However, the DfE does not appear to keep these data. Further, the Schools Adjudicator does not have powers to investigate any objections to admission arrangements where the Secretary of State has agreed variation to the requirements in academies (see the Admissions Code, paragraph 3.3d). This raises questions about transparency and parity.

### **Free Schools and admissions**

Submissions to the Commission raised various concerns about admissions practices for Free Schools. The concern raised most frequently related to the derogation for Free Schools to set admission criteria in relation to oversubscription that give priority to children of the founders of the school. The NUT’s written evidence to the Commission drew attention to the Canary Wharf College, a Christian school in Tower Hamlets.<sup>12</sup> Its funding agreement stipulates that:

‘Provided that the Academy Trust acts in accordance with the public benefit requirement under charity law, the Trust may for a minority of places of the yearly intake adopt admission oversubscription criteria that give priority to children of parents (Founders) who have provided specific assistance, advice, guidance or support in the preparation of the Application and Business Case for the Academy.’

Canary Wharf College admitted just one pupil who was eligible for free school meals in its first 60 entrants – in a Borough where almost half of young people are eligible (NUT evidence). The DfE is determined that this will not be repeated. However, it appears to remain the case that the DfE’s approach is simply to work within the spirit of the Admissions Code rather than to impose clear and accessible criteria, such as indicating acceptable numbers of founder-related admissions or setting time limits on these arrangements. Such an approach fails to be transparent and engender trust. A lack of readily available information fuels suspicions of selective practices, whether accurate or not.

<sup>12</sup>. See the admissions page of the school’s website: [www.canarywharfcollege.co.uk/page/?title=Admissions&pid=16](http://www.canarywharfcollege.co.uk/page/?title=Admissions&pid=16)

## Placing vulnerable young people

### Fair Access Protocols

The Admissions Code places obligations on local authorities and admission authorities (that is, including academies) to secure fair access to schooling for all pupils, as set out below:

#### Arrangements and obligations in respect of Fair Access Protocols

3.09 Each local authority must have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that – outside the normal admissions round – unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. In agreeing a protocol, the local authority **must** ensure that no school – including those with available places – is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour.

3.11 All admission authorities must participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

Source: *School Admissions Code 2012*, DfE.

The changing environment has facilitated some effective new approaches and opportunities for good practice, as noted by a recent ISOS report (Parish *et al.*, 2012). For example, one local authority, in partnership with its schools, has completely refreshed its approach to Fair Access so that there is a greater emphasis on preventing exclusions, more transparency about how vulnerable children are placed, and greater ownership by headteachers (Parish *et al.*, 2012).

However, various researchers have found that market competition in the education system provides incentives for schools to avoid particular, vulnerable pupils who might be seen as detrimental to the school's attainment profile (MacBeath, 2006; Barnardo's, 2010).

The Commission received reports of breakdowns of local behaviour and attendance partnerships, with some academies reportedly refusing to cooperate with other local schools in relation to hard-to-place and excluded pupils, despite the legal requirements. The NUT, in written evidence to the Commission, provided examples of such breakdowns from many different areas, including Derbyshire, Cambridgeshire, Nottinghamshire and Sefton. These partnerships had previously worked to ensure headteachers cooperated in managing hard-to-place pupils and moving pupils who were at risk of exclusion. The partnerships were underpinned by a belief that all local headteachers should share responsibility for all the pupils in their area.

Particular concerns about the refusal of academies to cooperate have tended to coalesce around new stand-alone converter academies. This evidence is supported by others, including the Office of the Children's Commissioner (2012) and the report from the Education Select Committee (2011) on behaviour and education in schools. This all suggests that the growth in the number of academies is challenging such local partnerships.

*Where schools saw Fair Access Protocols as objective, fair and transparent, they continued to engage with them well*

Parish and colleagues (2012) have raised similar points in the ISOS study already mentioned. Their interim report found that, in general, in areas where schools saw Fair Access Protocols as objective, fair and transparent, they continued to engage with them well. However, where Fair Access had not been administered successfully, schools swiftly disengaged themselves. As the ISOS research progressed, local authorities expressed increased anxiety as to the future security of Fair Access arrangements, even in areas where they have been effective in the past. Some local authorities fear that increased autonomy could lead to individual schools opting-out of taking their fair share of pupils who face multiple challenges and are consequently hard to place. Some local authorities also felt that the pressure of forced academisation for schools at or near the floor target increased their reluctance to accept pupils who might have a negative impact on their results. A further complication is that disputes with academies which are escalated by local authorities to the Education Funding Agency are not being resolved quickly enough. Schools' participation in local Fair Access arrangements, however, is critical to ensuring that a good, quality place is available for every vulnerable pupil.

The ISOS study concluded that effective engagement with Fair Access arrangements depended more on the commitment of individual headteachers and governors than on the type of school (academy or otherwise). As we have seen, there are examples of excellent practice where dedicated academies and schools collaborate in new ways with the local authority to ensure they meet the needs of vulnerable young people. In an all-academy system it will be imperative to have arrangements for securing school places for hard-to-place pupils, and that schools cooperate to share their obligations. Chapter 5 explores this in more depth.

### **Directions**

Local authorities remain responsible for ensuring that all children in the local area are placed in a school. In discharging this function, authorities have the power to direct the admission authority of maintained schools in their area to admit a pupil, even if the school is 'full' (DfE, 2012k). However, the local authority cannot *direct* an academy to admit a pupil; only the Secretary of State can do this, as set out here:

#### **Summary of local authority and Secretary of State powers to issue directions to admit pupils**

3.16 Local authority powers of direction (general) – A local authority has the power to direct the admission authority for any maintained school in its area to admit a child even when the school is full.

3.22 Secretary of State's power of direction (Academies) – Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child, and can seek advice from the Adjudicator in reaching a decision.

Source: *School Admissions Code 2012*, DfE (2012k).

However, the model funding agreement (Annex C) appears to suggest that, in the case of a pupil with a statement of special educational needs, the local authority can propose to name an academy in a statement to admit her or him, but the academy can appeal to the Secretary of State to make a (different) determination. This is rather different. The Commission has found that even legal experts find the implications challenging, illustrating the lack of transparency for parents and other non-expert stakeholders.

### **Admissions of pupils with special educational needs (SEN) and behavioural, emotional and social difficulties (BESD)**

Concerns about fairness have focused especially on provision for pupils with statements of special educational need (SEN), behavioural, emotional and social difficulties (BESD), and other vulnerable pupils.

The admission of pupils with statements of SEN to academies is a complicated area, as suggested above, and submissions to the Commission expressed concerns that academies' admission arrangements do not provide equal access and provision.

Two recent moves substantially address concerns about exclusive practice. First, following the Academies Act 2010, arrangements for admitting pupils with statements of SEN have changed. Responding to campaigns and pressure in the House of Lords, the government amended the legislation to achieve 'absolute parity' between maintained schools and academies in relation to SEN. All funding agreements for academies opened after 2010 must now include details of their 'SEN obligations'. While campaigners welcomed this improvement, concerns remain that funding agreements still do not give parents the same rights of redress as they have in community schools.

Second, the recent high profile First-tier Tribunal Special Educational Needs and Disability (SEND) cases and decisions in relation to Mossbourne Academy and Hackney local authority have provided clarity about whether the legal rights of parents of children with statements of SEN are the same in academies that were established before 2010 as they are in maintained schools. The SEND Tribunal treated academies as independent schools rather than maintained schools (see the note on terminology in chapter 1); independent schools have no statutory obligation to admit pupils with statements in compliance with Tribunal orders. However, the Upper Tribunal ruled instead that academies should be assumed to comply in the same way as maintained schools. This decision will now stand. Subsequently, the Tribunal has ruled in favour of the majority of the families bringing cases in the Mossbourne/Hackney case (IPSEA, 2012). Although, in theory, the Secretary of State remains the final arbiter in each academy case, on the basis of academy funding agreements, he has said that he cannot foresee that he would disagree with or intervene in Tribunal decisions related to special educational needs and disability.

It remains the case, however, that legislation applied to maintained schools is different from that applied to academies' appeals: paragraph 3 of Schedule 27 of the Education Act 1996 sets out the process for enabling parents to express a preference as to the maintained school at which they wish education to be provided for their child. Where the parent expresses



such a preference, the local authority ‘..shall specify the name of that school unless the school is unsuitable to the child’s age, ability or aptitude or special educational needs or the attendance of the child would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources’. On appeal, the burden of proving the exception is on the local authority. Where parents seek to have an academy named, then the Tribunal applies section 9 of the same Act which provides that the decision maker ‘... shall have regard to’ the general principle that pupils are to be educated ‘in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure’. It is a different test, and the local authority is not required to comply, subject to exceptions, as with maintained schools.

In his evidence to the commission, David Wolfe stated that the legal rights of pupils to attend academies, and the rights of their parents, remain confusing (both to parents and to academies), and that legal recourse is time-consuming.

The Commission heard from judges from First-tier Tribunal Special Educational Needs and Disability (SEND) that complexity remains, because of the potential for academies to refer Tribunal decisions to the Secretary of State. Cases involving pupils transferring from one school to another are fast-tracked to enable the pupils concerned to start at the relevant school in the autumn term. However, if applications are made to the Secretary of State, after Tribunal decisions, this could significantly delay the final decision. There are consequences for the pupil and, potentially, for the outcome in that the family might place the child at an alternative school to avoid the child missing school. In its submission to the Commission, the ACE raised concerns that in areas where all schools become academies, the lack of power for local authorities to direct school admissions could leave vulnerable pupils without a school place for a considerable time.

The Special Educational Consortium (SEC 2012) and other campaigning groups have consistently urged the government to tighten regulations on academies. In a meeting of representatives from the SEC, National Parent Partnership Network, National Deaf Children’s Society, IPSEA and NASEN, the Commissioners heard that campaigning and support groups were witnessing a growth in reports from parents who are either unable to gain access to academies for their children or who are concerned about the provision in these schools. The following concerns were raised in the meeting:

- an apparent trend towards not appointing coordinators for special educational needs (SENCOs)
- a detrimental effect of academisation on the central provision of services for pupils with SEN by local authorities, with some specialist units for pupils with low-level disabilities (such as hearing impairment) cut back; and worries for the future of these units after 2012/13 when funding for specialist services will no longer be ring-fenced
- the possible emergence of a population of pupils who cannot be placed or are placed permanently in alternative provision academies

- academies/chains setting up Free Schools and alternative provision for their SEN and BESD pupils, so removing them from the performance data of the original academy; and a consequent move away from inclusive practices.

Other submissions also alluded to the last concern. For instance, in written evidence to the Commission, UNISON said:

‘The impending introduction of alternative provision academies means that, in a local area, both schools and Pupil Referral Units could come under the umbrella of the same academy sponsor or chain. Without proper safeguards in place, this could lead to protectionism and create perverse financial incentives to keep pupils in alternative provision (with higher per-pupil funding rates) rather than integrate them back in to schools.’

There certainly appears to be a trend for alternative provision under the banner of Free Schools. In 2012 there are three special Free Schools and five Alternative Provision Free Schools (DfE, 2012p). Of the 113 Free Schools approved to open from 2013 (as at November 2012), five are special Free Schools and 13 are Alternative Provision Free Schools (DfE, 2012g).

David Braybrook, specialist educational consultant for SEN and disability, raised several of these concerns in his oral evidence to the Commission. He reported that while some excellent practice takes place in some academies that have a thorough understanding of their obligations, this is not consistent; some academies are extremely poor in terms of dealing with special educational needs and interpreting their obligations. He also observed covert practices of steering SEN pupils towards other schools, along the lines of ‘This school is not for you. Your child would be happier elsewhere.’

However, the SEN reforms progressing through Parliament are intended to give parents greater powers.<sup>13</sup> The Coalition’s response to the SEN Green Paper (May 2012) suggests that parents will not only be given more say in managing budgets for the provision for their child, but also that they will have the right to seek a place at any local school, including academies and Free Schools.

### **Exclusions**

High rates of exclusion have implications for the pupils concerned, as well as for the local schools that have to admit these pupils. We already know that pupils with statements of SEN are among the groups most likely to be excluded, alongside pupils eligible for free school meals, and pupils from some Black and minority ethnic groups (DCSF, 2009; DfE, 2011c).

There is evidence of significantly higher rates of exclusion within academies than in local authority maintained schools (NAO, 2010; DfE, 2011c, DfE, 20120; Office of the Children’s Commissioner School

<sup>13</sup>. For further details, see: [www.education.gov.uk/inthenews/inthenews/a00209040/changes-to-sen-support-for-2014](http://www.education.gov.uk/inthenews/inthenews/a00209040/changes-to-sen-support-for-2014).

Exclusions Inquiry, 2012<sup>14</sup>). Recent research by the Local Schools Network (2011) and Anti Academies Alliance (2012) shows that in 2008/09 and 2009/10 academies permanently excluded twice as many pupils as local authority secondary schools did. There was also a significant gap between the two for fixed-term exclusions. The DfE's report (2012) shows that academies had the highest rate of permanent exclusions; however, in comparing academies with maintained schools with similar intakes, the DfE argues that the average permanent exclusion rate for academies was only slightly higher than for the comparator schools (0.32% and 0.25% respectively).

The Education Act 2011 removes parents' rights to appeal to an independent panel against the permanent exclusion of their child from a school (or an academy). The replacement Independent Review Panels cannot require a school to reinstate a pupil that the panel judges was unfairly excluded. Although this move has raised alarm about the erosion of parents' rights to appeal,<sup>15</sup> other changes in recent legislation provide some safeguards. The excluding school/academy now retains responsibility for the pupil's academic attainment and attendance, and is required to commission and pay for alternative provision. Furthermore, academies/schools will all need to take account of the Equalities duties on the public sector.

However, the Commission received evidence of cases of 'unofficial' or 'informal' exclusions within academies. These echo accusations cited in the report on school exclusions from the Office of the Children's Commissioner (2012). For example, it gives the example of 'a young person or their family [who] is "persuaded" to move school – a move usually sold to the family and the child as an alternative to a permanent exclusion going on the child's record.'<sup>16</sup>

### **Agreeing and regulating admission arrangements**

With a range of parties involved in setting and administering admissions arrangements, it is important that the ways of coordinating the arrangements and dealing with alleged breaches of admissions rules are effective.

#### **Admissions Forums**

All admission authorities have to consult parents and other admissions authorities whenever they propose to amend their admission arrangements (DfE, 2012k).

In addition to these statutory requirements, local authorities have also historically convened admission forums. These have provided parents with a forum where they can log complaints about admissions

14. The report of Phase 1 of *The Office of the Children's Commissioner School Exclusions Inquiry* (2012) provides evidence. It explores the effectiveness of the current exclusions system, including alternative provision, support, and mechanisms for appeals, and identifies concerns about exclusions in academies.

15. See, for example, the *Office of the Children's Commissioner School Exclusions Inquiry*, 2012; also Administrative Justice and Tribunals Council (AJTC), 2011.

16. Such practices, and this quotation from the Children's Commissioner, apply to schools in general rather than just academies. However, her report specifically recommends that the Secretary of State should urgently investigate accusations made to the inquiry 'regarding some academies failing to abide by relevant law with regard to exclusions.'

arrangements. Admission forums have had a remit in overseeing the effectiveness of local admissions arrangements, advising local admissions authorities on improving their arrangements and abiding by fair practice, and dealing with difficult admissions issues. Although the 2010 Education Act removed the requirement for local authorities to convene admissions forums, many forums continue their work. Their effectiveness, however, appears to be mixed, perhaps because they now lack formal powers and because working practices differ across authorities (Noden and West, 2009; Rudd *et al.*, 2010). Despite these reservations, forums were identified as playing an important role in several areas (Noden and West, 2009).

Critics see the removal of the requirement for local authorities to host admissions forums as hindering parents' access to make objections about admissions. Removing the requirement also appears to present a challenge to the capacity of the Office of the Schools Adjudicator since it would have to deal with an increase in complaints about admissions.<sup>17</sup> The Schools Adjudicator's 2011 report warns:

'It seems to be a pity that at a time when the number of admission authorities is growing, this vehicle that has the potential to improve arrangements locally is not likely to survive in most LA areas.'

**OSA, 2011**

The government has extended the right to object to the Schools Adjudicator to any person or body (see below).

## The Schools Adjudicator

### Role and remit of the Schools Adjudicator

Schools adjudicators work independently from the Department for Education but are appointed by the Secretary of State for Education. They are appointed on their experience and ability to act impartially, independently and objectively. The school adjudicators' legal responsibilities include:

- ruling on objections to schools' (including academies) or local authorities' admission arrangements, for pupils entering a school in the September of the year following the publication of the contested arrangements
- resolving local disputes regarding statutory proposals for school reorganisation
- ruling on appeals from maintained schools against a direction from a local authority for the school to admit a particular pupil; and
- resolving disputes on the transfer and disposal of non-playing field land and assets.

The Chief Schools Adjudicator submits an annual report to the Secretary of State on fair access.

Source: The Office of the Schools Adjudicator.

17. See for example submissions from NASUWT and Comprehensive Future.

*The Commission is of the view that it would be better if the procedures for academies were the same as those for maintained schools with the Secretary of State having no role in proceedings*

The School Standards and Framework Act 1998 introduced the Office of the Schools Adjudicator to resolve local disputes, including those related to school admissions. Since then, the role of the Schools Adjudicator has been expanded to include responsibility for adjudicating on the statutory requirements of the School Admissions Code and to consider the legality of schools' admission arrangements. The role of the Schools Adjudicator is described above.

There are some differences in how directions to a school to admit a pupil and variations to determined admission arrangements are adjudicated, in line with the remit of the Schools Adjudicator, with regard to academies and maintained schools.<sup>18</sup>

First, a local authority is the admission authority for community and Voluntary Controlled schools in its own area. It has less direct control over Foundation and Voluntary Aided schools: if a local authority wishes a maintained school in another LA or a Voluntary Aided or Foundation school in its own LA or another authority to admit a pupil it must issue a notice of intention to direct to the admission authority (school) concerned. The admission authority concerned can then appeal to the Schools Adjudicator. The decision of the Adjudicator is final.

