



# **Academies, the School System in England and a Vision for the Future**

## **Executive Summary**

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### **Overview**

The report outlines the way in which a policy, introduced by the Labour Government in the early 2000s and expanded by the Conservative-Liberal Democrat Coalition from 2010, to give individual schools freedom has in fact resulted in over 70 per cent of those schools having *less* freedom than they had before, if indeed they legally exist as separate schools at all. It explains how the resulting practical issues could be addressed – including restoring genuine school autonomy – without necessarily needing the politically dramatic step of re-imposing a system of maintained schools.

Nearly a third of publicly-funded schools in England are now ‘academies’ (22 per cent of primary and 68 per cent of secondary schools), rather than ‘maintained by’ local authorities.

Academies are owned and run by not-for-profit private trusts registered with Companies House, subject to company law and some statutory education law, and controlled and funded directly by central government by contract, rather than governed by statutory education law as for maintained schools.

Although some trusts run ‘stand-alone’ academies, most academies are now in ‘chains’. In 2017, 73 per cent of academies were run by Multi-Academy Trusts (MATs). These schools no longer exist as legal entities and cannot – at the initiative of the head teacher or local governing body – decide to leave the MAT.

The report provides a brief history of the school system and the development of the academies programme in England. It discusses the ‘funding agreements’ for academies; academy ‘chains’; regional schools commissioners; the legal identity of academies; and some of the ‘freedoms’ of academies. It also summarises some key issues raised by what it describes, and presents proposals for policy makers to address some of these.

## The English school system and academies

The Education Act 1944 established a national system of primary and secondary education, comprising schools under the overall supervision of 'local education authorities' (now 'local authorities'), responsible for funding ('maintaining') all such schools. From 1988 schools had legal autonomy and they, rather than the local authority, became responsible for making decisions on matters such as finance and appointments.

From the early 2000s, academies were gradually introduced by the Labour Government; these were designed to replace schools considered 'failing' by the school inspection body, Ofsted. Academies were not 'maintained' by local authorities, instead being 'sponsored' by businesses, individuals, churches or voluntary bodies, which made a contribution to the capital costs and then ran the schools. Revenue costs were met directly by central government. Sponsoring bodies established trusts (private companies with charitable status) which entered into funding agreements (contracts) with the Secretary of State. In 2009, the requirement for sponsor financial contributions was removed.

All aspects of school governance for those academies were initially prescribed by the contract, with those academies thus being initially 'freed' from the statutory provisions applying to maintained schools, in areas such as admissions, exclusions, SEN, the curriculum, and so on. By the time of the 2010 general election there were just 203 such 'sponsored' academies, out of a total of 3,333 secondary schools, namely 6 per cent of all secondary schools.

Following the 2010 general election, the Conservative-led Coalition Government enacted the Academies Act 2010 which provided a bespoke statutory mechanism for maintained schools, both primary and secondary, to be forced or allowed to 'convert' to academy status. New academies were also established under the label of 'free schools'. Where a local authority considers that there is a need for a new school in its area, it must (other than in exceptional cases) seek proposals to establish an academy in the form of a 'free school'.

The Department for Education (DfE) has, over time, adopted various 'model funding agreements' as the templates for the agreements for academies being created at the time (but with no backward effect). In 2014, eight Regional Schools Commissioners (RSCs) were appointed as DfE civil servants, with responsibility for approving new academies and intervening to address underperformance in academies. They are now vested with significant powers and responsibility with respect to academies *and* maintained schools.

### Issues

- Many key governance features vary from school to school, between maintained schools and academies, and between academies, depending, in part on the timing and circumstances of their creation with no consideration of their present needs.
- Despite the initial driver of giving schools freedom and autonomy, those now run by MATs have no freedom.
- Decisions which, in maintained schools, are taken by governors appointed by an open process through meetings which must be publicised and reported on, are – in academies – now often taken by 'trustees', whose appointment remains opaque,

and through processes that are not subject to rules on openness which apply across other areas of public life.

