



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

by

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Executive Summary

Overview

This 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.

Introduction

There has been a rapid and significant transformation of school-based education in England since 2000, with nearly a third of schools now being 'academies' rather than being 'maintained' by local authorities. Academies are owned and run by not-for-profit private trusts (exempt charities) which register as companies with Companies House and are subject to company law. Academies are controlled and funded directly by central government by means of a contract between a trust (i.e. a legal entity) and the Secretary of State for Education, rather than being run by a governing body in accordance with statutory education law, as is essentially the case for maintained schools.

However, beyond this apparently simple starting point there is huge variation, great complexity and no clarity of description or understanding when it comes to academies. In some cases the trust runs a single 'stand-alone' academy under contract with the Secretary of State; some trusts run a number of academies (a Multi-Academy Trust or MAT) under a single contract; in some instances individual stand-alone academies with individual contracts (or even MATs) have then grouped themselves under what has been called by some (though the term is used differently by different people and organisations) an 'umbrella trust'; and some stand-alone trusts with individual contracts have entered into what some have called 'collaborative partnerships' with other trusts.

The term 'chain' has been coined, but is used in different ways by different people and organisations, something which causes confusion. One organisation specialising in business advice to academies¹ uses the term to describe MATs, umbrella trusts and collaborative partnerships, but in 2015 the DfE used the term to cover just MATs and academies/MATs 'linked by' a common 'sponsor',² but now seems not to use it at all. None of these are legal terms of art (other than MAT which describes an outline legal structure).

This confusion matters, because the legal implications of each of the many academy governance structures involved are entirely different and, as we shall see, can easily be misunderstood. Certainly, for a concerned person, such a parent or a local MP, finding out who actually decides what the governance arrangements for any particular academy are and who actually runs the school, can be a very real challenge, particularly from published materials.

Local authorities, having been dominant in the provision of school-based education since the Education Act 1944, now have a markedly reduced role, at least in relation to schools that are now academies: 30 per cent of schools overall (22 per cent of primary and 68 per cent of secondary schools).³

¹ See for example: Carter and Coley, Different Types of Academy Chains. 2018
<https://www.carterandcoley.co.uk/services/specialist-sectors/academy-schools/different-types-academy-chains>

² DfE. Measuring the performance of schools within academy chains and local authorities SFR 09/2015, London: DfE, 2015.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415659/SFR09_2015.pdf

³ DfE, Schools, pupils and their characteristics: January 2017. London: DfE, 2017.

<https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2017>

Overall, the school-based education system in England has changed radically, from a transparent national system of schools with their own legal identity and management, with local oversight via democratically elected local authorities and where all state schools operated to a single legal model (with modest variations), to a part-locally administered system and a part-centrally-controlled, but in any event now highly fragmented, and highly opaque, system.

This report provides a brief history of relevant aspects of the school system in England and the development of the academies programme. The following sections discuss: the funding agreements for academies and how these have changed over time; academy ‘chains’; regional schools commissioners; and the legal identity of academies. We then look at some of the ‘freedoms’ underpinning the academies programme. Somewhat ironically, as we explain, the academies programme, promoted to bring freedom and independence from central control for schools, has ended up with over 70 per cent of academies actually being run by Multi-Academy Trusts (MATs) having entirely lost the legal identity and autonomy enjoyed by both stand-alone academies and maintained schools (leaving them in much the same position as maintained schools before the introduction of ‘local management of schools’ following the Education Reform Act 1988) with others in collaborative arrangements (or ‘chains’) of other kinds. Perhaps unintentionally (and certainly inconsistently with the initial political imperative), the process has ended up as an exercise of *centralisation* and *loss* of control by schools themselves: many schools are now run by self-appointed trusts far from the communities they serve, not by local governors with local authority oversight. The final section of this report summarises the key issues raised by the changes that have taken place and presents proposals that could be considered by policy makers to address some of these issues.

1 The English school system over time

The Education Act 1944

The Education Act 1944 established a national system of primary and secondary education, comprising schools under the overall supervision of ‘local education authorities’ (latterly just called ‘local authorities’).⁴ The local authority was responsible for funding (‘maintaining’)⁵ all such schools.⁶

Many changes to the system took place over the following decades including the emergence (and sometimes disappearance) of various types of maintained schools: community and voluntary-controlled schools (under the direct control of the local authority) and some with more autonomy (particularly over admissions), notably voluntary-aided schools (often associated with religious bodies), grant-maintained schools and foundation schools.⁷

⁴ There were also – and still are – private fee charging schools.