However, in respect of academies, if a voluntary agreement cannot be reached between the local authority and the academy admission authority, the local authority can appeal to the Secretary of State to make a direction. The Secretary of State is able to consult the Adjudicator but it is not obliged to do so.

This anomaly was raised in the Schools Adjudicator's annual report in 2011 (Office of the Schools Adjudicator, 2011). It argued that all such applications (including those from academies) should come to the Office of the Schools Adjudicator (OSA). The current Schools Adjudicator confirmed in her oral evidence to the Commission that the capacity of the OSA would not be a problem in considering requests for a variation to determined arrangements, since there are relatively few annual applications. The Commission is of the view that it would be better if the procedures for academies were the same as those for maintained schools with the Secretary of State having no role in proceedings.

Second, the OSA takes decisions on objections to and referrals about determined schools admission arrangements for maintained schools and academies, *taking account of any agreed exemptions* from the Schools Admissions Code that an academy may have been granted through its Funding Agreement. These distinct arrangements risk confusion and the suspicion of different treatment for maintained schools and academies.

As noted earlier, in 2011 a disproportionate number of objections to admission arrangements came from academies. In oral and written evidence submitted to the Commission, concerns were raised about the Schools Adjudicator's powers and capacity to investigate such objections and ensure fair admissions arrangements in an increasingly academised system, given reduced local authority powers in this area.

The Commissioners were impressed by the capacity of the Office of the Schools Adjudicator and its development of effective systems. For example, the provision of local authority reports to the Schools

<sup>18</sup>. For further information, see: [www.education.gov.uk/schoolsadjudicator/about](http://www.education.gov.uk/schoolsadjudicator/about).

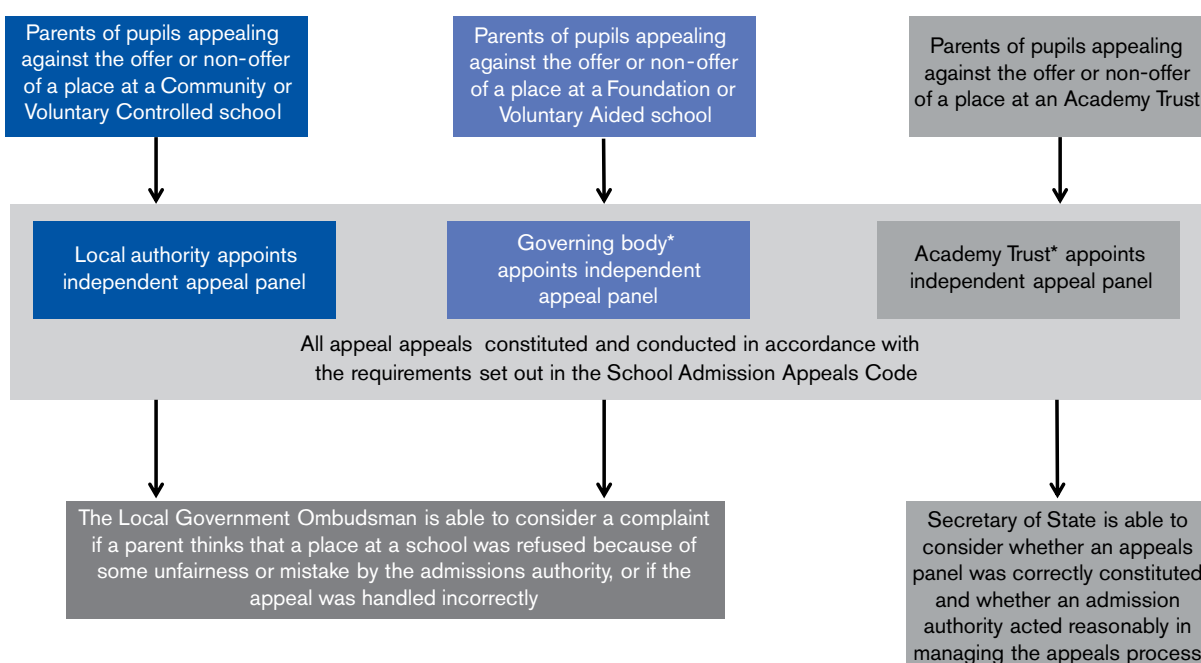
Adjudicator on local admissions and fair access has previously proved patchy, despite legal requirements for these to be supplied, with only 58% of authorities having done so on time in 2011. This provoked the disapprobation of the then Schools Adjudicator (Schools Adjudicator report, 2011). However, a simpler online process has facilitated 100% publications/returns of local authority reports in the present year (2012). The Schools Adjudicator told the Commission that the reporting template is being reviewed and will be revised for 2013 to ensure that relevant information is covered.

The Commission recommends that academies and maintained schools be placed on a common footing with regard to local authority directions to admit pupils. The role of the Secretary of State in this regard should be ended and all appeals against directions should be heard and determined by the Office of the Schools Adjudicator. The adjudicator should also be granted powers to hear complaints against variations and derogations from the School Admissions Code that the Secretary of State grants to academies.

### Appeals and complaints

The Commission considered the routes available to parents within an increasingly diverse system, including how complaints about the ways in which schools/academies are drawn up and implementing admission policies are handled, and individual appeals against decisions. Figure 7 illustrates the diversity.

**Figure 7: Routes of appeal**



\*The governing bodies of Foundation and Voluntary Aided schools and Academies may ask another body, e.g. the local authority, to carry out some or all of their admissions functions on their behalf. However, the admission authority remains responsible for ensuring those functions are carried out properly.

Source: Academies Commission.

### **Appeals on decisions relating to the admission of individual pupils**

As noted earlier, local authorities continue to be responsible for ensuring every local child has a school place. Therefore, they play a central role in admissions to maintained schools. However, they are not able to direct an academy to accept a pupil. Previously, the local authority was the admission authority for all community and Voluntary Controlled schools within an area, but recent legislation has created different structures for appealing against the decisions of academies. Parents have the right to appeal against decisions made by an admission authority to refuse their child a place. Responsibility for making arrangements for appeals against the refusal of a school place rests with the admission authority of the school – which in the case of an academy will be the academy trust and not the local authority.<sup>19</sup>

The admission authority must appoint an independent panel to hear appeals and decide whether to uphold or dismiss an appeal. These are run as quasi-independent bodies. In the case of local authority panels, such panels are supported by a local authority's appeals service which recruits, trains, and supports the panel, including providing a clerk. Different local authority staff (the admissions team) present evidence to the panel on behalf of the authority, with the parents and their representatives having a chance to respond.

In the case of an academy, where the trust rejects the appeal, the next step is for the parents to take the appeal to the academy's independent appeals panel. Both local authority and academy panels have to follow the rules and procedures for establishing such panels and conducting the appeals process, as set out in the School Admission Appeals Code (DfE, 2012j). However, given that many of these panels deal only with a single academy, questions may be raised about the extent of their experience and competence. Community schools converting to academy status will be taking on this function for the first time. Assessing local authority reports to the Schools Adjudicator, the Schools Adjudicator's annual report (2011) made the following observation (see also SOLACE, 2012):

‘As more and more schools become their own admission authorities, an increasing proportion of LAs consider that they lack the information needed to monitor compliance of ‘independent’ panels, and to carry out their responsibilities as champions of the pupils and parents within their communities. Many LAs believe that if they are to act as the champions of local children and parents then they should have the powers to monitor these panels, without of course compromising their independence.’

In terms of avenues of redress if an appeal hearing is unsuccessful, differences between maintained schools and academies are significant.

In the case of maintained schools (which include Foundation and Voluntary Aided schools as well as community and Voluntary Controlled schools), parents can take their case to the Local Government Ombudsman (LGO). The LGO can address complaints about appeals processes and the practices of admissions appeals panels. This extends

19. Foundation and Voluntary Aided schools are also responsible for their own appeals.



to converter academies ‘but only where they have converted from maintained schools during the admissions process’. So, in most cases, the LGO is unable to investigate complaints relating to academies’ admissions panels. The remit of the LGO is set out in more detail below.

### **Role and remit of the Local Government Ombudsman in School Admission Appeals**

The Local Government Ombudsman is not another level of appeal and cannot question decisions if they were taken properly and fairly by an admissions authority (the body making the decision on a place) or the appeal panel. The LGO can, however, consider your complaint if a parent thinks that a place at a school was refused because of some unfairness or mistake by the admissions authority, or if your appeal was handled incorrectly.

Parents can also complain if they have asked for an appeal and the admissions authority has not arranged an appeal hearing for you within a reasonable time.

The Ombudsman cannot overturn an appeal panel’s decision. But if it finds that something has gone wrong in the way an application or appeal has been dealt with that might have affected the decision, it can:

- ask the admissions authority to hold a fresh appeal with a different panel;
- ask the admissions authority to offer a place at the school you wanted. This only happens occasionally where, for example, it is clear that the published admission criteria have been applied wrongly and your child has been denied a place as a result;
- recommend that the admissions authority reviews its appeal procedures to avoid problems recurring in the future.

The LGO’s remit is limited to taking cases in respect of community, foundation, voluntary aided, voluntary controlled or nursery schools. It can only deal with complaints about academies, in so far as they have converted from maintained schools during the admissions process.

Source: Local Government Ombudsman.

Parents who are not satisfied with conduct of an academy’s admission appeals panel can complain to the Secretary of State. The Secretary of State cannot review or overturn an appeal decision – that can be done only by the courts following a judicial review of the decision. However, under Sections 496, 497 and 497A of the Education Act 1996, and under an academy’s funding agreement, the Secretary of State may consider whether:

- a. the panel was correctly constituted by the admission authority; and
- b. the admission authority has acted reasonably in exercising functions in respect of the appeals process or failed to discharge a duty in relation to that process.

These arrangements mean that academies do not face an independent layer of accountability and scrutiny to which other kinds of maintained school are subject with regard to appeals.

While the Commission is mindful of the need to avoid creating bureaucracy, it seems vital that there should be an independent office to facilitate complaints and scrutinise the practices of schools/academies and their admissions authorities. The Commission recommends that the LGO's powers should be extended to consider complaints concerning the maladministration of admissions and admissions appeals of all admissions authorities – including academies. Again, the role of the Secretary of State in this area should be ended.

#### **The role of the Secretary of State and Education Funding Agency (EFA)**

In relation to complaints against decisions made by appeal panels for academies, parents can complain to the Secretary of State through the EFA. The EFA exercises ultimate responsibility for dealing with complaints about academies, once a parent has exhausted other avenues. The procedures are set out in the *School Admission Appeals Code* (DfE, 2012j). The EFA's role in facilitating and addressing complaints is becoming clearer, with recent publications and website information providing clarity that was previously lacking. However, a certain lack of clarity remains about the extent of its powers and capacity to hold academies to account or require them to overturn their decisions. The EFA explains that:

‘The EFA cannot review or overturn an academy’s decisions about complaints but will look at whether the academy considered the complaint appropriately. The EFA will generally only do this after a complaint has been through the academy’s own procedure but may investigate sooner if there is evidence of undue delays by the academy. If the EFA finds that an academy did not deal with a complaint appropriately it will request that the complaint is reconsidered. Similarly, if the academy’s complaints procedure does not meet statutory requirements then the EFA will ensure this is put right.’

**EFA, 2012a**

This latter appears to refer to potential legal recourse. The document goes on to say:

‘If the academy does not comply with the actions, the EFA may on behalf of the Secretary of State, if appropriate, seek to enforce its decision through the courts under the terms of the funding agreement.’

The evidence before the Commission also raised concerns about the capacity of the EFA to deal with complaints regarding academies’ compliance with the admissions code and with their funding agreements. It is evident that the unanticipated speed of converter academisation following the Education Act 2010 took the government and its executive agencies by surprise: the DfE had expected less than a quarter of the applications for conversion that it received in 2010. Consequently, there has been a period of building capacity and improving systems in response to the number of academies. Evidence to the Commission and other documentation in the public domain concerning the EFA’s lack of capacity and lack of clarity on its role may reflect this period of ‘lag’. For instance,

the report of The Office of the Children’s Commissioner on exclusions (2012) calls for the Secretary of State – through the EFA – to provide greater clarity about its role in responding to complaints and grievances from parents of excluded pupils when they consider academies are operating outside their funding agreements (2012).<sup>20</sup> At the Commission’s SEN ‘round table’, representatives reported that the EFA was only just beginning to give attention to issues relating to SEN admissions and provision, as a result of the Secretary of State’s comments at the Select Committee. However, there was a sense that the EFA lacks capacity and expertise in this area, given that its remit is mainly around funding. There were claims that the EFA intervenes only when it is too late (that is, when the provision set out in a statement of SEN is not made) rather than actively ensuring that academies provide inclusive and effective education for pupils who have SEN statements.

*The Commission heard that the EFA has taken a range of steps to improve capacity and transparency, and simplify systems*

The Commission heard that the EFA has taken a range of steps to improve capacity and transparency, and simplify systems. However, the key intention of the EFA is to ensure efficiency in dealing with complaints rather than to initiate actions. Again, this prompts questions about the necessity for additional scrutiny. Evidence given by the Special Education Consortium (SEC) during the passage of the Academies Act 2010, and again in response to the 2011–12 consultation on revised guidance on exclusions, maintained that, in practice, it would be very difficult to hold academies to account when they are not meeting their responsibilities. This is because there is no viable intermediary between academies and the Secretary of State.

Research into complaints procedures for schools has found that parents are not convinced by the capacity and effectiveness of the Secretary of State to resolve disputes or complaints. Some parents viewed him as too ‘distant’ from a local context, and ‘part of the (educational) system’ (McKenna and Day, 2012). It may be that, in this context, parents are more likely to use independent and voluntary organisations for advice and guidance, such as the Advisory Centre for Education (ACE), Contact a Family (CAF) or Parent Partnership Services (PPSs), all of which have a remit for supporting the parents of pupils with SEN. However, McKenna and Day (2012) found that while parents used these services, they were aware of the limited powers of independent organisations in dealing with schools. In addition, funding cuts in the voluntary sector raise concerns about the extent to which organisations such as the ACE could continue to support parents.

### Looking forward

Complex and unwieldy admissions arrangements in *any* school/academy contravene the Admissions Code’s requirement that schools develop and consult on admission procedures in a way that is clear and accessible for parents. Complex arrangements also have the potential to exacerbate existing inequalities. Opaqueness and complexity generate concerns in relation to:

20. See also questions from the Education Select Committee as to the role of the YPLA and EFA, and the Secretary of State’s response. *The Independent* reported as follows: [www.independent.co.uk/news/education/education-news/eight-academies-given-improvement-notice-7675721.html?printService=print](http://www.independent.co.uk/news/education/education-news/eight-academies-given-improvement-notice-7675721.html?printService=print)

- the government’s intention to provide greater parental choice
- social justice
- system-wide improvement.

Given the diversity of school types and associated arrangements for managing admissions, this has been a long-standing problem. However, as academies become their own admission authorities, there is a risk – supported by evidence to the Commission – that this problem could get worse. Evidence to the Commission illustrated the impressive moral commitment of most academies to social inclusion, but this does not necessarily extend to all.

The academies programme was originally introduced to aid social mobility and equality of opportunity. But heightened accountability measures (such as rising floor targets), coupled with the explosion of academies acting as their own admissions authorities, could mean that the government’s intentions are undermined, manifested in greater educational and social segregation. Poor admissions practices have an impact not only on pupils who are unfairly excluded; they also have a negative impact on the intakes of other local schools, causing greater social segregation. This is detrimental to overall attainment and system-wide improvement.

The increasing complexity of the current system therefore represents a key challenge for the government if it is to foster a socially just and high-achieving education system. The Coalition government has taken measures to decrease bureaucracy and through introducing the Pupil Premium, it has also acted to reduce educational inequality (including in admissions). However, the Commission’s analysis suggests that the system remains complex and lacks transparency, not helped by some of the measures for addressing academies’ compliance with the Admissions Code. The lack of statutory agencies for redress between academies (at one end) and the Secretary of State (at the other) also raises concerns.

The complexity facing parents cannot be overemphasised. It would be extremely unfortunate if more parents were forced to take legal action as a route to recourse. In its 2010 report, the Office of the Schools Adjudicator recommended that there should be ‘one consistent, independent route through which interested parties can object to the admission arrangements of all state schools for determination’ (OSA report 2011; see also West *et al.*, 2009). The Commission agrees.

The evidence before the Commission leads us to conclude that:

- the present system is unnecessarily complex, and this is exacerbated by the various distinct arrangements for determining or challenging admission arrangements and individual appeals, depending on whether a school is maintained or an academy
- a proliferation of ‘own admissions’ authorities comprises a threat to social mixing and equality of access to high-quality school provision
- in the case of schools/academies that are their own admissions authorities, it is unsatisfactory that Foundation and Voluntary Aided schools and academies run their own appeals panels. Full

independence needs to be ensured, following the principle of natural justice that no-one should judge her/his own case.

- all schools and academies should be subject to the Admissions Code in the same way, just as the government is moving towards a level playing field for school funding (irrespective of whether a school is maintained or an academy).

The Commission believes that legal mechanisms should not be the principal machinery to ensure good admissions practice. We need to return to the vision and principles underpinning the state education system: the aim is to ensure high-quality education for every child. Too much practice currently appears to reflect the letter rather than the spirit of the law. School populations should reflect their local communities. Competition and accountability measures must not deny equality of access to excellent provision, especially to pupils that need it most.

### **Recommendations**

The Commission makes the following recommendations to mitigate the risks that have been described:

- ensure consistent quality and parity of practice wherever possible
- provide a clear compliance framework within which all schools operate.

To these ends:

#### **Admissions Appeals**

- The Secretary of State should identify an organisation that is well-placed to provide an independent appeals service, to be instigated and run in a quasi-judicial manner.
- The Local Government Ombudsman's powers should be extended to hear complaints concerning the maladministration of admissions and admissions appeals of *all* admissions authorities (whether from maintained schools or academies).

#### **Admissions Arrangements**

- Parity should be established between maintained schools and academies in the mechanisms for dealing with complaints about admissions arrangements and the operation of local authority directions. The Chief Schools Adjudicator should consider and determine all appeals against directions, and complaints against variations and derogations from the School Admissions Code.
- Local authorities' annual reports to the OSA should act as a vehicle for raising any concerns, potentially triggering an investigation by the Schools Adjudicator.
- The DfE should require all schools and academies to publish data on applications and acceptances for school places in

relation to free schools meals (FSM) or other socio-economic data. These data should be scrutinised and reported on by the Office of the Schools Adjudicator with a particular focus on identifying any growing risk of socio-economic segregation.