- Decisions which, in relation to maintained schools, are taken by local authorities under the oversight of elected local councillors which operate in meetings subject to ‘public participation’ obligations, are – for academies – taken by the eight RSCs, individuals appointed by central government.
- Local authorities remain under a duty to ensure there are sufficient schools in their areas, but have no direct power to do anything about this given the role played by the RSCs and the free school presumption.
- Making changes to maintained schools – opening them, closing them, expanding them, changing the range of pupils for whom they make provision – involves a public process (public notices, and opportunity to object, and so on). This does not happen with academies.
- There is a lack of reliable information of the way in which the academies policy is working.
- Academies are not required to follow the national curriculum, so are potentially reducing educational opportunities for pupils who attend them. Nor are they required to adhere to the national school teachers’ pay and conditions, with potential impacts on teacher retention in maintained schools.
- Whilst the accounts of academy trusts must be audited by external auditors, the accounts themselves do not provide a detailed account of how (public) money is spent, in contrast to maintained schools. This again is a transparency issue, and opens the door to possible abuse of funds.

## **Possible legal and policy solutions**

### *Reduce fragmentation in the operational specifics*

There are various ways in which fragmentation could be reduced. For example, there is no obvious reason why the Local Government Ombudsman can scrutinise the admissions and exclusion decision processes for maintained schools but not academies; and there is a strong case to be made for simplifying admissions arrangements, and ensuring all schools teach broadly the same ‘national’ curriculum. It is also unclear why the rules which the DfE considers appropriate to apply to the latest generation of academies should not, at the very least, apply to all academies.

We suggest that the current, incoherent and fragmented, set of provisions are brought together in a single framework around aspects of school governance. One key aspect of that could be in restoring a common format for governing bodies, including restoring to academies the requirements for parental, staff, and community involvement. Such a framework could be more or less prescriptive for each area, as considered appropriate.

The template for this could be the way in which common frameworks for special educational needs (SEN) and exclusions were introduced for academies and maintained schools, overriding the previous incoherence between maintained schools and academies, and between one academy and another. This would require statutory intervention. In this case, parliament would set the overall framework, not the particular Secretary of State or

RSC of the moment. A similar approach could be adopted with respect to teachers' pay and conditions.

### *Introduce transparency*

There is a clear need for more transparency regarding the governance of academy trusts, which points to things like requiring trusts to publish SEN policies and expenditure for individual academies in the same format as maintained schools. Such transparency arrangements could include common statutory arrangements around governance, the operation of academy governing bodies, and so on.

### *Autonomy for schools?*

The notion of what it means to be a school and the idea that schools have autonomy and some existence as organisations has been discarded in many instances. Addressing this would require the reinstatement of the legal identity of the many schools currently run by MATs and (assuming that the contractual/academy model remains part of the system) would require there to be a contract for each academy, even if a 'MAT-type' support/advisory layer were to remain. Restoring the autonomy and legal identity of schools could allow for the mobility of academies between MATs. A further opportunity – assuming the continuation of academy type entities – would be the standardisation (by statute) of the contractual arrangements (rather than the existing multiplicity of different contracts).

### *Restore local democratic oversight*

We propose that the contracts under which academies operate (newly separated out in relation to MATs) should be with the local authority rather than the Secretary of State (or the eight RSCs). This would restore the linkage with local authorities whilst (assuming this is what is wanted) keeping the relationship primarily contractual rather than statutory. It would be a shift from central government (and indeed RSCs) to local government, but without reducing school freedom.

Existing MAT organisations, where they add real value (in actually supporting the local running of schools, for example) could continue as a service which individual schools could call on, perhaps by buying in services from it, just as maintained schools can choose to buy in support services from the local authority or from external providers. The presumption of a 'free school' when a new school is needed should be removed so that local authorities are able to ensure sufficiency of local supply.

### *Beyond that*

These measures would still leave in place two parallel strands overall: maintained schools and academies, albeit with both linked to local authorities (rather than central government) and with common overall requirements around the specifics of governance and operations. Stopping there would have the attraction of not actually changing the core legal notion of an academy – a school run by a trust under contract with the state – and so would be a relatively modest, if powerful, step to take.

A further step, would be to allow academies (newly freed from chains by being reinstated as separate legal entities) to become maintained schools. A new legal framework directly

enabling such a transition would be required. At present the only way an academy can become maintained again is for the academy to close and then for the local authority to open a new maintained school, the reverse of how academies were created from maintained schools pre-Academies Act 2010. That process could be made compulsory, but is not necessary to deal with many of the issues and challenges which have, in practice, caused the problems with the academies programme as it has developed over time.