⁵ By the School Standards and Framework Act 1998 section 22, the core obligation on a local authority when it comes to ‘maintaining’ a school is to ‘defray its expenses’.

⁶ Different types of school were established: grammar schools, technical schools and secondary modern schools. Following Circular 10/65 comprehensive schooling was introduced across most of the country.

⁷ West, A. and Bailey, E. The development of the academies programme: ‘Privatising’ school-based education in England 1986-2013, *British Journal of Educational Studies*, 61, 2 (2013): 137-159.

Perhaps the most fundamental changes were in the establishment of school governing bodies as freestanding legal entities⁸ and in the arrangements for 'local management of schools',⁹ the combined effect of which was that, from 1988, schools – in the form of the governing body – themselves made and were able to act on key decisions on matters such as finance and appointments rather than that all being under the local authority, as had been the position before. Despite those shifts and developments, the maintained school system (which still remains in place for the majority of schools) remains relatively coherent in terms of governance and structures.

Academies pre-2010

However, from the early 2000s, changes to the state-funded school system have been made, starting with the initial gradual introduction of academies. Academies – originally known as City Academies – were introduced by the Labour Government, albeit without any close parliamentary or public scrutiny.¹⁰ Their forebears had been City Technology Colleges (CTCs) introduced by the Conservative Government after 1986.¹¹

These initial 'academies' (as they came to be known) were designed to replace schools deemed to be failing by the school inspection body, Ofsted. They were not 'maintained' by local authorities, instead being 'sponsored' (a term used in different ways in different situations over time, as we shall see) 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 and set at a comparable level to other schools in the local authority, though with additional funds to cover the cost of services for which the academy would be directly responsible once it was no longer 'maintained' by the local authority. To make that happen, the sponsoring bodies established trusts (private companies with charitable status) which entered into funding agreements (contracts) with the Secretary of State for Education. In 2009, the requirement for those sponsors to make financial contributions to new academies was removed.

All aspects of school governance for those academies were prescribed by the contract, with the academies thus being 'freed' from the statutory provisions applying to maintained schools in areas such as admissions, exclusions, SEN, the curriculum, and so on. However, they were instead required – by contract – to offer a 'broad and balanced' curriculum, but with special emphasis in at least one area of the curriculum (e.g., science and technology, languages, the arts or sport). They were 'all ability' schools, with admissions policies agreed upon with the Secretary of State for Education, and were permitted to select up to 10 per cent of pupils on the basis of aptitude for the specialism.

⁸ Education Act (No 2) 1986

⁹ Education Reform Act 1988

¹⁰ Education Act 1996 section 482, which had provided for City Technology Colleges, was amended by the Learning and Skills Act 2000 to provide for "city academies", to be created by an agreement between the Secretary of State and a 'person'.

¹¹ Wolfe, D. Schools: The Legal Structures, the Accidents of History and the Legacies of Timing and Circumstance, *Education Law Journal*, 14, 2 (2013): 100-113; see also West, A. and Bailey, E. The development of the academies programme: 'Privatising' school-based education in England 1986-2013, *British Journal of Educational Studies*, 61, 2 (2013): 137-159.

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.¹²

Academies Act 2010 (and beyond)

Academies Act 2010

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 ‘convert’ (a new statutory term) to academy status.¹³ There was no longer a requirement to specialise in a subject area.

A new key policy goal was for academy status to be ‘the norm for all state schools, with schools enjoying direct funding and full independence from central and local bureaucracy’, and using this apparent autonomy to raise standards and narrow the attainment gap between children from different social groups. Extending greater autonomy in this way to all schools was said to be ‘an absolute priority’.¹⁴ Ironically, as we shall see, despite that original intention most academy schools now no longer exist as legal entities to enjoy any notion of independence.

Initially, only schools deemed ‘outstanding’ by Ofsted could apply to become academies; considerable financial incentives were offered to encourage schools to convert to academy status.¹⁵ But from April 2011, all schools ‘performing well’ could apply.¹⁶ New academies were also established under the label of ‘free schools’, but the difference was in name only.