The approach suggested in the final recommendation, as well as highlighting good and poorer practice, might serve as a positive reminder to schools (and in the case of non-community schools, their charitable affiliate organisations/sponsors) of the mission of state education.<sup>21</sup>

21. This approach has previously been suggested by Professor Anne West, based on her extensive work on schools, admissions, and social segregation. See West *et al.* (2009) and her oral evidence to the Commission.







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## 5. Diversification and the impact of academies on existing provision

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The report has explored some of the implications of the growing number of academies. This chapter discusses the impact of academies on the education system in England. It explores the international evidence – such as it is – on the diversification of school types and the entry of new school providers into public education systems. It considers the role of local authorities and possible ‘middle tier’ organisations, including the developing role of groups or ‘chains’ of academies. The Commission argues that instead of a ‘middle tier’, the arguments for which are unconvincing, local authorities should take the lead responsibility for commissioning sufficient school places and should also undertake a stronger role as champions for local standards. That is, they should have a clear role in securing the sufficiency and quality of educational provision, ensuring that the interests of children and young people in their area are met.

### **English academies in context**

Much of the debate about academies – and much of this report – focuses on the impact of academies on the provision and organisation of schools in England. However, it is important to set the diversification that has already been described into the wider international context of the provision of public education. Around the world, there are concerns about inequities in provision, about persistent underperformance in parts of education systems and about plateauing performance in otherwise good and effective provision. In some countries, the last 15 years have seen extensive experimentation with the organisation and structure of schooling and with different models of funding and governance. The rapid development of the academies programme is part of such experimentation.

The most widely quoted parallel examples to academies are American charter schools. Charter schools have many similarities with academies. In particular:

- A charter school is a legally and financially autonomous public – in the North American sense – school, that is, without tuition fees or selective admissions.

- Charter schools are managed by organisations which are granted a ‘charter’ to operate the school, and the charter might specify in some detail a school’s expected performance outcomes. Some Charter Management Organisations (CMOs) have developed groups and clusters of schools which have taken on school development and improvement functions.
- Charter schools have many of the features of academies, being given freedom over the curriculum, teachers’ employment, and aspects of the school year and the school day.

The concept of charter schools was developed in the 1980s by an American academic and was taken up by the then president of the American Federation of Teachers. The first state to grant a charter to a school provider was Minnesota, in 1991. By 2010 some 5,000 charter schools were operating in over 40 American states. Responsibility for authorising charters varies from state to state: in some states, the responsibility rests at state level; in others, local school boards can issue charters. The charter defines expected outcomes against which the charters are held accountable: over the last 20 years, some 12% of charters have been withdrawn for poor performance.

Energetic and technical debate takes place in American educational research literature about the effectiveness of charters. In what is a very controversial field, the most extensive study, conducted by the Center for Research on Education Outcomes (CREDO), explored outcomes in charter and public schools across 16 states (CREDO, 2009). The overwhelming conclusion of the CREDO study was that the performance of charters was broadly similar to the performance of conventional public schools, although local evaluations, including in Boston (Abdulkadiroglu *et al.*, 2009) and New Orleans (CREDO, 2009) have suggested that in *urban* areas, charter schools significantly outperform conventional public schools. In some parts of the United States, charter operators have developed strongly branded ‘groups’ or chains of schools, of which the most high profile are perhaps the ‘Knowledge is Power Program’ (KIPP) schools.

Similar attempts to diversify provision of public schooling have taken place in a number of other countries. In Sweden, the system of *friskolor* or free schools was introduced by law in 1992, and led to the development of both not-for-profit and for-profit publicly funded schools.

Sweden now has approximately 900 *friskolor*. The Swedish National Agency for Education (SNAE) explains that these independent schools:

‘... take various forms, from small parental cooperatives whose start-up may have been fuelled by the closure of a municipal school, to schools with a particular educational approach or subject specialism, and schools which are run by large for-profit education companies’

**SNAE, 2006**

The impact of these schools on the Swedish system more generally has been widely debated. Dr Rebecca Allen of the University of London Institute of Education notes that drawing conclusions about the overall effect of Swedish ‘independent’ schools is difficult because Sweden does not routinely collect administrative test and demographic data

*The charter defines expected outcomes against which the charters are held accountable: over the last 20 years, some 12% of charters have been withdrawn for poor performance*

(Allen, 2010). Nonetheless, Allen's conclusion, concurring with that of the Swedish National Agency for Education, is that while *friskolor* have had a moderately positive impact on attainment, particularly in urban areas, and a limited negative impact on social mixing, it is difficult to generalise both across Sweden and from the Swedish example. In general, Allen concludes that the *friskolor* have had a modest positive impact but by no means have transformed Sweden's educational performance.

The most recent study of Sweden's free schools, published in October 2012, is more unambiguous, despite a deterioration in Sweden's PISA performance. The study, undertaken by the Swedish Institute for Evaluation of Labour Market and Education Policy (Böhlmark and Lindahl, 2012), concluded that the expansion of *friskolor* had improved educational performance 'both at the end of compulsory school and in the long run in terms of high school grades, university attendance and years of schooling' and added that the positive effects took at least a decade to establish themselves. Importantly, the report concludes that the positive impacts arose from 'spill-over or competition effects and not [because] independent-school students gain significantly more than public school students'. Even so, the authors caution against over-generalisation, noting that 'a comparison with other school systems is difficult both because the alternative school types differ and because the conditions under which external effects work well are very different'. Moreover, as Chris Cook of the *Financial Times* has pointed out, the overall impact of the Swedish reforms on attainment is extremely modest, even on the IFAU analysis, raising attainment by 0.07 standard deviations. Cook observes that, in the English context, this is the equivalent, across five GCSEs, of 'a bit more than half of one grade in one subject. The effects are positive, but they are not very impressive given the scale of the policy intervention' (Cook, 2012).

Chile has adopted perhaps the most radical diversification, allowing the rapid growth of privately provided public education from 1980. In 2010, over 60% of all pupils attended privately supplied schooling, which operates on a voucher basis; schools may charge additional fees above the voucher provided by the state. A study in 2000 exploring the impact of Chile's reforms concluded that outcomes in the subsidised private schools – those entering the voucher system after 1980 – were generally similar to those of government-funded municipal schools (Mizala and Romaguera, 2000). Chile's performance in PISA remains relatively poor: in PISA 2009, only Mexico performed worse in reading and mathematics.

Other countries have developed more cautiously. In Canada, Alberta issued charters in 1994, although other provinces have not done so, and Alberta's experiment has been limited. In 2012, just 13 charter schools operate in the province, including two focused on gifted children, two with an arts focus, one with a rural focus, and one all-girls' school. Most recently, the newly elected New Zealand government, having appointed a senior civil servant from England to oversee its reform programme, has developed academy or charter schools in Auckland with a view to extending them.

This question of the long-term implications of academisation, therefore, is of more than national significance, and goes to the heart

of challenging questions about the provision, management, governance, impact and accountability of school systems. Internationally, the impact of charter, *friskolor* or academy schools has been debated extensively. Academic debate has focused on four main issues:

- first, the performance of charter schools compared with more conventional public schools
- second, the impact of charter schools on the composition of school populations and thus on the social distribution of pupils
- third, the impact on particular groups of pupils and especially on those with special educational needs
- finally, the impact of these schools on innovation and flexibility.

The literature is extensive and the issues are methodologically exceptionally complex. Much of the evidence and conclusions continue to be disputed. There are, in all jurisdictions, powerful examples of charter, *friskolor* and similar schools which have succeeded. There are also examples of such schools which have failed, and have been closed. The evidence of such reforms on overall levels of attainment is difficult to establish: those countries which have experimented most extensively with school independence have not seen their PISA scores improve substantially, although they do record improvements on some national measures of performance. Cases where gains are reported for attainment are often simultaneously characterised by reports of a negative impact on social mixing (e.g. Allen, 2010; Baker 2012). Moreover, many of the points at issue in relation to school independence go beyond measures of overall pupil attainment and, as the most recent Swedish study reminds us, involve longer-term as well as short-term measures. Perhaps the critical issue which emerges from international experience is not the fact of school autonomy – which has been a feature of the English system since the mid-1980s – but the ways in which academy schools work together, with non-academy schools and others, to sustain high achievement.

### **Experience in England: academies and diversification**

Academisation is likely to mean that local school provision in England will be increasingly diverse, with a wider range of school types and local structures. It is worth noting, though, that by international standards schools in England have always been diverse. In some areas, wholly academised secondary schools already exist, as in Southwark; complex patterns of school provision are emerging in other areas. The journalist Greg Hurst, who is also a governor at a converter academy, explained in detail to the Commission the ways in which local structures are adapting to more diversified and marketised settings. For example, in his local area, Maidenhead, the secondary sector now has faith schools, community schools, academies and grammar schools nearby.

For each school, it is critical to understand and respond both to parental expectations and to the behaviours, real and likely, of other schools. This offers a profound challenge to public education. The evidence presented to the Commission suggests that, in many areas, local behaviours are developing more quickly – and adapting to the realities of diversification more quickly – than policy is keeping up with. It is clear

*A senior civil servant from the DfE stressed that the 2010 Academies Act was intended to generate not only competition between schools but also cooperation and collaboration*

that, in an academised system, not only will collaboration develop but, as the Children’s Commissioner pointed out to the Commission, it will do so on a ‘needs must’ basis in many areas.

This development offers opportunity as well as challenge, particularly if schools can find ways to cooperate to pool provision in the best interests of local pupils – for example, by sharing the costs of specialised resources or supporting minority subject provision post-16. A senior civil servant from the DfE stressed that the 2010 Academies Act was intended to generate not only competition between schools but also cooperation and collaboration. He argued strongly that this focus on school collaboration in a diversified environment distinguishes post-2010 academies from the grant maintained schools of the 1990s. The Commissioners note that, despite this aspiration, the 2010 Act does not actively incentivise collaboration or – although converters had to specify how they would support other schools – hold converters to account for this.

### **The challenges of a diversified system**

More complex and flexible local provision reinforces trends since the development of specialist status after 1998. Some of those giving evidence to the Commission saw the introduction of specialist and niche provision, including Studio Schools, UTCs and some Free Schools, as providing local flexibility to meet specific needs and ensuring a truly comprehensive and inclusive system. They described the system as being more dynamic and open. Others, especially headteachers, referred to ‘fragmentation’ and ‘confusion for parents and students’.

David Hawker drew the Commission’s attention to four ways in which an academised system might be inefficient in terms of resources:

- unnecessary capital expenditure on schools which are in the wrong place or building extra capacity in schools where there are vacant places nearby, resulting in poor use of public funds and poor provision. The Commission was presented with evidence that some private school benefactors are opening Free Schools in areas where standards are already high and surplus provision exists, rather than in areas of deprivation
- inefficient provision for pupils who have special educational needs and other vulnerable groups of pupils; this arises from gaps in provision when individual schools do not cooperate to resource more specialist needs
- a lack of economy of scale in managing school support services
- inflation of the costs of senior personnel in academy groups or the multiplication of senior roles in groups.

The question is whether such inefficiencies can be minimised so that the benefits of the new system outweigh the disadvantages.

Our argument is that potential inefficiencies can be mitigated through effective local coordination of autonomous schools, in particular effective local planning for school places and planning for pupils with special needs, as suggested by the evidence from the ADCS. The issue here is not the autonomy of schools, but the framework within which autonomy is exercised and the ways in which school collaborations are managed.

Some of those presenting evidence drew attention to real dangers of the alternative: Dr Bob Burstow from King's College London warned of the prospect that, without regulation, we might have 'suburbs, estates and towns without a school, [and] monopolisation by larger conglomerates'.

### **Local authorities**

It is, of course, possible that many of the functions previously undertaken by local authorities could be shared more widely. There is certainly evidence that other bodies are beginning to discharge coordination and review functions for schools. Evidence from the Education Funding Agency (EFA) suggested that it has established robust mechanisms for financial accountability in academies which, in some respects, go beyond the mechanisms established for local authority schools by their local authorities. Nonetheless, there remain concerns, expressed by the ASCL among others, about the ability of the EFA to manage its functions over several thousand schools. The Office of the Schools Commissioner, although it is extending its remit, may also have difficulty in operating at sufficient scale. The regional offices that Ofsted is planning have some potential for strengthening early warnings of faltering performance. However, they are not a basis for effectively managing the key issues in relation to planning school places, efficiencies, and the needs of vulnerable pupils.

The Commission is also aware that there are increasing calls for a stronger regional approach to educational provision. For example, the London Mayor has recently published the report of his own Education Commission, arguing for a regional role in school improvement and quality assurance. The Commission believes there is a need for a clearly articulated view of the roles and responsibilities of statutory agencies to avoid confusion and potential duplication. Without a clearer sense of the role of the local authority in relation to these responsibilities, and consequent decisions about funding, mass conversions in some areas are likely to erode the capacity of local authorities to discharge their statutory responsibilities.

Local authorities still retain over 200 statutory responsibilities in relation to pupils and schools; additional statutory responsibilities have been added in the last two years. However, in the case of academies, local authorities no longer have the power to compel them to comply (for example concerning admissions, place planning, special provision or school improvement practice). Where a large proportion of schools in an area are academies, this potential impediment to the local authority's statutory responsibilities may be particularly acute. This anomaly is highlighted by the recent decision of Her Majesty's Chief Inspector to publish a list of local authorities in terms of the effectiveness of local provision, in his Annual Report (Ofsted, 2012b). In fact, in the present circumstances some local authorities have little or decreasing influence over local school provision.

A critical issue, therefore, is for the government to articulate its view on the long-term responsibilities of those who support schools. A variety of possible models has been described:

- Some commentators, including, most recently, O'Shaughnessy (2012), have argued for a strongly marketised model in which,

in principle, failure is tolerated and the government allows the entry of new providers to the market to secure sufficient quality and supply. Intervention would be managed to bring in private providers where local authorities or not-for-profit providers had been unable to secure provision which was at least good.

Some of those who gave evidence to the Commission argued for versions of this model, referring to the need to make public capital funding available to school providers directly, to be disbursed by them on agreed programmes to develop additional school capacity.

- Some commentators, including Wilshaw (2012) and Hill (2012), have argued for a new ‘middle tier’ of school commissioners who would take a strong local line in commissioning and – critically – decommissioning school supply, working with local authorities.
- Some commentators, including Coles and the Local Government Information Unit (LGIU), argue that the role of local authorities should be refocused to meet the needs of local people better, working with academy groups and chains to do so.

The Commissioners are not convinced by arguments for creating new local School Commissioners unless there are significant other changes in the system. Appointing local School Commissioners raises the risk of an additional layer of bureaucracy.

It is the view of the Commission that there is little sense in inventing a new system, and creating what the ASCL, in its evidence, called a democratic deficit. Instead, the government needs to articulate a new role for local government as the guarantor of provision in a diversified and fluid system. Recent evidence from the ASCL suggests that neither local nor central government can act as reliable agents for consistently high-quality provision. However, local government can and should develop as a planning and coordination agency, ensuring that there are sufficient good school places and quality provision locally by championing the needs and interests of children and young people.

The Commission’s view is that the development of academy freedoms and the expansion of the academy system both reinforce the need for coherent planning and development. At the moment, rapid academisation is making such coherence more challenging. The Commission’s concern is that while this is – and might be in the future – relatively unproblematic in some areas, and especially in areas of relative affluence and relatively stable populations, there are serious risks of destabilisation elsewhere. Strong planning and coordination are necessary to eradicate inefficiencies.

Arguments relating to a ‘middle tier’ are in danger of becoming overly ideological: the focus needs to remain firmly on what we need a middle tier to do if we are to meet pupils’ needs better and ensure efficiency and high standards. The Commission is attuned to, and supportive of, the impetus towards ‘bottom up’, professionally-led provision of services. Nevertheless, the evidence raises both demands for better local planning, and threats in the absence of it. There are questions about how some statutory responsibilities in relation to school supply, local coordination and the needs of vulnerable children will be met. At the core of the



issue in relation to any proposed middle tier is planning: the longer, term planning of school places, the commissioning of provision for low incidence but high-intensity special needs, the planning of responses to rapid changes in pupil numbers. In a devolved and autonomous school system, it is logical that schools themselves should take an increasing responsibility for responding to these needs. Such responsibility involves collaboration, and such collaboration, of necessity, will be local in scope. While non-geographically contiguous groups of academies may stimulate effective teacher development and continuing professional development, ultimately children live in communities. Therefore, attention needs to be given to the local, geographic coordination of schools' responses to their needs.

*There must be sufficient local schools, sufficient local support services for pupils in need of additional support and sufficient local challenge to secure high standards*

In practice, our view is that the organisation of local provision may be less important than the effectiveness of collaboration between schools and others to secure successful education for all children and young people. The Commission has some evidence of autonomous school providers looking to extend local differentiation of provision, for example by establishing Pupil Referral Units (PRUs). Although there are arguments for and against such local differentiation, as the Children's Commissioner has pointed out, given that PRU places cost three times as much as mainstream places, and given that a place in a special school is substantially – up to four times – more expensive than a mainstream school place, local differentiation of provision is an economically ineffective substitute for good local collaboration. Indeed, in a largely autonomous school system, local coordination remains a key role. One of the lessons from the development of US charter schools and *friskolor* in Sweden is that local coordination remains a significant task for school boards and municipal authorities.

A more open, dynamic and fluid education system might bring advantages to pupils and communities. It seems to the Commission that in Sweden, the USA and Chile there is some evidence that such improvements seem to be characteristic of **urban** schools. But it is also our view that effective improvement in schools needs to be set within a coherent local framework to assure the sufficiency and quality already mentioned. Local authorities need to embrace a new working relationship with a wide range of schools and school providers to secure supply and quality – and the best possible outcomes for children and young people. The government needs to pursue the logic of the academised system it has set in train: it needs to clarify the relationship between local authorities and schools across a diversified system, articulating a clear role for authorities in their relationship with increasingly autonomous schools.

### **Planning school places in a diversified system**

The Commission shares the widespread and serious concerns about planning for school places. We agree with the government that popular and successful schools should be allowed to expand. We note that the current barriers to expansion are often matters of capital spending rather than revenue, and we are concerned that, in some areas, the inability of local authorities to direct academies to expand will create significant problems of supply, since there are few incentives for schools to expand. A local planning function is needed, not only to ensure sufficient places

in the right places – and certainly to protect provision for vulnerable groups of pupils – but also to serve the needs of local people. No serious evidence has been presented that operating a local market in terms of school places will provide places where they are needed at the times they are needed. Dr Rebecca Allen of the Institute of Education noted in oral evidence that the market, as presently structured, has no incentives for providers to move into particularly challenging areas.

Local authorities retain responsibility for ensuring a supply of sufficient school places. The LGiU's report (Thraves *et al.* 2012) expresses some scepticism that the government could secure sufficient school places in every locality without a local partner with local knowledge, connections and influence; its report also questions whether market forces – the entry of new school providers – could create, on their own, sufficient school places. The direction of policy since 2005 has been to liberalise school supply by bringing in a range of new providers. Proponents of free market processes argue that where there is a substantial surplus of places, liberalising supply in these areas could empower parents and act as a mechanism for more responsive schooling. However, where there are shortages – as is increasingly the case in parts of the south east in primary provision – there are no strong incentives in the system encouraging new supply in those areas where it is most needed. The experiences of early Free School applications confirm this: such applications have not always been closely linked to areas where there is a shortage of school places, and in some places have been located in areas of surplus. Providing incentives for schools to expand is challenging, as Rebecca Allen and Simon Burgess (2012) have pointed out.

Some local authorities are using diversification to find imaginative solutions to providing sufficient school places, but there are challenges. No academy can be required to expand its intake. However, there are clear signs that some academies will seek to maintain their current size and so additional school places will need to be met from the smaller number of community schools. The government has recognised some of the perverse incentives in the system and is considering ways of providing incentives for academies to continue to expand; it also draws attention to examples – which are striking but few – in which excellent schools (such as Cuckoo Hall in Enfield) have used the academy programme to open new provision. The Commission is not persuaded, however, that the local market, on its own, provides a satisfactory basis for securing a sufficient supply of quality school places in the medium term.

There must be sufficient *local* schools, sufficient *local* support services for pupils in need of additional support and sufficient *local* challenge to secure high standards. The danger is that an increasingly diverse school system is unable to guarantee this local coverage. This is not an argument about school improvement and school support, which we believe can and should be school-led; it is about how the education system works locally: first, in relation to the needs of all pupils and their entitlement to a good-quality school place; second, and very importantly, in terms of the needs of those who require additional services or who are vulnerable. The commissioners have heard evidence from a wide range of groups with a particular interest in the provision of support for children with additional or special needs, and agree with those witnesses that the diversification

of the school system holds significant material risks for providing support for special needs. This has been discussed in chapter 4.

Two challenges exist in relation to a commissioning role for local authorities in the supply of school places. The first is the authorities' relative lack of access to capital funding; the second is their decreasing ability to direct schools to admit particular pupils. Local authorities' capacity to direct schools to admit particular pupils is the more profound challenge. For many academies, this matter goes to the heart of autonomy and the 'independence' of schools. But all children need a school place. Although local authorities do not have the power to direct academies to admit a given pupil, the Commission does not believe it is in schools' or children's interests for such cases to be resolved in the courts. We therefore argue that, in order to discharge their responsibilities to all local children, local authorities should have the power to issue a formal request to admit to any school in relation to a pupil or group of pupils and that, should a school decline to admit, the Office of the Schools Adjudicator should make the final decision. These are very difficult issues. Our view is that they relate to the profound difficulty facing both schools and local authorities observed above: local authorities retain extensive statutory responsibilities but their power to fulfil those responsibilities differs in relation to different schools. This is unsustainable. A clarification of role would enable local authorities to strengthen a diversified system by:

- scrutinising the quality of local provision in relation to individual children and young people as well as local and national needs
- securing the supply of school places in areas where they are most needed.

Local authorities could assume a much stronger role as the commissioners and (in partnership with the Office of the Schools Commissioner) decommissioners of school supply in their locality, acting, as 'champions for children'. This would reinforce the role of local authorities. They would become genuine guardians of local children's interests, scrutinising the quality of local provision and reporting on this to the DfE (to inform decisions concerning renewal or otherwise of funding agreements), as well as ensuring children with additional and complex needs have their needs met.

Safeguarding this latter provision is crucial. Very complex needs are very expensive to provide for, and commissioning for them clearly needs to be area-based. As champions for children in the local area, it is right that the local authority continues to commission provision for those with special educational needs from local schools (and has the power to do so), and continues to be resourced to commission any additional provision necessary. Academies must collaborate with the local authority to ensure provision; otherwise we risk a danger of a lack of inclusion and/or poor-quality provision. The Commission believes there should be a duty for academies to collaborate with the local authority to this end.

Some local authorities may need to agree joint arrangements with others to undertake planning and the commissioning role efficiently and, in some cases, the government might need to reserve powers to

intervene where local authorities are not adequately fulfilling their role. Importantly, as Professor John Howson pointed out in his evidence, not all parents are able to exercise choice on behalf of their children or lack access to information to do so; for this reason, there needs to be a corporate parent acting for young people. Greater clarity, therefore, about the role of a local authority would allow it to discharge responsibilities in relation to all pupils' education.

The Commissioners heard a strong, although not universal, commitment from headteachers and academy sponsors that academies should be an integral part of local children's services delivery and community planning, and that academies therefore need to work closely and productively with local partners. The majority of the headteachers the Commissioners spoke to accepted that strong academies and robust local authorities are not at odds with one another, although a minority disagreed. We encountered evidence that some academy groups are seen to be undermining community links and partnerships through what are seen as either assertive approaches to existing arrangements or through links with academies outside the area but within the group. As academy groups develop their identity, some tensions are inevitable, but such evidence reinforces the need for clarity about the role of local authorities and the responsibilities of schools and school providers in dealing with local government.

Many academy headteachers and many of those who gave evidence to the Commission make assumptions about the continuing role of the local authority for certain functions – essentially, they see the local authority continuing to be a backstop in terms of some administrative functions. Academy headteachers in general assumed that the local authority would continue to plan school places, oversee the assessment of pupils with special needs and, indeed, some thought they would continue to provide additional services for minority needs. Some local authority chief officers to whom we spoke talked of a situation in which local authorities no longer have the resources to discharge their statutory functions or in which the discharge of these is frustrated by individual schools that are unwilling to cooperate – for example, in admitting particular pupils.

### **Diversification and quality**

Diversification of the school system poses new challenges for securing levels of quality. Academy funding agreements are agreements between the academy trust or sponsor and the Secretary of State. It is clearly impossible for the government to monitor the performance of every school, and exceptionally difficult for the government to intervene in schools when there are subtle early signs that all is not well. The Commission has been influenced by the suggestions made by Coles (2012) for greater local monitoring and responsiveness in a fully academised system. We have adapted his suggestions to propose a new framework that focuses very much on performance:

- Academies should continue to have funding agreements with central government, although these should be for five years not seven (thus providing a tighter timeline for tackling poor provision).

- Medium-term performance targets over five years would be set out in the agreement. There would have been some local engagement in what these targets should be.
- At the end of the five-year period, if performance targets had been achieved, a further five-year set would be agreed. If the targets had not been met, the DfE would consider allowing a short period for the academy trust to improve or face being replaced by a different provider that would be more likely to succeed. As Coles (2012) suggests, ‘replacement might be through open competition between a range of providers, run and decided locally but leading to a national funding agreement’.
- Each local authority should produce an annual report on the quality of education provided in the area and will refer specifically to the performance of each school in the area, making use of a local data ‘dashboard’. Such an annual report, combined with ‘soft’ intelligence and evidence from reports by Ofsted should provide early warning of slippage.
- The annual report would be brief, underpinned by quantitative data and compiled by the local authority on all publicly funded schools in its areas. It should be published on the local authority website, as well as comprising a formal reporting requirement to central government each year. The Commission does not envisage local authorities requiring a substantial staff in order to compile the report.

This proposed framework is not resource-intensive but gives the national system of academisation far greater support and rigour. It is rooted in a national system but acknowledges the importance of education as a local service, since it is parents and the local community who care most about it locally. Light-touch local scrutiny would allow local authorities to use their democratic base to act as champions for the interests and needs of children and young people, particularly for those most at risk. This would include celebrating what is good about local provision but also raising any concerns about quality. The latter might lead to working with the DfE to decommission providers.

### **The developing system**

The Commission is aware of arguments both for and against the need for local planning of education.

A lack of local oversight and planning impedes the effective operation of the system, both in terms of meeting the needs of individual pupils and improving system-level outcomes. This may well have an impact on services for vulnerable children, on planning for school places, and on admissions. There is also a need for sustained local scrutiny of the quality of education. The American evidence is clear that the widespread deployment of charters reinforces the need for strong local planning.

Those against the (re)development of a ‘middle tier’ to replace the local authority see the imposition of mechanisms for local planning as re-imposing the bureaucracy from which academies have just been freed. Such mechanisms might constrain confidence and innovation, and reduce

*Being part of an academy chain often involves a significant weakening of individual school autonomy*

the responsiveness and dynamism of the system. The Commission heard that many academies have felt liberated by their freedom from what they perceived as local authority control, and it is certainly not possible to argue that local authorities have always worked effectively to secure high-quality provision across an area, or even to secure fairly the interests of local pupils. However, arguments for the importance of autonomy may be overplayed: schools are, by definition, part of their local community and will continue to depend on a web of local services and structures for the discharge of their missions. Being part of an academy chain often involves a significant weakening of individual school autonomy. There is a paradox at the heart of the growing academy system in that academy status means more autonomy for some and less for others.

The Commission believes that local planning remains important. In chapter 1, we made clear our view that local authorities should end their role in provision of improvement services. It also believes there needs to be urgent clarification as to how they may fulfil their statutory obligations in a system of autonomous schools.

### **Looking forward**

Governments around the world are exploring innovative approaches to the organisation and management of publicly funded education. As yet, the evidence that such approaches have secured systemic improvement remains patchy and contested. Our view is that diversification alone is unlikely to do so.

This chapter has argued, first, that the government needs to express its confidence in the local authority as the commissioner of school places. Local authorities should identify local need, plan to meet it, and work with both the government and a range of providers to secure the necessary provision. Second, the local authority has a role in quality. Chapter 2 argued for a diminution of the role of the local authority as the automatic provider of school improvement services. However, this report also argues for retaining a key local role that shapes and raises aspirations for education and achievement. The role should include articulating concerns about the quality of school provision. The democratic base of local authorities gives them this leverage to act as champions for the interests and needs of children, young people and, indeed, local communities. Finally, the Commission believes the local authority remains well-placed to commission services for children with additional needs (including those not addressed by local maintained school provision); and that the money to enable this must be carefully maintained and ring-fenced.

The Commission believes that there are policy interventions which the government should adopt with some urgency to secure improvement and mitigate the risks described here.

## Recommendations

- Local authorities should embrace a new role in education, not as providers of schools or school improvement services, but as champions for children. This would mean articulating a local and aspirational vision for education. As champions for children, the local authority would capture local knowledge and intelligence by undertaking some scrutiny of education provision to ensure it is meeting the needs and interests of children and young people in the area.
- As champions for the needs of local children in an academised system, local authorities should report annually to the Secretary of State on the quality of local provision so he receives early warning of any emerging issues and addresses these through his relationships with academy trusts.
- The government should set out a coherent framework for the planning and commissioning of school places. This should acknowledge and clarify the primacy of the local authority as the lead body responsible for planning and commissioning sufficient school places to meet local need.
- Individual academies and groups of academies should embrace a new relationship with local authorities to ensure they all contribute to local planning, review and development that support both sufficiency and quality, and the needs of all children.





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## 6. Academy governance

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This chapter and the next explore governance and accountability in an academised system, arguing that further capacity and urgent tightening of systems are necessary to ensure that academisation realises its potential for system improvement.

Systematic devolution of autonomy to individual schools raises questions about how the system itself will continue to function effectively in terms of the processes of governance and accountability. The government's vision is for a galvanised system based on professionalism, school-to-school collaboration and 'grown up' independence. Academisation represents a new paradigm, emphasising professional responsibility rather than top-down determination. In this sense, the frequent submissions to the Commission expressing scepticism that the Secretary of State for Education or his central agencies can oversee over 20,000 schools effectively may be applying the wrong lens. Nevertheless, there are challenges in balancing the potential tensions between the autonomy that encourages professionally-led, dynamic schooling, and transparent systems of accountability and governance that ensure good practice and every child's entitlement to high-quality education.

The Commission heard evidence from many primary and secondary headteachers, including from academies, and read evidence from the NAHT that academy status enables school leaders and governors to make strategic decisions about what is best for their school community, providing freedom from political interference in operational decisions. At the same time, the Commission was surprised by the level of concern voiced about governors, in particular by sponsors. Across a large system there is always opportunity for poor practice, and public services need to be fully accountable. Witnesses to the Commission from all quarters stressed that as public money is being spent on academies, academies and their procedures must be subject to proper, public scrutiny and accountability. Academy sponsors, governors and headteachers were often among the most vocal witnesses in asserting this point.

The risks of returning to a professional secret garden are slim.<sup>22</sup> For over 20 years, England has worked with levels of school autonomy and accountability that are unusual in OECD systems. A common complaint from international analysts is that in spite of the autonomy devolved to

22. In his speech at Ruskin College on 18 October 1976, the Prime Minister James Callaghan said: 'It is almost as though some people would wish that the subject matter and purpose of education should not have public attention focused on it: nor that profane hands should be allowed to touch it.'

schools in England, innovation is limited because of the pressures against risk-taking exerted by accountability measures such as inspection by Ofsted and the publication of performance data. A dip in attainment or a poor Ofsted report, or both of these, can have devastating consequences for schools and, indeed, the careers of their headteachers. This provides a strong incentive to ‘play safe’.

Two key elements of management in an academised system, then, are, first, the governance of individual schools and, second, the management of the system overall. School governors are responsible for outcomes and good practice within individual schools; central government remains responsible for outcomes from the whole system and value for money.

As we have seen, there are also matters beyond the remit of individual schools which, nevertheless, appear to require area-specific management (place planning provides one example). These additional, area-level aspects of governance, which go beyond schools but cannot be managed centrally, have generated debates about the need or otherwise for a ‘middle tier’ for education provision, either replacing local authorities or providing them with a particular role, as discussed in chapter 5.

This chapter and the next explore the specific issues raised in evidence to the Commission concerning governance and accountability within an academised system.

We look first at the governance of individual academies, exploring questions of the capacity and accountability of governing bodies, and make recommendations as to how academy governance might be strengthened.

### Context

In an autonomous system, school governors have a particularly important role in ensuring each academy is well managed and that senior leaders are held to account for improving both outcomes for pupils and school capacity. With academies’ independence from the local authority, governing bodies become the key mechanism for directing school improvement, and the pivotal link between the school and the wider community. Moreover, at Trust level, academy governors take on an additional role to that of their counterparts in maintained schools, since they become company directors (as academies are charitable companies limited by guarantee). It follows then that academy governing bodies need:

- clear understanding of their roles
- strong capacity and expertise.

Added to these is capability to ensure that all key stakeholders, within the school community and beyond, are engaged in the work of the school and can make their voices heard.

Governing bodies therefore present both an opportunity and a considerable risk in a fully academised model. The more business-driven composition of governing bodies of sponsored academies, and their potentially innovative approaches, were seen as a key asset of the original *Academies Mark 1* in driving improvement. This was certainly effective in some cases, although notably not in all.

Academy chains offer the potential to innovate with academy governance, as we discuss below. However, since the 2010 Act, the

*With academies’ independence from the local authority, governing bodies become the key mechanism for directing school improvement, and the pivotal link between the school and the wider community*

majority of academies are now converters and, as such, most of the governing bodies remain largely unchanged from the previous community school state. The National Governors' Association (NGA) observes that some governing bodies report that the process of conversion has re-invigorated their governing body and challenged them to improve their own effectiveness. However, numerous responses and witness contributions, including from converter governors themselves (and from the NGA), testify that many converter governing bodies have *not* taken this opportunity to review and/or alter practice and, instead, have continued largely as they were. A BMG Research survey for the NCSL (2012) found academy leaders were more likely to respond positively to questions about their governing bodies, and those schools with more positive Ofsted judgements (which will include many converter academies) were more likely to rate their governing bodies as effective. However, in the case of the latter, this does not necessarily mean they have understood their new roles as academy governors. This is an important point, given that (a) roles have changed significantly, and (b) with the reduced role of local authorities in an academised system, governing bodies effectively become the custodians of school improvement.

The following key risks were identified in evidence to the Commission:

- the lack of understanding among some academy governors about their new responsibilities as company directors
- the lack of understanding among some academy governors about their new responsibilities regarding school improvement
- insufficient governors or potential governors with the requisite time and expertise
- lack of engagement by academy governing bodies with key stakeholders and the local community or lack of representation of the community they serve.

We discuss each in turn.

**Risk: Academy governors do not understand their new responsibilities as company directors**

Academies are charitable companies. As such, there are two layers to academy governance:

- The 'Members' operate at a strategic level with ultimate control over the direction of the academy trust, with personal liability for the academy's assets
- The governors (often referred to as the company directors or trustees) have responsibility (and accountability to the Members) for day-to-day management and educational matters for the academy trust.

Both groups vary in size across academies/chains. Sometimes they operate distinctly; in other cases they are conflated (with, for example, Members simply sitting on the governing body, and/or all governors being Members). This change in arrangements comprises 'arguably the biggest change in most schools' governance since 1870' (Adam Clarke, individual

submission). Yet the Commission heard that many governors remain unaware of this change and its implications, raising an additional risk that if they were fully aware, some might be deterred from governance. As the Charity Commission explained: ‘Whilst their duties as governor, charity trustee and company director may overlap, they need to understand these responsibilities and how they are fulfilled’.