The free school presumption

The Education Act 2011 introduced section 6A (the ‘free school presumption’)¹⁷ to the Education and Inspections Act 2006: 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’). This leaves local authorities still under a legal duty to secure that efficient primary and secondary education is available in their area¹⁸ and the specific duty to secure that sufficient schools for providing primary and secondary education are available in the area¹⁹, but without any direct legal power to (for example) set up new schools themselves to meet those needs.

¹² West, A. and Bailey, E. The development of the academies programme: ‘Privatising’ school-based education in England 1986-2013, *British Journal of Educational Studies*, 61, 2 (2013): 137-159.

¹³ Funding agreements now take effect under Academies Act 2010 section 1.

¹⁴ DfE The Importance of Teaching Cm 7980, London: DfE. 2010: 52, 54.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175429/CM-7980.pdf

¹⁵ West, A. and Bailey, E. The development of the academies programme: ‘Privatising’ school-based education in England 1986-2013, *British Journal of Educational Studies*, 61, 2 (2013): 137-159.

¹⁶ DfE. A guide to becoming an academy, London: DfE. 2011.

¹⁷ DfE The free school presumption: Departmental advice for local authorities and new school proposers, London: DfE. 2016.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501328/Free_school_presumption_guidance_18_february.pdf

¹⁸ Education Act 1996 section 13

¹⁹ Education Act 1996 section 14

Forced academisation?

In March 2016, the Secretary of State announced that all maintained schools would be forced to become academies by 2022.²⁰ However, by May 2016, in the face of opposition from backbench MPs and local government, the Government backtracked, saying it would not force academisation, although the goal of all schools being academies remains.²¹

Current state of play

In January 2017, there were 3,748 primary academies out of a total of 16,768 primary schools (22 per cent) and 2,325 secondary academies out of a total of 3,408 secondary schools (68 per cent). Altogether 30 per cent of all primary and secondary schools are academies (see Table 1).²²

Table 1: State-funded primary and secondary schools in England²³

	Academies & Free Schools (%)	Maintained schools (%)	Total number (%)
Primary converter academy	2,530		
Primary sponsored academy	1,082		
Primary free school	136		
Primary maintained schools		13,038	
Total primary schools	3,748 (22%)	13,038 (78%)	16,786 (100%)
Secondary converter academy	1,471		
Secondary sponsored academy	619		
Secondary free school	151		
University technical college (1)	48		
Studio school (1)	36		
Secondary maintained schools		1,083	
Total secondary schools	2,325 (68%)	1,083 (32%)	3,408 (100%)
Total primary & secondary schools	6,073 (30%)	14,121 (70%)	20,194 (100%)

Notes: (1) University technical colleges and studio schools are also types of academy, catering for students aged 14-19.

²⁰ DfE. Educational Excellence Everywhere Cm 9230, London: HMSO, 2016.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508550/Educational_excellence_everywhere_print_ready_.pdf

²¹ Adams, R. Government drops plan to make all schools in England academies, The Guardian 6th May 2016. <https://www.theguardian.com/education/2016/may/06/government-backs-down-over-plan-to-make-all-schools-academies>

²² In January 2018, the proportion of schools that were academies varied from 93 per cent in Bromley to 6 per cent in Lancashire, Lewisham and North Tyneside. Immediately after the expansion of the academies programme in 2010 it was common for schools to form stand-alone trusts, known as single-academy trusts (SATs). Since August 2012, an increasing number of academies have formed/joined multi-academy trusts (MATs) (National Audit Office. Converting maintained schools to academies, HC 720 SESSION 2017–2019. London: NAO, 2018).

²³ DfE. Schools, pupils and their characteristics: January 2017. London: DfE, 2017.

<https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2017>

2 Academies and funding agreements

As noted earlier, academies are owned and run by not-for-profit private trusts, but controlled and funded directly by central government by means of a funding agreement – a legally-binding contract – between a trust and the Secretary of State for Education.

The Department for Education (DfE) has, over time, adopted various ‘model funding agreements’ as the templates for the agreements for academies being created (whether as new ‘free schools’ or from the conversion of a maintained school) at the time. By that mechanism, the DfE has introduced many changes and added many additional restrictions across a range of governance and pupil-related matters (including the areas of admissions, curriculum, and so on, for which ‘freedoms’ had been sought, as above).

But the model is just a *forward looking* template. The many and sometimes frequent changes in the model (as the DfE has sought to reinstate controls and deliver new policy initiatives) do not have retrospective effects – they cannot change existing contracts – and so they do not have an impact on existing academies.