While some converter academies have converted to form a multi-academy trust or become part of an umbrella trust, many stand-alone converter academies have not seen the change from community school to academy status as an especially significant move but rather as a ‘modest adjustment of their public sector status’ (CfBT, written evidence; see also NGA evidence). For example, they might not be aware of or interested in assessing risks which are, in theory, attendant on their becoming directors of a charitable company. Steve Barker, Chair of Governors at Collingwood College, Surrey, put it simply:

‘Most converters don’t know what to look at and often get big surprises post-conversion at the extent of new responsibility and bureaucracy associated with company law etc.’

#### **Exemplar: liability insurance**

The Commission heard that due diligence, and adequate risk assessment, are not fully understood by many governing bodies (NGA evidence). It was argued that some academies do not have adequate liability insurance in place to cover certain medical procedures administered to pupils with specific health needs, or risks such as claims from those exposed to asbestos in schools (UNISON, written submission; see also UNISON and the Royal College of Nursing, 2012). Questions arise as to with whom such risks reside in practice: CfBT observes that most stand-alone academies do not see these risks as real, assuming instead that the government is still the funder of last resort and that, if anything fundamental goes wrong, the government will take over the institution.

CfBT observes that this assumption may well be correct, being currently untested: ‘The neglect of certain risks, such as a serious HR case, or sudden extra capital costs, may be based on a realistic assessment that their independence is limited and therefore so is their responsibility’ (CfBT, written evidence).

The situation is different for chains, who are more likely to be aware of risks (because they may deduce that if something goes wrong, the EF A may assume the chain should be capable of covering the costs). There is also a lever towards due diligence in the significant brand/reputational risk for chains, should things go wrong.

The potential lack of understanding of specific roles and responsibilities also raises specific risks around accountability and potential conflicts of interest. For example, some academies have very small numbers of Members (the minimum allowed is three), who know each other well or may even be related. The Public Accounts Committee (PAC) has sounded an alert about potential impropriety, warning sponsors against contracting-out support services to one of their own companies.

A specific risk was raised by CfBT in relation to academies ‘exempt’ charitable status, and consequent answerability to the Secretary of State rather than the Charity Commission:

‘Specifically, for example, it means that not only are academies permitted to have employees as trustees – whereas conventional charities are almost always not permitted to elect employees as trustees – but in fact they are required to have employees as trustees with the headteacher and a representative of the teaching staff expected to be trustees of an academy trust.’

CfBT notes that, although most of the research in this area has been carried out in the United States in a somewhat different institutional environment, the general conclusion has been that ‘a prevailing tendency in such organisations is for them to be run in the interests of their senior staff’. It goes on to say: ‘It is to counter that tendency that the charitable sector in the UK has operated within the rule that aid executives should not be trustees of the organisation.’ Thus CfBT sees this potential ‘imbalance’ in interests, rather than the trust’s independence, as the key risk. The Commission endorses this concern. Roles must be sufficiently separate to ensure that the trustees are able to hold headteachers to account, and that Members are acting purely in the interests of the academy.

Indeed, the Commissioners heard of a general trend, prevalent in both maintained schools and academies, for a ‘cosy’ relationship between the headteacher and Chair of Governors. Such relationships were seen to reflect the previous school governance cultures in maintained schools where governing bodies tended to be supportive, or even led by the headteacher, rather than challenging. This cultural approach is felt to have been transported to academy governing bodies, in spite of the new onus and reliance on these bodies to ensure good charitable company management, and to secure school improvement (see below). The Commissioners are concerned that this ‘cosiness’ reflects a very different approach to that usually practised by trustee boards in the charitable sector, wherein CEOs are held to rigorous account by trustees.

**Risk: The governors of converter academies do not understand their new responsibilities regarding school improvement**

In Chapter 2 we discuss the crucial point that many converter academies are not undertaking their promised commitments to support other schools to secure improvement. Witness evidence suggests that the views of converter governing bodies may provide one explanation for this. It was suggested to the Commission, both by individual governors who could provide experiential evidence to support their claims and by the NGA, that converter governing bodies tend to be primarily – and often overridingly – concerned with standards and improvement at their own school; efforts to support other schools were seen as a potential drain on that capacity and very low priority. It was argued that many governing bodies are not aware of – or not convinced by – the evidence of reciprocal benefits to the converter school of engaging in school-to-school support.

Certainly it appears that school improvement has not been an especially strong impetus for academisation for many converter governing bodies. A TES/NGA survey found only a quarter of governors believed conversion had improved educational standards in their schools, with the remaining three quarters either unsure, or believing there had not been an impact: 26% of academy governors said conversion had improved educational standards in their school; 30% said it had had no impact; the remaining 44% said they

*Converter governing bodies may specifically impede the government's intended mechanism for accelerating improvement*

were unsure (Exley, 2012a). It may be that the governing bodies of converter academies disproportionately comprise those schools for whom favourable financial arrangements were the main motive for academisation (see Reform, 2012). So, converter governing bodies may specifically impede the government's intended mechanism for accelerating improvement.

There is also a risk for school improvement in relation to the quality of governing bodies in sponsored schools. The Commission heard evidence that in the original academies programme the governing body of the preceding 'failing' school was completely replaced, whereas now they frequently remain largely intact (see also Essex Council, 2012). One current Chair of Governors of a struggling school that has been identified as 'vulnerable' wrote to the Commission in confidence to declare that she and her fellow governors lacked the expertise to navigate the process of academisation 'which, as far as I can gather, is equivalent to setting up a company'. Such situations prompt the question as to whether some governing bodies will, indeed, 'struggle on', even if they are out of their depth, with damage to individual academies as a result.

**Risk: There are insufficient governors/potential governors with the requisite time and expertise**

Given the nature of an academy governing body (that is, it is a charitable company trust), academy Members, and trustees who are governors, take on more responsibility than do their community school counterparts. As the Charity Commission observes (written evidence): 'Company membership brings legal responsibilities that may not make it attractive or appropriate for parents and other members of the community.' There are risks around capacity and capability which need to have been thought through fully.

Academy status requires governing bodies with greater levels of corporate experience and financial and legal knowledge (or awareness of the need for and routes to access these). As the Audit Commission (2012) reports, a high proportion of whistle-blowing reports come from schools. The Audit Commission observes that academies have more autonomous governance arrangements than maintained schools and that risks increase in periods of change. Evidence suggests financial expertise may be particularly significant, and that it is important that academies have in place:

- the equivalent of a Senior Accounting Officer (SAO) who ensures that the company establishes and maintains appropriate accounting arrangements
- a clear strategy to manage financial risks and ensure compliance.

The NGA suggests that good business managers mitigate risks in this regard. A growing number of academies have an Audit Committee in place (NAO, 2012). The NCSL offers a 'Certificate in Financial Reporting for Academies' (CFRA) which has had good take-up (BMG Research, 2012). On the other hand, the NAO (2012) found that the proportion of academy Finance Directors with recognised accountancy qualifications has reduced from 61% to 34% since 2010. Lack of specific expertise to ensure academies' new responsibilities are properly discharged emerges as a threat. Evidence to the Commission – from chairs of governors and



from E-ACT – suggests that most academies in the ‘second wave’ of academisation have not significantly changed their governing bodies when they converted to academy status, either in terms of personnel or roles, and that there is an apparent difficulty for some governing bodies in securing the necessary expertise.

Experienced chairs of governors highlighted to the Commission that governing bodies may be insufficiently supported by the existing guidance – and, indeed, they raised questions as to its sufficiency and quality. Governing bodies also need the expertise to be able to limit the actions of a chair or headteacher who is set to operate in breach of regulation or law (ASCL evidence). The Commission learnt both from the Teach First ambassadors’ survey, and oral evidence from chairs of governors, that changes in academies were often being driven by the vision of charismatic headteachers or individual sponsors. While this has benefits in terms of innovation, transformation and potential improvement, it also poses a risk if such people are not adequately challenged and scrutinised by the governing body (see above). For example, risks around financial management are exacerbated for academies (and especially chains), given the size of their budgets and their independence, illuminating the importance of effective audit. This risk, frequently raised in evidence to the Commission (and especially in regard to the ‘first wave’ sponsor academies, where *Academies Mark I* intervention powers are weak), emerges as a key one within an autonomous system, and it is important that Members and trustees are alerted to it.

Clearly, training and continuing professional development for governors is one approach to dealing with some of these challenges. However, especially for stand-alone academies, it may be difficult to achieve the economies of scale achieved by local authorities regarding continuing professional development for members of governing bodies. Various submissions suggested that local authorities had provided a reassuring presence and point of some information. While some academy governors embraced independence from the local authority, others expressed their anxiety at the removal of a reassuring point of potential information and support. To ensure a strong framework of governance to support an autonomous system, it is vital that the government takes further steps to support academy governors. We make recommendations to this end below.

**Risk: academy governing bodies do not remain democratically accountable**

Academies have a distinct mandate around Membership and Board of Director (Governing Body) composition. This mandate facilitates flexibility. The governing body must now include a minimum of two parent governors, elected by parents at the academy. All other categories are optional (except in the case of specific arrangements for predecessor Voluntary Aided and some Foundation schools, whereby Members may appoint representatives from the religious organisation). This flexibility, however, also raises questions about democratic accountability and adequate representation of stakeholders because there is no stipulation as to the representation of different groups in Membership of the Academy Trust.

Several different anxieties are raised in submissions to the Commission about this. One relates to centralisation, reflected in the new arrangements

for governance in some academy chains. While there are notable strengths and opportunities around capacity and innovative systems for governance in chains, over-centralisation may be a danger if the control is concentrated in too few hands with little engagement of stakeholder groups. This may militate against independent, objective governance at a local level, with potentially deleterious consequences for school improvement, as well as for democratic representation. The Charity Commission observes in written evidence (below) that the model charitable company membership provisions for academies are relatively narrow, generating concerns about representation and stakeholder influence:

‘The structure is designed around effective school governance rather than inclusion of stakeholder interests. Only members are invited to the Annual General Meeting... We advise charities to consider the need to consult stakeholders on matters of policy and key decisions. This might be an area where academies could do more.’

It is imperative that the governing bodies of academies secure effective engagement from key stakeholders, including staff and pupils. It might be argued that, in addition to parent governors, one or more teachers should be represented, to ensure a level of professional engagement in institutional strategy, reflecting the emphasis on professional responsibility that we are advocating for teachers to improve teaching and learning.

More generally, academy trusts need to find innovative ways of engaging local communities. We suggest that, in keeping with the model of established company practice, each academy trust should produce an annual report and discuss it with the local community. This might also support the engagement of key partners in school review and planning for improvement (see chapter 2).

### **Looking forward**

There are potential benefits of academisation in building innovative and high capacity governance models and, indeed, in providing governing bodies with authority. In this sense, arrangements for academy governance may comprise a strength as well as a risk. Many academies have taken steps to ensure that stakeholders are involved, for example by setting up Parents Councils, and academy headteachers appear to show greater levels of confidence in their governing bodies than do their maintained school counterparts (BMG Research, 2012). However, the risks are clear: governing bodies are a potentially weak link in an academised system. Indeed, the Commissioners are concerned that the apparent cultural status quo for governing bodies will mean that they are not fit for purpose in the future. Three main questions arise in relation to realising the potential of academisation:

- how to secure better capacity
- how to encourage governors to support school-to-school improvement
- how to ensure democratic representation/accountability.

As we have seen, the most immediate challenges relate to the capacity of the governing body to hold the headteacher to account for the leadership and management of the academy and ultimately to ensure school improvement.

As noted earlier, the stipulations for academy governance allow flexibility, and new models are being developed that deal with some of these challenges. In the case of multi-academy trusts (MATs), academy chains establish a central trust with executive oversight over governing bodies in individual academies, distinguishing strategic direction (exercised at whole-chain level) from more operational accountability (at academy level). As Hill *et al.* (2012) found, in large chains governors may be moved around schools within the chain, thus tackling questions of capacity and developing the experience of the governors concerned.

### **Governance case: ARK governance**

ARK Schools is a company limited by guarantee which:

- holds the master funding agreement with the DfE
- takes a long lease on each academy
- operates each academy under the terms of the academy's funding agreement.

The directors of ARK Schools are the legal governors of all ARK schools. There are five directors, including the Managing Director.

### **Local governing bodies**

Although the ARK Schools Board is the legal governing body, it delegates many of its functions to a Local Governing Body (LGB) for each school.

An LGB normally consists of up to 15 members, as follows:

- 6–10 ARK Schools nominees
- 1 parent representative (who may be chair of the Parent Council)
- 1 local authority representative
- 3 school staff: the principal, teaching and non-teaching staff representatives.

### **Delegation principles**

ARK Schools operates under the following principles:

- Delegation to schools wherever practicable
- Budgets belong to academies, not to ARK Schools
- ARK Schools support should be available in areas where a lay governing body cannot reasonably cope with the burden of prescriptive legislation and detailed compliance, or where expert skills are needed

The LGB operates as a committee of the ARK Schools Board with delegated powers. The actual level of delegation varies according to the circumstances of individual schools.

### **Legal Liability**

In legal terms the LGB is an advisory body to the ARK Schools Board (the legal governing body for all academies) and the academy. While many of the scrutiny functions are delegated from the ARK Schools Board to the Local Governing Body, legal responsibility cannot be delegated. Local Governing Body members are therefore free from any threat of personal litigation or responsibility, although the expectation of professional and ethical standards remains at all times.

Source: 'Information for Potential Governors', ARK Schools brochure.

*The Commission sees chairs of governors as key in an academised system: the chair is highly influential in the effective functioning or otherwise of the governing body as a whole*

Hence there are potential benefits in such models of governance within chains of strong oversight, clarity of roles, capacity and support. Risks may include excessive control from the centre of the chain, and/or lack of local accountability and representation in governance. Chains offer the potential for innovation, support for capacity-building, and provision of continuing professional development in governance, although they need to remain vigilant in maintaining oversight and development of their shared mission, and in ensuring inclusive local practice.

However, the majority of academies are now converters and not necessarily associated with a chain, and it is here that there may be particular need for support. Taking steps to do this is vital in order to bolster this key element in the academy system. Pont *et al.* (2008) maintain that autonomy needs a strong infrastructure of support, including training and development for leadership. So how can quality be assured? There is much speculation about the optimum size of governing bodies, including an apparent assumption that smaller governing bodies may be more effective.<sup>23</sup> However, the Commission judges that function and capacity (including coverage of expertise) remain the key criteria. Emerging models are very diverse – certainly too much so to enable conclusions to be drawn about size. As the ASCL and the NGA point out in their evidence, there is no research evidence to support the assumption that smaller governing bodies are more effective; indeed the NGA expressed some wariness about very small groups. Both organisations note a risk in terms of capacity for small groups – both time and the ability to cover all areas of necessary expertise. They also note the risk relating to adequate representation of stakeholder groups. The ASCL additionally observes the risk for such groups that governors fail to distinguish their role from that of the executive. Both organisations emphasise that it not the size of the governing body but, rather, the quality of the necessary expertise that has an impact on good practice.

The Commission sees chairs of governors as key in an academised system: the chair is highly influential in the effective functioning or otherwise of the governing body as a whole; and the (professional, constructive but robust) relationship between the Chair and the headteacher is key to productive governance. It is here that the government needs to take firm action in order to secure quality and capacity. It is taking some steps in this regard, for example through the National Leaders of Governance being developed by the National College of School Leadership (as well as its CFRA course mentioned above). This is an important step and needs to be accelerated to match the longer-established NLE scheme for headteachers. However, it may be that many governors and chairs of governors, already hard-pressed to maintain their duties to a high standard (often on top of paid work), will not wish to take up such opportunities. Payment of governors was suggested as a way of providing direct incentives in terms of quality assurance. The Commission believes that payment to chairs of governors might be explored; but a different approach would be to pay governors/chairs of

23. Some academies and chains have acted accordingly to shape small governing bodies which they report as more focused and responsive. For example, in the Kemnal chain academy, governing bodies each involve just five or six governors. Hill (2010) notes that the move of some chains to develop smaller governing bodies provides a 'sharper and more driven form of accountability'.

governors to attend courses or to cover the associated costs (as in the case of arrangements for jury service).

The Commission believes that the process for appointing chairs of governing bodies should become more professional and rigorous, in order to ensure high-calibre appointees. Chairs' posts should be advertised, as is widely the case with other public sector Board roles, and schools should be expected to have at least one independent person on the selection panel for a new Chair. All chairs should have to meet explicit criteria around (a) understanding of the role and responsibilities; (b) preparedness to engage in continuing professional development; and (c) ability to challenge the headteacher when necessary. In addition, any new Chair should be expected to undertake formal training within six months of being appointed. The Commission would like to see the National College hosting an annual conference for chairs of governors (which there is an onus to attend). In addition, the government should find ways to celebrate their role better – as central figures within an improving education system.

Thought also needs to be given to provision for continuing professional development, given that local authorities are likely to scale back activities (especially in the secondary sector where academies are more prevalent).

In addition to training, there is more that the government might do to support governing bodies. For example, as suggested in Chapter 2, the direct supply of key data on individual schools (for example, a regular data 'dashboard') would provide governing bodies with ready information, as well as a steer as to the sorts of information they should be scrutinising regularly. Providing further, simple and user-friendly guidance, including support materials and model templates, may help to ensure governing bodies fulfil what they need to do to secure accountability and do their jobs effectively. The DfE already provides documentation to support best practice in some areas, such as documents on the basic rules of procurement for schools and academies. This approach should be extended.

We suggest that in looking forward to a fully academised system, the governance of individual academies within it becomes a key risk for the quality of the system overall. To that end, the government needs to give added impetus to collaborative learning through cross-school communities of practice. A start has been made with the designation of National Leaders of Governance, but more needs to be done to help governors understand governance practices in other schools, coming together as governing bodies to share continuing professional development and achieve economies of scale in purchasing services, and so on. The latter offers especial potential for securing professional support for example with audit, the preparation of accounts for reporting, legal advice and other matters that may be required.

## **Recommendations**

Governing bodies have a pivotal role in an autonomous school system and so for the success of the academies programme. The government needs to act to ensure capacity in governing bodies, and to provide incentives for participation, to secure the effective school governance that is vital for an academised system. We recommend the following:

- The DfE should act to increase understanding of the pivotal role of governors in an academised system. This should include a focus on their responsibilities not only as company directors of charitable companies but also for wider system improvement.
- Using the National College, the DfE should take steps to support the capacity of governing bodies, and in particular the quality of the Chair.
- Schools should advertise the appointment of new Chairs as part of an open recruitment approach and involve at least one independent person in the appointment process. There should be mandatory training on appointment.
- The government should consider incentives schemes (such as tax credits) to employers to encourage their employees to participate in school governance, and to facilitate time off for employees to attend continuing professional development and/or governing body meetings.
- The DfE should supply key data to governing bodies of individual schools to ensure the governing body is adequately informed and thus equipped to act.
- Using the National College, there should be further development of high-quality continuing professional development, materials and templates for governors.
- Using the National College, the government should find more ways to increase school-to-school collaboration across governing bodies, to encourage capacity-building through development and training, and to secure better value for money through shared procurement (such as for legal guidance and audits).
- To encourage engagement and to support local accountability, academy trusts should publish an annual report and provide a forum for its open discussion with stakeholders.





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## 7. Governance and public accountability: the role of central government

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In a fully academised system, the government retains its responsibilities for system-wide improvement and the effective, transparent use of public resources. Within an autonomous system the key elements are:

- commissioning
- monitoring/regulation
- intervention.

School improvement levers and accountability measures are considered fully in Chapter 2. This chapter focuses on some specific issues raised in evidence to the Commission in relation to the role of central government. It explores each element in turn, focusing on the commissioning and decommissioning of sponsors, and transparency and monitoring of standards across the system. We also explore aspects of accountability, including funding mechanisms, financial oversight, and redress. The Commission argues for further tightening of mechanisms, and further use of hard powers, to secure the transparency and efficiency necessary for an effective academised system.

### **Commissioning**

The government is levering school improvement in a range of ways, including a focus on commissioning improvement through arrangements with sponsors and with academies that have been judged by Ofsted to be outstanding.

### **Appointment of sponsors**

Evidence presented to the Commission indicates there is a need for a better check on the due diligence of sponsors to ensure effective school improvement. The Coalition government decided not to continue with the system that had been put in place for the formal approval of accredited sponsors, and the DfE runs a minimal 'fit and proper person' check on potential sponsors. The Commission was concerned that so little about this, for example, the criteria for selection, is in the public domain. Many submissions to the Commission suggested that this

approach to something as fundamental to children's lives as schools and their improvement is inadequate. A confidential submission from a city council children's services director noted:

'In any other aspect of public life, contracts for the operation of public services are subject to open tender and once in operation are governed by procurement frameworks. Why not in education? There is no open register of school sponsors, no transparent process for determining if a person or body is 'fit and proper' to run state funded schools. Why not?'

However, a balance needs to be struck in encouraging rather than deterring participation by sponsors. As the DfE points out, sponsors cannot be 'tested' until they take on schools but, as sponsors expand activities, it becomes easier to monitor their success or otherwise, and to use this information to inform decisions in the future. Nevertheless, the Commission believes that explicit criteria on the capacity of sponsors, their understanding of education, and their vision should be made publicly accessible. Transparent criteria for the DfE's identification of appropriate sponsors are important, especially in the case of the 'forced academisation' of schools that have been identified by Ofsted as inadequate. The current lack of transparency raises questions for some stakeholders, such as the NAHT, as to the independence of the decision-making process.

The Commission heard that the DfE is beginning to develop and apply systems for monitoring the achievement of different chains, and to use the information gathered to inform decisions about whether particular chains should be awarded further schools. This work needs to be accelerated and, again, made publicly available. Centrally modelled data should be available to parents and other stakeholders so that they are aware of the practices and effectiveness of different chains. This is important because chains' marketing information can 'spin' different performance indicators in a range of ways. Established chains should be allocated further schools only if they can demonstrate good results with those they already have.

In the early academies, the old school (including its governing body) was replaced by a new sponsored academy. As time went on, however, a more consensual system of appointing sponsors was adopted and the present government has retained this. This involves brokerage between the DfE, local authorities and the struggling school. This is often manifested in the so-called 'beauty parade' noted in chapter 2: the DfE brokers and the local authority supports the struggling school to select from a range of interested sponsors that are presented to (and make a presentation to) the school's governing body. Witnesses to the Commission referred to this system on numerous occasions with frustration and exasperation at what was considered extremely bad practice. It was regularly likened to 'asking turkeys to vote for Christmas'. Governing bodies (including the existing headteacher) of struggling schools were felt to be ill-equipped to make decisions about what is best for the school's future and likely to be attracted to the sponsor that would least disrupt or threaten existing arrangements (including, for instance, the current senior leadership team and/or the governing body itself). It is noted that these two limitations may apply to other circumstances in which headteachers and the

*Established chains should be allocated further schools only if they can demonstrate good results with those they already have*

governing bodies of struggling schools select sponsors beyond selection processes brokered by the DfE.

There is a further disadvantage to this method: that is, the energy taken by sponsors competing with one another to take over schools, and the ‘wooing’ of stakeholders and so on that such processes often entail. The process is also problematically opaque. A number of witnesses told the Commission that they considered the legal basis for it was suspect, not to mention the costs and inefficiencies involved. Some witnesses felt that responsibility for identifying a suitable sponsor should rest exclusively with the DfE, with a decision made on the basis of transparent selection criteria. Sir Bruce Liddington, the CEO of E-ACT, made this point strongly in his evidence:

“Beauty parades” must be ended. The Academy system is damaged by many sponsors competing with each other to take over schools. The decision over which sponsor should take over a particular school should be down to the Department for Education. This will ensure Academy sponsors’ efforts will be focused on promoting exceptional standards in schools.’

**Written evidence, E-ACT**

Questions also arose about accountability to parents in the appointment of sponsors. Several submissions to the Commission maintained that there should be better processes of consultation with parents, especially given that academisation represents changes to a school’s legal status, of which parents are often unaware. There was doubt as to the meaningfulness of present consultation processes.<sup>24</sup> Nevertheless, it is clear that the changes can have consequences for parents which they have not necessarily understood or been consulted about.

‘My son had mentioned he had not seen his music teacher for a while and turns out was now working at one of the other schools in federation – parents not aware. I FEEL THERE IS NO ONE ELSE TO TURN TO AND THAT SCHOOLS CAN DO WHATEVER THEY LIKE.’

**Confidential submission from parent**

## Recommendations

- The practice for appointing sponsors, commonly known as the ‘beauty parade’, should be ended. The DfE should ensure that the selection of sponsors is open, fair and rigorous, and supported by clear criteria.
- There should be a requirement for meaningful consultation with parents on their school’s potential academisation. This should clearly set out the implications for the school’s legal status and its educational provision (especially concerning the actual

24. David Wolfe submits that the public participation requirements for the process of converting to/establishing academies are ‘so weak, and so vaguely framed, as to undermine the democratic legitimacy of the decisions which follow.’ He asserts that, in many instances, even parents who are agnostic about, for example, their school’s conversion develop grievances about how things are done.

implications of academisation for the school's organisation and for education within it). The DfE should develop, or circulate existing exemplars of, guidance showing best practice in meaningful consultations with parents on a school's potential academisation.

## Regulation

### Monitoring and regulation of academy chains

We have noted the DfE's development of monitoring mechanisms. It is imperative that the performance of chains is tracked centrally, given that some chains extend beyond their local areas. In an academised system, large chains represent both significant opportunities and strengths and considerable threats. If an academy chain declines, the consequences for pupils are, in Greg Hurst's words, 'catastrophic'. An influential civil servant told the Commission that the single biggest risk to the academies programme is if 'a sponsor falls over'. At present, the majority of chains are very small, comprising two or three schools; and the Office of the Schools Commissioner is seeking to drive the expansion of larger chains (three or more academies) with more capacity, but avoiding the development of chains that are too large to be sustained. However, a handful of chains are now very large. Since the government remains responsible for school improvement and the use of public resources, it needs to ensure that chains behave with probity and efficiency.

There was some support in submissions to the Commission for Ofsted to inspect academy chains rather than individual schools. A number of academy sponsors made this argument strongly, in addition to policymakers and other commentators. However, the Commission is not minded to support this recommendation. As discussed in Chapter 2, parents are interested primarily in the outcomes of their children's school, rather than the overall performance of a chain; and it is right that Ofsted should remain focused on what is happening at the level of an individual school.

However, this is not to say that chains should not be held to account for performance across a chain. There are three elements to this:

- transparency/monitoring of performance
- inspection
- intervention.

The Commission believes that while inspection should continue to focus on individual schools, transparent systems should be developed to provide publicly accessible information on the performance of chains. This would provide information to schools wishing to associate themselves with a sponsor. As noted earlier, the information should also be used overtly in decision-making about allocating failing schools to sponsors and, in worst-case scenarios, to ban particular chains from taking on additional schools, and/or to remove a sponsor.

The DfE should operate hard powers in relation to failure. According to its evidence, the Office of the Schools Commissioner (OSC) is developing a system for academies' performance monitoring and intervention is being developed by, with consequences for

underperformance. The DfE also provided evidence that 40 academies were ‘red-rated’ in 2011, and eight pre-warning notices were issued to academy sponsors.<sup>25</sup> According to the NAO (2012), at July 2012 the OSC was monitoring the performance of 166 academies, with 30 of these classified as causes for concern. Yet the public remains uninformed about this. Moreover, the Commission notes that almost half of sponsored academies are rated by Ofsted as requiring improvement (‘satisfactory’ before September 2012) or inadequate (the latter standing at 8% of sponsored academies) (NAO, 2012), raising questions as to the view that the number of academies at high risk regarding performance is ‘very small’. The Commission believes that the role of the OSC should be explicitly extended to encompass intervention as well as the identification and monitoring of sponsors.

The criteria and systems for intervention should be made more transparent. As we noted in Chapter 5, some 12% of charters in the United States have been withdrawn for poor performance over the last 20 years. In his written submission, Professor Mel Ainscow points out that charter schools are granted a charter of three to five years by local school boards, and are judged on the basis of a contract to deliver their plans, including results. Removing a sponsor in England may not be without difficulty, given problems about the ownership of land, and the need to dissolve a trust. Nevertheless, it is important that such powers can be – and are – exercised when necessary. The Commission advocates a reduction in the length of funding agreements, from seven to five years, to provide a tighter timeline for intervention if improvement is not being secured.

The Centre for Public Scrutiny, in a written submission, suggests that local councils might take a role in holding academies to account on behalf of the local community, suggesting this might be along the lines of the powers for councils to scrutinise health services. The Commission makes a similar suggestion in relation to annual reports by local authorities in earlier chapters, arguing for a role for local authorities in scrutiny of and reporting on school performance and raising any concerns.

The Commission considers that if academisation is extended across the system, it may be beyond the capacity of the OSC to operate these intervention powers effectively on its own (see also O’Shaughnessy, 2012). The Commission suggests that in a newly re-focused role as champions for local children and young people, local authorities could be involved in reviewing the contracts of sponsors. In this way, the OSC might provide performance data to them, enabling local authorities to draw on this data, in conjunction with their local evidence, to support a judgement about the renewal (or removal) of contracts for an individual sponsor academy. This might form the basis of a recommendation from a local authority to the OSC, the body ultimately responsible for commissioning and decommissioning.

Adequate time needs to be built in for improvement. Nevertheless, it is imperative for an improving system – and the education of individual

25. The pre-warning notices were reported by *The Independent* on 25 April 2012; [www.independent.co.uk/news/education/education-news/gove-admits-eight-academies-are-on-notice-over-failures-7676014.html](http://www.independent.co.uk/news/education/education-news/gove-admits-eight-academies-are-on-notice-over-failures-7676014.html)

pupils – that academy funding agreements are not seen as ‘for life’, but can be, and are, rescinded for poor performance.

### Recommendations

- The DfE should continue to develop and make publicly accessible its monitoring of performance across different chains, and sharpen its role in intervention.
- Funding agreements for sponsorship should be reduced from seven years to five.
- The Office of the Schools Commissioner should produce an annual report on the comparative performance of sponsors
- The DfE (OSC) should be responsible for intervening to terminate funding agreements (sponsor removal) on the basis of data shared with and recommendations from the local authority.

### Efficient use of resources

Chains draw a small proportion of the budgets of individual academies within their chain to the centre to fund activities across the chain: this is referred to as the ‘top slice’ (see Hill *et al*, 2012, for details). It is noted that the top slice levied in different chains varies dramatically – typically, but not always, lower than that levied by local authorities. (The latter levies also vary significantly; they also incorporate provision for additional services.) In some cases, the top slice is very low, in others far higher, yet there is a lack of clarity about what is being provided to account for these differences. There are calls for greater transparency, especially given that academy trusts no longer need to register with the Charity Commission. The NASUWT, for instance, says in its written evidence, that there is no meaningful, objective audit of the extent or appropriateness of expenditure.

Another issue raised about value for money is, as one parent put it, the ‘huge salaries’ paid to senior staff. The salaries of academy headteachers appear to have risen rapidly (Public Accounts Committee (PAC), 2011; NAO, 2012). Some witnesses expressed concern that the (often high) salaries for CEOs of academy chains are often being subsidised by schools. A lack of transparency in this area fuels suspicion. In the case of academy headteachers, there may be particular explanations for relatively high remuneration: for example, in the case of the original sponsor academies, the challenging task of turning around failing schools in areas of social disadvantage might have been deemed to require incentives to ensure quality. Likewise, some academy headteachers hold additional responsibilities for other schools. Nevertheless, information in the public domain is inadequate. It can be challenging to find information about resourcing, since it may be protected by commercial confidentiality. Submissions to the Commission drew parallels with the experience of the release of the further education sector from local authority control and a concern that lessons have not been learnt.

Again, there is a need to ensure systematic transparency, accessible information for parents, and clearly defined processes to safeguard good practice and school improvement.

*There are calls for greater transparency, especially given that academy trusts no longer need to register with the Charity Commission*

## Recommendations

- One way of making diverse information on different chains and their practices more accessible to the public would be to develop ‘score cards’ for chains, providing key information around educational ethos, organisational model, spending, and attainment data.
- The DfE should take steps to hold converter academies to account for their commitment in their application for academy status to give support to the improvement of other schools.
- Sponsor chains and individual academy trusts should be required to be transparent in their financial arrangements.

### **Accountability: information and transparency**

In the view of the Charity Commission, academies should be accountable to a range of stakeholders, including pupils and parents; regulators; funders; a school’s local community; and the wider public. Accountability to these stakeholders can be supported by access to key information; enabling stakeholders to influence decisions; having in place, and signposting, sufficient procedures for dealing with complaints.

A range of templates is available to support good practice in reporting. As well as statutory requirements around the preparation and accessibility of accounts, the latest version of the funding agreement requires academies to publish a wider range of information on their websites in relation to their curricula and academic results.

As the Charity Commission observes, the accountability of academies remains a matter of high public interest. As discussed earlier, Jon Coles, Chief Executive of United Learning, has said:

‘As Academies, the very facts that our funding agreements are with central government, that we are freed of many requirements of governance legislation and that we have new freedoms mean that we have a greater responsibility to account for ourselves well to parents and to the community. If we want to retain our freedoms and get ahead of our critics, we need to make sure as a sector that we build a reputation for being open and accountable.’

**Jon Coles, the Academies Show, 16 May 2012**

As discussed earlier, issues debated in the public eye include:

- the removal of academies from the Register of Charities and, as a result, the lack of easily available, free public information
- some academies’ submission of abbreviated accounts to Companies House or the claiming of exemption from the need to submit accounts
- high salaries and incidences of the misapplication of funds.<sup>26</sup>

The next section examines some of the key issues arising to inform appraisal of the current situation and to look ahead to the implications for a fully academised system.

26. Examples taken from the Charity Commission’s submission.



## Funding

There is scepticism that funding of the academies programme has been competently managed. As the Commission heard, and the NAO (2012) reflects, academy conversion in 2011/12 dramatically outstripped the expectations of the DfE, and systems to accommodate much smaller numbers of conversions were tested. The NAO report (2012) confirms that the DfE's Impact Assessment 'contained simplistic assumptions about some funding elements and omitted other costs, including sponsored academy start-up funding'. Moreover, there were particular issues around the Local Authority Central Spend Equivalent Grant (LACSEG). Peter Downes (2012) has suggested that a partial explanation for the speed of conversions since 2010 has been a 'dash for cash' as a result of a disproportionately large allocation of the LACSEG money to individual academies.<sup>27</sup> A financial motive for conversion is confirmed by responses to the Reform/Schools Network survey, 2012.

'The true extent of the DfE's under-estimate of what it will be paying in LACSEG to academies was revealed in figures published on July 19th 2011 as part of a consultation asking for advice on how to solve this problem. The figures showed that the expected LACSEG spend on academies in existence and schools likely to convert within the next year will amount to £997 million (mid-range estimates). This leaves a gap of £584 million between what they have recouped by top-slicing LAs and what they will allocate to academies. This is an astonishing figure in a time of national penury.'

**Downes, 2012**

The NAO (2012) calculates the aggregate difference between funding paid to academies and funding recovered from local authorities between April 2010 and March 2012 to be £350 million. As Downes reports, the DfE announced on 17 July 2012 that local authorities whose top-slice was excessive would be partly refunded, yet authorities who had an above-average number of academies would not be required to pay extra. Annex A of the DfE's announcement explained the methodology for arriving at the refund.<sup>28</sup> The total refunded to local authorities for 2011-12 is just over £58 million, nearly 40% of what had originally been top-sliced. The total amount for 2012-13 has not been announced since schools are still in the process of converting, but Downes calculates that, if the proportion is similar, the amount to be refunded would be £106 million.

The DfE has recognised that this method of funding academies is not sustainable, and a new national system, including a new National Funding Formula, is in the process of being established (a notice will be

27. LACSEG money is partially recouped from money held back from the local authority to spend on pupils who have acute needs. The total is divided by the number of pupils in the whole local authority and academies are given their share. Given that converter academies often serve more advantaged populations, they are generally likely to have fewer pupils that need the extra help for which the funds were intended. In his written evidence, Peter Downes observes that, 'in effect, [this] transfers funds from those in greatest need to those with the fewest problems'.