The effect is considerable variation when it comes to matters of perhaps most direct concern to parents, pupils and so on – curriculum, admissions, discipline, etc. – across academies, as new academies are formed on new bases. Contracts for existing academies (and therefore the requirements which apply to them) only change if the contracts are varied by agreement between the academy trust and Secretary of State (which has happened to only a very limited extent), or if overridden by statute.

Examples of statutory overriding have included new provisions relating to SEN²⁴ and to permanent exclusions,²⁵ through which the Conservative-led Coalition Government overrode pre-existing contractual arrangements (and thus ‘freedoms’ for all academies) seemingly without any great resistance even from the academy trusts in question.

3 Academies, chains, umbrella trusts and MATs

Stand-alone academies, chains, umbrella trusts

Although there are still some ‘stand-alone’ academies (where the academy trust operates a single school under contract with the Secretary of State), most academies are now in ‘chains’ of one sort or another.

What has emerged, simply through changes made by the DfE and initiatives from academies themselves (and without any parliamentary scrutiny), has been a range of governance structures of enormous variation and complexity.

The key term ‘chain’ (which has no formal legal meaning) appears to be used – but in different ways by different people and organisations and at different times – as a catchall term for a range of situations in which multiple academies are legally connected. In debates

²⁴ Children and Families Act 2014

²⁵ School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012

in parliament, MPs have sometimes treated chains and MATs as if they are the same thing.²⁶ However, the situation is actually much more complex. In short, different uses of the term 'chain' include (at least) the following:²⁷

- individual stand-alone academies with individual contracts which have grouped themselves under what has been called an 'umbrella trust';
- stand-alone academies with individual contracts have entered into what some have called 'collaborative partnerships'.
- academies run by Multi-Academy Trusts (MATs).

In 2015, the DfE adopted a different understanding and classification of the notion of a 'chain',²⁸ namely to describe just two situations (and not including the umbrella trust or collaborative partnership noted above) namely:

A 'sponsor-led' chain comprising five or more academies linked to the same approved sponsor. There may be a number of different trust arrangements in place – a sponsor's linked academies may all be in SATs [single academy trusts], may all be in MATs, or may be a combination of SATs and MATs. Many converter academies are recorded as being in sponsor-led chains, but are not in themselves 'sponsored'. These converters will have voluntarily joined academy trusts that are led by 'approved' sponsors.

or

A 'non-sponsor led' chain comprising five or more academies in a MAT.

Where (according to that same 2015 DfE document):

The term 'linked' in this context usually means that:

(a) the academy sponsor is listed as the 'principal sponsor', 'lead sponsor' or 'sponsor' in section 1 ('Interpretations') of the articles of association; or

(b) the name of the trust/company's name in the articles in section 2 of the articles is the name of the academy sponsor; or

²⁶ Lucy Powell, then Shadow Education Secretary: 'multi-academy trusts – MATs – or chains as they have become better known' House of Commons Debate Schools White Paper 13 April 2016 Volume 608, col 421 <https://hansard.parliament.uk/Commons/2016-04-13/debates/16041341000001/SchoolsWhitePaper>

²⁷ See for example: Carter and Coley. Different Types of Academy Chains. 2018. <https://www.carterandcoley.co.uk/services/specialist-sectors/academy-schools/different-types-academy-chains>

²⁸ DfE. Measuring the performance of schools within academy chains and local authorities SFR 09/2015. London: DfE, 2015: 10-11

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415659/SFR09_2015.pdf

(c) the academy sponsor has majority influence on an academy trust: either as a founding member of the academy trust (in the memorandum of association); or as subsequently appointed members in section 12 of the articles.

The DfE list (in effect) described an additional, fourth, type of ‘chain’ in which a number of stand-alone academies with their own legal identity (in the form of individual trusts) and separate contracts with the Secretary of State form part of a ‘chain’ by virtue of a common ‘sponsor’, rather than by an umbrella trust or collaborative partnership as described above. That, in turn means that some MATs are themselves ‘part of a wider sponsor arrangement where the sponsor oversees multiple MATs’.²⁹

In April 2018, the official DfE database of publicly-funded schools³⁰ identified the following mutually exclusive forms of academy/academy group: 1,840 single academy trusts (SATs), 1,476 MATs, and 1,012 School Sponsors (these support an underperforming academy/group of academies).³¹