28. *Consultation on the proposed decision on the calculation and recovery arrangements for the Academies Funding Transfer for 2011-12 and 2012-13 – Government response*, DfE, 2012; available at: <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00090-2012>

issued in 2013–14). Some local authorities and some academies, too, may lose out in the new model.

Of course, in a fully academised system, all schools (academies) would be subject to the same arrangements. Nevertheless, since public money is being spent, it is imperative that funding agreements are transparent and open. Such transparency is currently lacking. As several witnesses observed, the current system of placing duties on academies through individual funding agreements, with academies formed at different times having different duties, and a change of responsibilities requiring the amending of every individual funding agreement, is unsustainable and may lead to confusion locally as to where responsibility lies. The DfE is seen to have over-used the argument of ‘commercial confidentiality’ to obscure what funding is made available (ASCL, written evidence).

The Commissioners are further concerned by findings from the NAO concerning the high cost of insurance. Maintained schools obtain insurance through their local authority, whereas academies must purchase it themselves. Academy respondents to the NAO identified this, and accountancy and financial service costs, as costs that had increased after gaining academy status. The DfE has chosen to refund academies for insurance costs incurred, providing £92 million between April 2010 and March 2011, (NAO, 2012). It is also encouraging academies to bring down these costs through more cost-effective purchasing. The Commissioners welcome the latter impetus, and encourage greater urgency here. Seventy-one per cent of converter academy respondents to the NAO reported increases in costs for finance staff and/or services. The academies programme must not come to be seen as a ready source of income for accountants and insurance companies, but must find ways to encourage academies to work together to ensure value for money offered by economies of scale.

### **Financial oversight**

There is also a challenge of due oversight. As the ASCL acknowledges, there is a need for a higher level of external audit in the case of academies. For national government accounting purposes, academies are officially regarded as government offices, and from this year (2012–13) the accounts of every academy are consolidated into the DfE’s accounts. This is a consolidation of an unprecedented scale in the history of UK government, and especially unique (and potentially challenging) given that academies are autonomous institutions. For example, the scale of this already unprecedented arrangement would grow significantly further should the majority of English schools become academies. Hence, levels of external audit ought to be equivalent to that required for charities, or further education colleges. But, clearly, this could create a challenge for, say, small primary academies. The reporting levels expected are considered relatively onerous: the Commission heard evidence from some academy headteachers that financial reporting is felt to be too bureaucratic and unnecessarily complicated. One academy headteacher remarks in written evidence from FASNA that this element is the one disadvantage they have experienced in academy conversion:

‘We are (and have been) a very well financially managed school and, being a trust school and foundation prior to this, have significant experience but the transformation to academy has been dramatic... There is a need to reduce the level of accountancy – schools are not like traditional businesses, we do not sell goods or services to raise funds. I agree that there needs to be strict financial control over schools given the sums of public money involved but a simplified system that the DfE, Companies House and the Charity Commission agree on must be worthwhile. It is difficult to justify the extra funds that we have had to allocate to this activity, given the reductions in funding to schools and, consequently, less funding being spent directly on students and their achievement.’

These views are corroborated by a survey for the NAO (2012) which found that nearly half (47%) of academies feel less free from bureaucracy than they expected before conversion, with particular concern about financial issues.

The NAO (2012) concludes that academies’ financial management is good (albeit it notes that this information is largely self-reported). Less than 1% of academies were assessed as inadequate in financial management and governance (NAO, 2012). Nevertheless, it is vital that academies demonstrate probity in using public funds. As we saw in the previous chapter, reports of fraud in the school sector are relatively high, and the more autonomous governance arrangements for academies may comprise a risk in this regard (Audit Commission, 2012). Reviews of the arrangements for regulating and monitoring academies to ensure that public funds are used efficiently and effectively led to the establishment of the EFA to replace the preceding YPLA in 2012. The EFA is intended to provide a clearer focus on the financial monitoring and regulation of academies. Two main issues arise in submissions to the Commission: transparency/external audit, and EFA capacity. We deal with transparency first.

There have been several high profile cases in the past year of alleged financial mismanagement at key academy chains, including the Priory Federation of Academy Trust in April 2012.<sup>29</sup> Academies must have their accounts externally audited, an important safeguard, and one that the EFA is relying upon. This year the EFA has specifically asked for external auditors to comment on any irregularities.

However, access to this information is not straightforward. Unlike other charitable trusts, academies are exempt from having to submit their accounts to the Charity Commission. Instead, as registered companies, they have to furnish their accounts to Companies House. Anyone who is interested can ask for them for a small fee. Academies must make their accounts available on request, and the recent model funding agreement now requires that the accounts are published on the academy’s website. However, this does not extend to academies established before 2010, and

29. An investigation by the DfE revealed ‘serious failings,’ including the CEO’s misuse of the Federation’s resources to pay for training for his son, personal tax advice, DVDs and other ‘personal and inappropriate’ items. The report and the Academy Trust’s response are available at: [www.education.gov.uk/inthenews/inthenews/a00208467/media-statement-in-relation-to-the-priory-federation-of-academies-trust](http://www.education.gov.uk/inthenews/inthenews/a00208467/media-statement-in-relation-to-the-priory-federation-of-academies-trust)

the NAO (2012) notes that of these latter, only 16% publish accounts on their own or their sponsor's website.

Systems and guidance are being tightened in response to criticism, for example from the PAC, and as a result of internal review (DfE, 2012e). This action was certainly necessary, again reflecting the insufficiency of existing systems to deal with the unanticipated extent and speed of academisation following the 2010 Education Act. The Comptroller and Auditor General's report to the Houses of Parliament on the YPLA's 2011–2012 accounts noted that, in 2011, 21% of academy accounts were not filed on time (NAO, 2012). Further, 54% of Financial Management and Governance Evaluation (FMGE) self-assessment returns to the EFA were also filed late. The EFA has been asked what it could do to increase timely submission in the future, as the number of academies and hence the assurance gap increases (Smith, 2012). The DfE's evidence to the Commission outlined the steps that have been taken to secure this.

*The NAO noted that the current assurance framework, which monitors compliance with the academy's funding agreements, was insufficient*

The NAO gave a qualified opinion on the YPLA's accounts with regards to the regularity of the spending of public money, that is, it could not gain sufficient assurance that the money had been spent on the purposes for which it was intended. The NAO noted that the current assurance framework, which monitors compliance with the academy's funding agreements, was insufficient. This is because the current funding agreements and the accompanying Academies Financial Handbook do not fully reflect requirements for central government entities. In particular, the YPLA did not take sufficient action to ensure that special payments (such as severance payments in excess of contractual commitment) were reported so as to pass them through the necessary HM Treasury approvals process. As Smith (2012) observes, inconsistency in 2011 academy financial statements may reflect not only a lack of clarity about requirements but also a lack of guidance for academies. For example, inconsistencies 'could be partly attributed to guidance in the 2011 Accounts Direction being issued on 31 August, the last day of the academy financial year'. Smith concludes: 'Any audit code, and new framework for academy assurance laid out therein, must come early enough to give academy auditors time to provide their staff with the skills needed to provide government with the levels of assurance they require.'

The PAC is looking at academies' financial due diligence, with the NAO (2012) having issued its report on the expansion of the academies programme shortly before the production of this report. The PAC's report, *Department for Education: accountability and oversight of education and children's services* (May 2012), has raised some concerns around financial mismanagement in academies and a lack of systems to monitor this. The specific concerns go beyond the capacity of this Commission to consider them, given the constraints imposed by the Commission's design as a 'speed Commission'. The technical issues arising will be addressed by the NAO and the PAC. However, it is appropriate to note that, in a statement on the PAC's report, its Chair, the Rt Hon Margaret Hodge MP, said that the committee 'remain[ed]

very concerned at the weakness of the proposed arrangements to ensure accountability for value for money.<sup>30</sup>

The Commission also notes evidence on the volume of whistle-blowing in the school sector (Public Concern at Work, 2012; Audit Commission, 2012), and a concern that whistle-blowing – the facilitation of which is perhaps especially important in relation to autonomous institutions – may be impeded by the lack of local offices to which to take concerns.<sup>31</sup> The current arrangement for whistle-blowers to approach government (the DfE) may appear remote and intimidating. In keeping with our recommendation later in this chapter that the remit of the Local Government Ombudsman (LGO) be extended to accept general complaints about local schools, we suggest that the LGO should provide a mediating tier to receive any concerns about fraud and to pass these to the EFA.

To conclude this section, the Commission would expect, as a minimum, that every academy would have routine accounting practices to ensure probity, transparency, and both efficient and effective use of resources. These should – at least for secondary academies – include basic reporting essentials, regular risk assessment and an audit committee. The question of scale poses a potential problem for primary academies. The Commission considers that all academies should ensure that they have sufficient expertise on their governing body and an identified responsible member of staff. In the case of primary academies, this person might be responsible for commissioning external financial/audit expertise.

### **The role of the Education Funding Agency**

Turning to the second issue of EFA capacity, there is particular scepticism – from many different quarters – about the Agency’s capacity to provide thorough oversight and to secure accountability for individual academies.

‘The capacity of the Department for Education and the Education Funding Agency to oversee an all-academy system remains in doubt.’

**ADCS, written submission**

Concerns expressed were two-fold. Some respondents doubted that the EFA has sufficient capacity to monitor funding agreements for individual academies and hold academies to account for any breaches, given the numbers. This first concern was expressed by a range of different organisations and individuals, including governors and academy headteachers. These submissions broadly echoed the PAC’s concerns:

30. The PAC observed in its Progress Report (PAC 2012a) that the DfE’s third draft Accountability System Statement remained ‘weak’, suggesting that the DfE will ‘rely on a mix of local accountability mechanisms, information systems, inspection, and oversight bodies to gain the necessary assurances over regularity, propriety, and value for money’. In its report published the following month (PAC, 2012b), the PAC called for the DfE to ‘do more work to clearly define how funding streams will be monitored, audit arrangements, and processes to support whistleblowers’. The May report and the Chair’s statement are available here: [www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/dfe-accountability-report-publication/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/dfe-accountability-report-publication/)

31. Concerns voiced by MPs at a Commissioners’ meeting with MPs, 6 November 2012.

‘There is a question mark over whether the Education Funding Agency will have the capacity and skilled staff to oversee the growing number of academies... among our concerns is whether the Department has the ability to pick up early warning signs of improper spending or poor value for money, such as academies paying very high salaries to senior staff or incurring questionable expenditure.’

**PAC, 11 May 2012**

Questions about capacity also extend to how converter academies might be held to account for their promised collaboration with struggling schools for school improvement purposes, specified in their applications for conversion (see chapter 2). The EFA does not appear to see accountability for such commitments as part of its role. Yet such school-to-school support comprises one of the key elements of the government’s plans for school improvement via academisation.

Other respondents, especially individual respondents and unions, were worried about the capacity of the EFA to act effectively to resolve complaints.

In relation to both points, the PAC’s report notes the urgency for adequate systems, given that resources across the education sector are declining. The DfE and the EFA have taken a series of steps to address the PAC’s recommendations, increasing capacity and improving transparency. The DfE’s Statement of Action in response to the PAC’s recommendations includes:

- establishing the Education Funding Agency (EFA) to take over the financial monitoring and regulatory role for academies previously carried out by the YPLA
- the establishment by the EFA of an ‘accountability framework that allows academies to take responsibility for ensuring their own effective financial management’
- the redrafting of the financial handbook for academies with a ‘shorter principles-based focus’ to come into effect from 1 September 2012
- the DfE’s publication of academies’ finance data in 2012 to improve transparency.

The EFA states that the proportion of academies submitting their audited accounts on time has increased and that it works closely to ensure that all academies make returns as soon as possible. In terms of the questions about sufficient capacity at the EFA to provide robust accountability and oversight of academies’ use of public funds, the DfE responds that, ‘Academies are a priority for the Department and its academies’ functions have been staffed accordingly’ (although we note that this response was provided before recent announcements of significant staff cuts at the DfE). The Commission heard that the EFA has doubled the number of its accountants this year. The EFA reviews all academies’ self-assessments, and visits a sample number of schools. According to the DfE’s evidence to the Commission, the EFA visited 5% of academies to validate the FMGE sample [now no longer required], and 5% regarding funding audit.

In responding to concerns about the capacity of the YPLA (now the EFA), the DfE has said:

‘The Department keeps under review the requirements of the growing number and greater diversity in the types of Academy to ensure that its capacity and that of YPLA keep pace with developments. Both the Department and YPLA have re-directed resources within their organisations to expand their capacity to fund and to monitor the performance of the increased number of Academies.

However, the rise in the number of Academies should not lead to a corresponding increase in the support capacity. The Government’s policy is that the relationship between the Department, YPLA and Academies should be one characterised by a light touch, reflecting the expectation that successful schools, sponsors, federations and other groupings of Academies will support others.’

**HM Treasury, 2011**

The Commission welcomes the important steps taken by the DfE and EFA to secure compliance and transparency in financial management. However, this needs to go further to ensure robust accountability, to mitigate risks and reassure stakeholders. Capacity to maintain such systems is also fundamental if academisation is to be driven forward. We are encouraged that review and development appear to be continuing in this area. However, more work needs to be done, especially if the DfE and the EFA are to be seen to be taking the initiative rather than simply responding to concerns identified externally.

Three areas are of special importance:

- transparency
- parity
- policing.

In terms of transparency and parity, publishing academies’ spending data is an important step. However, good practice ought to apply to all schools. The DfE should publish (the same) data for all schools, whether academies or not; the data need to be complete and presented in such a way that fair comparisons can be made.<sup>32</sup> This transparent presentation of data will also enable school leaders to benchmark and reflect on practice (Lightman, quoted in Russell, 2012).

In terms of policing, the emphasis on self-governance reflected by the DfE’s actions and the statement quoted above reflect the desire to accentuate independence for academies and avoid bureaucracy. This is understandable. However, we suggest that ‘light touch’ is the wrong phrase to use in relation to the regulation of public spending; we are mindful of the concerns of both the NAO and the PAC. Further, the ‘expectation that successful schools, sponsors, federations and other groupings of academies will support other schools’ suggests that the EFA is relying

32. The DfE (2012) hopes ‘over time’ to align the datasets for academies and maintained schools, but says that it wishes to avoid ‘duplication of work and unnecessary bureaucracy for all schools and [we] are considering how to achieve this’ (see Russell, 2012).



*The Commission believes that 'all publicly-funded schools should be placed within a common administrative and legal framework'*

on converter academies and chains/other groupings to support weaker schools in terms of financial accountability. This may be optimistic. While developmental work across schools is always welcome, this must be seen as complementing strong financial management within each academy – which should be essential for every academy. The reliance on local audit comprises standard charitable practice yet, as we have seen, the arrangements for academy governance, wherein the CEO (headteacher) is also a trustee, mean that especially careful scrutiny is necessary. Cases highlighted by the recent NAO report (2012) demonstrate how quickly schools can decline if financial issues are not identified and managed. Transparent accountability needs to be based on clear, universal expectations. Although it is important to avoid 'overkill', the review procedures for self-assessments need to be robust. The EFA should have sufficient capacity to visit enough schools to ensure accountability in the use of public funds.

The Commission believes that 'all publicly funded schools should be placed within a common administrative and legal framework' (Ron Glatter, written evidence). This would certainly need to be the case if the school system in England – or even just the secondary sector – were to become fully academised. Further distinctions between schools through greater autonomy and reduced transparency and accountability for some schools and not others could reflect what Fullan (2011) has called a 'wrong driver' for school reform.<sup>33</sup> What is seen as beneficial for some schools in terms of for school improvement and effectiveness ought to be applied to the rest.

The Commission also regrets the decision to give academies exempt charitable status, and considers that as charitable companies they should be accountable to the Charity Commission, including submitting their accounts to the Charity Commission. This might also help in terms of releasing capacity for the EFA.

But if academisation is to be extended to all – or even to a majority of – schools in England, radically different systems would need to be put in place in order for the EFA to maintain proper scrutiny and appropriate intervention: for example, automating data submissions. But the DfE also needs to consider how the EFA would have the capacity to look beyond high-level data adequately, to ensure robust scrutiny and to maintain a meaningful number of both funding audit visits and investigations of financial management. Systems that ensure transparency and sufficiency in information are vital for a confident, successful academised system because they allow for the necessary scrutiny to hold academies and their sponsors to account.

### **Recommendations**

- Using the Education Funding Agency, the DfE should continue to tighten systems of financial accountability and transparency, ensuring there is capacity for a proportion of routine visits to schools to be undertaken and for investigation of compliance in order to deter bad practice.

<sup>33</sup> Fullan says that 'wrong drivers' 'alter structures, procedures and other formal attributes of the system without reaching the internal substance of reform – and that is why they fail.'

- The remit of the LGO should include the reception of concerns or complaints about financial irregularity, which are then communicated to the DfE.

### Redress

Evidence to the Commission relating to redress concerned admissions appeals and complaints. The former are dealt with in chapter 4. In relation to complaints, many submissions noted the lack of a clear route beyond the academy itself for dealing with complaints.

This may be a problem for schools more broadly. In addition to its remit for complaints about admissions appeals, until recently the Local Government Ombudsman (LGO) has been a potential route for complaints about wider school-related matters in the 14 local areas where this extended remit was piloted. However, these additional powers were repealed by Section 45 of the Education Act 2011 as part of a wider move to give greater freedoms to schools and reduce bureaucracy. As such, the LGO is now not able to take on new complaints (beyond those concerning admissions appeals). McKenna and Day's (2012) report for the DfE on parents' and stakeholders' experiences of the LGO complaint service (as well as other mechanisms for complaints) suggests that the LGO service was effective.<sup>34</sup> Parents valued having an independent body that was available to respond to and resolve complaints about schools when other mechanisms had failed.

Parents in maintained schools may make complaints about their children's school to the local authority. Likewise, parents whose children attend an academy within a chain may presumably also complain to the academy trust. However, for those in stand-alone academies, the next step for recourse is to a national body: the Secretary of State (via the EFA) or, possibly, Ofsted. The Commission heard evidence that there is a lack of clarity as to the distinct role and remit for the DfE, the EFA and Ofsted in dealing with complaints.<sup>35</sup>

The Commission notes that the EFA has recently taken steps to clarify and communicate to stakeholders its remit on complaints and how to complain.<sup>36</sup> However, witnesses frequently raised questions about local accountability in relation to redress. The ASCL evidence suggests that although most school leaders have welcomed the move away from local authority control, it has created a 'democratic deficit', with alternative models less accountable to communities and tax-payers. The NSPCC, in its written submission, was concerned that:

'...where schools are not maintained by the local authority, local people will not be able to hold schools to account for their performance through locally elected councillors. More thought is needed about how the public can hold academy schools to account with the loss of democratic accountability.'

34. *Parents' and young people's complaints about schools* (DFE-RR193), DfE, 2012; [www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR193](http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR193)

35. For example, Ofsted has no remit for complaints relating to SEN or admissions.

36. See *Procedure for dealing with complaints about academies* (Version August 2012), EFA, 2012.

Many organisations and individuals argued for the need for an alternative local accountability mechanism, and a requirement for community/ stakeholder engagement. The Commission believes this might be met in two ways. First, the LGO remit could be extended again to accept complaints from parents who do not have local recourse beyond their academy (that is, parents whose children attend stand-alone academies and Free Schools) and others (such as whistle-blowers, as outlined above). Second, the approach discussed in the previous chapter might be adopted, with the requirement that each academy should produce an annual report and call an open meeting to present and discuss it.

### **Looking forward**

Looking forward to a fully academised system, it is imperative that the autonomous system has the appropriate capacity and mechanisms in place to secure good governance and accountability. It is important that bureaucracy does not stifle dynamism and innovation – as one respondent to the commission (FASNA) pleaded: ‘All follow code, and don’t design a system for the few who don’t.’ However, in a school system the size of England’s, it is inevitable that there will be failures. We must not forget that, in each case, it is children and their families who will suffer. Reducing the number and risk of such failures remains a vital task. To this end, three aspects need further strengthening and assurance: transparency, parity, and high standards. We have highlighted the need for clarity and transparency throughout, and parity in how different types of educational institutions are expected or required to respond. We have suggested measures to strengthen scrutiny and accountability – essential for a successful autonomous system. We have also argued for a strengthening of the role of the DfE – in collaboration with local authorities – in monitoring attainment and intervening to ensure that academies improve.

We suggest that new approaches to accountability should reflect the new ethos. A key focus should be on accountability to parents. It is not just that information should be accessible to parents, but that the information should be what parents need.<sup>37</sup> Increasingly, schools also need to be accountable to one another professionally as they collaborate in school-to-school partnerships or join groups such as chains or federations. Greater thought needs to be given to modes of accountability that facilitate school-to-school improvement and parents’ needs in supporting their children’s education.

<sup>37</sup> For example, it may be that parents should be able to access examples of expected levels of work for their children’s age, and so on, in order to assess the practice of their children’s school, as Greg Wallace, Executive Principal, Best Start Federation, suggested in his oral evidence.

## Appendix 1: Sources of evidence

The Commission took evidence from a range of sources, as noted in Chapter 1. The main sources were:

- written evidence submitted to the Commission following the call for evidence on 8 May 2012
- discussions with witnesses
- meetings, workshops and ‘round table’ discussions
- two surveys.

Some witnesses who provided written submissions also provided oral evidence to the Commissioners. Some witnesses asked for their evidence to be treated confidentially.

### Organisations: written submissions

- Advisory Centre for Education (ACE)
- Association of Directors of Children’s Services (ADCS)
- Association of School and College Leaders (ASCL)
- Association of Teachers and Lecturers (ATL)
- Centre for Public Scrutiny
- Challenge Partners
- CfBT Education Trust
- Charity Commission
- Comprehensive Future
- The Co-operative
- Culham St Gabriel’s Trust
- Devon Parent Partnership Service
- E-Act
- Education Endowment Foundation (EEF)
- Freedom and Autonomy for Schools – National Association (FASNA)
- Independent Academies Association (IAA)
- Medway Council, Rose Collinson
- NASEN
- National Association of Head Teachers (NAHT)
- National Governors’ Association (NGA)
- National College for School Leadership (NCSL)
- National Association of Schoolmasters Union of Women Teachers (NASUWT)
- NSPCC
- National Union of Teachers (NUT)
- Ofsted Watch
- Special Education Consortium
- UNISON

## Organisations: oral evidence

- ARK, Lucy Heller
- Academies Enterprise Trust (AET), David Triggs
- Association of Teachers and Lecturers (ATL), Martin Johnson
- Best Start Federation, Greg Wallace
- Council for Disabled Children, Matthew Dodd
- Derbyshire County Council, Children and Younger Adults Services, Ian Thomas
- E-Act, Sir Bruce Liddington
- Hackney Council Children and Young People's Services and ADCS Resources Policy Committee, Alan Wood, CBE
- Harris Federation, Sir Daniel Moynihan
- Independent Parental Special Education Advice (IPSEA), David Gibbons MBE DL
- Knowsley Metropolitan Borough Council, Children and Family Services, Peter Lewis
- Local Schools Network, Fiona Millar and Henry Stewart
- NASEN, Lorraine Petersen OBE
- National Association of Schoolmasters Union of Women Teachers (NASUWT), Darren Northcott and Patrick Roach
- National Deaf Children's Society (NDCS), Jo Champion
- National Governors' Association (NGA), Emma Knights and Gillian Allcroft
- National Parent Partnership Network, Daisy Russell
- National Union of Teachers (NUT), Christine Blower and Celia Dignan
- Solihull and Sandwell Parent Partnership Service, Lorraine Attwood
- The Kemnal Academies Trust (TKAT), John Atkins and Peter O'Sullivan
- United Learning Trust (ULT), Jon Coles
- York City Council, Adults, Children and Education, Jill Hodges

## Oral evidence: government departments, agencies and MPs

- Children's Commissioner, Dr Maggie Atkinson
- Department for Education (DfE), Sam Freedman
- Education Funding Agency (EFA), Peter Lauener
- Lord Hill of Oareford, CBE, Parliamentary Under-Secretary of State (Schools)
- Ministry of Justice, First-tier Tribunal Health, Education and Social Care Chamber (Special Educational Needs and Disability, Care Standards and Primary Health Lists), Judge John Aitken and Judge Meleri Tudur
- Office of the Schools Adjudicator, Dr Elizabeth Passmore, CBE
- Office of the Schools Commissioner, Dr Elizabeth Sidwell, CBE
- Rt Hon Mr David Blunkett MP
- Stephen Twigg MP, Shadow Education Secretary

### Individuals: written submissions

- Prof Mel Ainscow, CBE, University of Manchester
- David Albury, Innovation Unit
- David Allsop, Queen Elizabeth's High School (Headteacher)
- Steve Baker, Lipson Co-operative Academy (Principal), Lipson Academy and the Ted Wragg Trust Exeter (Trustee), Schools Co-operative Society (Executive Member)
- Steven W Barker, Collingwood College and Bagshot Infant School (Chair of Governors)
- Dr Bob Burstow, King's College London
- Adam Clarke, Leicester City Councillor (Labour), creative and cultural learning consultant and parent
- Louis Coiffait, Springfield Primary (Chair of Governors) and Pearson Think Tank (Head of Research)
- Dr David Daniels and Dr Christine Tinkler, D and T Associates Ltd.
- Dr Sonia Exley, London School of Economics and Political Science
- Trevor Fisher, Education Politics
- Prof Ron Glatter, Open University
- Reverend Adam Gaunt, Unity City Academy (Chair of Governors)
- Prof David Hawker
- Robert Hill, Robert Hill Consulting
- Maureen Howie (Governor and former Headteacher)
- Prof John Howson, DataforEducation.info (Managing Director)
- Prof Merryn Hutchings, Institute for Policy Studies in Education, London Metropolitan University
- Martin Lawrence, GLM Partnership
- Jim McAtear, Hartismere School (Headteacher)
- Prof Gemma Moss, University of London Institute of Education
- Philip O'Hear, Chair of Governors at The London Academy, Chair of Partnership Subcommittee and member of the Board of Independent Academies Association
- James O'Shaughnessy, Policy Exchange (Visiting Fellow)
- Peter O'Sullivan, Transforming Education International and trustee of the Kenmal Trust
- Dr Joan Wilson, London School of Economics and Political Science
- David Wolfe QC, Matrix Chambers
- Prof David Woods, CBE
- Confidential, Chair of Governors
- Confidential, Local Authority
- Confidential, Local Authority
- Confidential, senior staff of an academy
- Confidential, senior staff of an academy
- Confidential, parent
- Confidential, parent

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- Prof Mel Ainscow, CBE, University of Manchester
- David Albury, Innovation Unit
- Dr Rebecca Allen, Institute of Education
- Steven W Barker, Collingwood College and Bagshot Infant School (Chair of Governors)
- Deborah Bruce, Claremont Primary School (Chair of Governors), Brenchley & Matfield CE (VA) Primary School (Governor), The Quest School (Trustee)
- Chris Cook, Financial Times (Education Correspondent)
- Prof Ian Craig, London School of Economics and Political Science and Former Chief Schools Adjudicator
- Claire Emery, The Olympus Academy Trust (Chair of Directors)
- Michael Gernon, RSA Academy (Principal)
- Robert Hill, Robert Hill Consulting
- Greg Hurst, The Times (Education Editor)
- Helen Hyde, Watford Grammar School (Headmistress) and FASNA (President)
- Greg Martin, Durand Academy (Executive Headteacher)
- Sir Alasdair Macdonald, Morpeth School (Headteacher)
- Prof Gemma Moss, University of London Institute of Education
- Avril Newman, Sir William Burrough School (Headteacher)
- Dr Vanessa Ogden, Mulberry School for Girls (Headteacher)
- Richard Sheriff, Harrogate Grammar School (Headteacher)
- John Stephenson, Whitley Academy (Chair of Governors)
- Prof Anne West, London School of Economics and Political Science
- Chris Wheatley, Cotgrave Candleby Lane School (Headteacher)
- Stephen Whiteley, Chief Executive, Landau Forte Charitable Trust
- Michael Wilkins, Outwood Grange Academies Trust (Chief Executive and Academy Principal)
- Chris Williamson, Howard of Effingham School (Chair of Governors)

## Focus groups

- Anti Academies Alliance, Alasdair Smith
- Teach First Ambassadors (8 interviewees)
- Parents' group: (5 interviewees)

## Additional meetings and workshops

- David Braybrook, Educational Consultant (SEN and Disability)
- Brooke Weston Academy, Corby
- Cabot Learning Foundation
- Corsham Primary School, Wiltshire
- David Young Community Academy, Leeds
- Family and Parenting institute (FPI)
- Independent Academies Association (IAA)



- Lampton School, London Borough of Hounslow
- MPs meeting
- National Audit Office (NAO)
- PTA-UK
- Pearson School Improvement Team
- Sandgate School, Kent
- SSAT (The Schools Network)
- SSAT Principals' Steering Group
- Schools Northeast
- Alan Wood, CBE, Hackney Council Children and Young People's Services, and previously chief executive of the Learning Trust in Hackney

## Appendix 2: Glossary

<b>CPD</b>	continuing professional development
<b>CTC</b>	city technology college
<b>DCS</b>	director of children’s services
<b>DfE</b>	Department for Education
<b>EFA</b>	Education Funding Agency
<b>FE</b>	further education
<b>federation</b>	two or more schools sharing a single governing body
<b>free schools</b>	all-ability state-funded academies set up by groups of local parents and other organisations
<b>LA</b>	local authority
<b>larger academy chains</b>	chains with 10 or more academies
<b>multi-academy trust</b>	an academy trust which governs a group of schools through a single set of members and directors. Each school will continue to have an advisory body which the MAT can choose to constitute as a local governing body to which it certain functions can be delegated. The MAT will ultimately be accountable and responsible for the performance of schools in the chain. It has a master funding agreement with the Secretary of State and a supplementary funding agreement for each academy
<b>National College</b>	National College for School Leadership
<b>NLE</b>	National Leader of Education
<b>Ofsted</b>	Office for Standards in Education, Children’s Services and Skills
<b>SEN</b>	special educational needs
<b>smaller academy chains</b>	chains with up to nine academies in the chain
<b>teaching schools</b>	schools designated by the National College to lead the training and professional development of teachers, support staff and headteachers as well as contributing to the raising of standards through school-to-school support. Teaching schools bring together provision for training and development from initial teacher education (ITEducation) through to headship under a single school designation
<b>sponsored academy chain</b>	a group of academies sharing the same lead sponsor and usually operating as either a multi-academy trust or an umbrella trust
<b>studio schools</b>	new schools for 14–19 year olds, delivering project-based, practical learning alongside mainstream academic study
<b>umbrella trust</b>	an overarching charitable trust established by a faith body or group of schools which in turn establishes individual or multi-academy trusts to run the schools coming under its umbrella. Each of the individual academy trusts within the umbrella has a separate funding agreement with, and articles of association approved by, the Secretary of State
<b>UTC</b>	university technical college, technical academies for 14–19 year olds sponsored by universities
<b>YPLA</b>	Young People’s Learning Agency, now abolished

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# Acknowledgements

## **Project advisory group**

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<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 15 January 2013	<b>Meeting Name:</b> Education, Children's Services and Leisure Scrutiny Sub-Committee
<b>Report title:</b>		Southwark Schools for the Future: New School Proposals	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Project Director, Southwark Schools for the Future	

## RECOMMENDATION

1. That Education, Children's Services and Leisure Scrutiny Sub-Committee note the briefing provided below.

## UPDATE

### Compass

2. Compass School have yet to identify a site and this non-identification of a site, both permanent and temporary, is a significant risk to the school opening as proposed in September 2013.
3. Their preferred site is the Bermondsey Campus of Southwark College although they continue to explore alternatives.

### University Technical College (UTC)

4. The DfE has approved the deferral of the opening of the UTC to September 2013. This date is now unlikely to be achievable and there is significant uncertainty associated with the project as a result of the proposed merger of Lewisham and Southwark College and the potentially competing proposals of Compass and the potential for these issues to result in the non-availability of the site or the necessary ancillary facilities for the UTC on the College's Bermondsey site.

### Southwark Free School

5. In 2011 Southwark Free School (SFS) secured Department for Education pre-opening approval to open in September 2012. At the time of this approval the school was proposed to be established at a site in Great Dover Street.
6. In March 2012 SFS initiated a public consultation process seeking feedback from local stakeholders in regard to proposals to establish a 420 place primary school at 399 Rotherhithe New Road.
7. The school has now been granted a 2 year lease from the Council for the Ledbury Estate Tenant's Hall to enable their establishment.
8. The school's permanent proposals for 399 Rotherhithe New Road are currently the subject of pre-application discussions with Southwark planners.

### Other Free School Proposals

9. A German/English bilingual primary school – Judith Kerr Primary School - has been provisionally approved by the Department for Education and is exploring options for establishment in the Dulwich and Rotherhithe areas. Officers have met with representatives of the proposer and the Education Funding Agency (the body tasked with delivering the new school) to discuss their proposals and provide advice and assistance where possible. The school has currently not secured a site.
10. Another proposer will be bidding to the Department for Education to be approved in the next round of free school approvals to establish a primary school in Peckham or Camberwell for Latin-American children. The proposer has not identified a site.
11. It is also anticipated that the Harris Federation will be expressing an interest to the Department for Education to establish a primary free school. Officers are meeting with representatives of the Harris Federation in mid-January to discuss their proposals.

### AUDIT TRAIL

<b>Report Author</b>	Sam Fowler	
<b>Version</b>	final	
<b>Dated</b>	4 January 2013	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Communities, Law & Governance	No	No
Finance Director	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Scrutiny Team</b>	10 January 2013	

## Education, Children's Services & Leisure Scrutiny Sub-Committee

### Work Programme 2012/13

16 January 2013
Review: Bullying - school and council policy in supporting vulnerable children and reducing abusive and poor peer relations. Evidence from young people, community organisations and practitioners : Schools OUT, Safe and Sound , Elena Noel, Speakerbox.
Review: Local authority role in education - the council's role with maintained, academy and free schools - exploring what our governance and influencing levers are in a changing context, and how the council can promote good performance, and tackle poor performance.
Rotherhithe School and Southwark Free Schools – regular report.
25 February 2013
Review: Universal Free Healthy School Meals. Evidence from Kids Company.
Review: Bullying - school and council policy in supporting vulnerable children and reducing abusive and poor peer relations. Take evidence on cyber bullying from mobile phone and social network providers.
Review: Local authority role in education - the council's role with maintained , academy and free schools - exploring what our governance and influencing levers are in a changing context, and how the council can promote good performance, and tackle poor performance.
Update on Domestic Abuse including cabinet response to the scrutiny report produced by Housing, Environment, Transport & Community Safety Scrutiny Sub-Committee.
Supporting parents in challenging situations: update report on the work being done by CSV to support parents (TBC)
Monitoring of cabinet members reports in response to reviews ; Obesity and Sports Provision
Rotherhithe School and Southwark Free Schools – regular report.
12 March 2013
Cabinet member interview with Cabinet member lead for Children's Services Councillor Dora Dixon-Fyle.
Review: Universal Free Healthy School Meals.
Review: Bullying - school and council policy in supporting vulnerable children and reducing abusive and poor peer relations.
Review: Local authority role in education - the council's role with maintained , academy and free schools - exploring what our governance and influencing levers are in a changing context, and how the council can promote good performance, and tackle poor performance.
Southwark Youth Council & Speakerbox review of Children's and Young People's Plan (CYPP).
Olympic and Paralympic legacy report.
Community Restoration Fund report.
Rotherhithe School and Southwark Free Schools – regular report.

23 April 2013
Review: Universal Free Healthy School Meals
Review: Bullying - school and council policy in supporting vulnerable children and reducing abusive and poor peer relations
Review: Local authority role in education - the council's role with maintained , academy and free schools - exploring what our governance and influencing levers are in a changing context, and how the council can promote good performance, and tackle poor performance.
Safeguarding – annual report and interview of Independent chair.
Rotherhithe School and Southwark Free Schools – regular report.

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**EDUCATION, CHILDREN'S SERVICES & LEISURE SCRUTINY SUB-COMMITTEE  
MUNICIPAL YEAR 2012-13**

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**NOTE:** Original held by Scrutiny Team; all amendments/queries to Julie Timbrell Tel: 020 7525 0514

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