The term ‘umbrella trust’ seems itself to be used by some people for the situation in which each academy (i.e. the trust that runs that academy) retains its legal identity and contractual relationship with the Secretary of State, but with another trust sitting over the top. For example, Charity Commission guidance describes umbrella trusts in this context as ‘charities established to offer services and support to a number of schools’, and says that

Often a Diocese will want to set up an umbrella trust to promote the Church character of the schools in its diocese and to help and support the schools to fulfil their responsibilities. An umbrella trust might act as a sponsor or appoint the majority of the governors to help to hold the governing body to account.³²

As for the particular powers that such a body might have (or rather, be given by the academies that enter into a legal relationship with an umbrella trust), the Charity Commission gives the following examples:

(a) to procure and deliver goods and services to the member schools, (b) to establish a Raising Achievement Panel and to assist any such panel to deliver improved achievement at any member school, (c) acting as a sponsor for or appointing trustees to member schools.

In governance terms these have very different implication: (a) could merely be a contract for services, (b) depends on whether the contemplated panel is merely providing support to individual schools or whether it has powers of control, and, as for (c), the term ‘sponsor’ has

²⁹ DfE. Official Statistics: Multi-academy trust performance measures: England, 2016 to 2017. London: DfE, 2018.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684244/SFR02_2018_text.pdf.

³⁰ DfE. Get information about schools. 2018. <https://get-information-schools.service.gov.uk/Groups/Search?tok=8T558Q2f>

³¹ DfE Sponsor an academy, London: DfE, 2016. <https://www.gov.uk/guidance/sponsor-an-academy>

³² Charity Commission for England and Wales (CCEW). Umbrella trusts for schools, London: CCEW, 2015. <https://www.gov.uk/government/publications/umbrella-trusts-for-schools-charity-commission-guidance/umbrella-trusts-for-schools>

no legal meaning as such, whilst the power to appoint trustees clearly gives rise to an (indirect) relationship of control.

Meanwhile, ironically, the DfE's 2017 *Governance handbook for academies, multi-academy trusts and maintained schools*³³ no longer uses the term 'chain'. Indeed, it is not clear whether the DfE has dropped the term altogether: for example, the House of Commons Education Select Committee report of February 2017 into MATs repeatedly referred to them as 'chains',³⁴ but the Government's October 2017 response did not use the term at all.³⁵ This just adds to the confusion.

In any event, the January 2017 DfE *Governance handbook* does use the term 'umbrella trust' to describe not just what we have seen above, but also uses it more widely to include any form of 'arrangements in which a separate trust is used by academy trusts to help them work together' as well as 'a trust sitting above a number of academy trusts'.³⁶ The position is similar to the term 'collaborative partnership' (not one used by the DfE but used by others), albeit that (presumably) the individual trusts have entered into some form of agreement to collaborate.

Multi-academy trusts: MATs

However, in terms of who decides what, and the issue of freedom *for schools* (which is what the academies programme set out to deliver) the big difference comes in a *MAT* (which is the majority situation and which does refer to a legally specific situation, rather than being some label coined as an overlay). This is because with a MAT, there is just one legal entity, with one set of trustees. The MAT contracts with the Secretary of State: schools run by a MAT have no separate legal identity.

Each school provided by (or run by) the MAT is, in law, simply the local site through which the MAT delivers the provision required by the central contract. Local staff and any local 'governing body' or similar have only the role given to them, including any decision-making role that is given to them by the MAT board itself (including potentially acting in only an advisory role with no decision-making role at all).³⁷ We shall later consider whether, in some instances, that means they have actually ceased to exist as schools at all (with the position actually being that the MAT in question is, in law, a single school with split sites).

The fact that each school run by a MAT (whether the focus is on a local 'governing body' or the head teacher) has only as much decision-making power as the MAT (i.e. the trustees of

³³DfE. *Governance handbook*, London: DfE, 2017.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/582868/Governance_Handbook_-_January_2017.pdf

³⁴ House of Commons Education Committee. *Multi-academy trusts HC 204*, London: House of Commons, 2017. <https://publications.parliament.uk/pa/cm201617/cmselect/cmeduc/204/204.pdf>

³⁵ House of Commons Education Committee. *Multi-academy trusts: Government Response to the Committee's Seventh Report of Session 2016–17, HC 452*. London: House of Commons, 2017.

<https://publications.parliament.uk/pa/cm201719/cmselect/cmeduc/452/452.pdf>

³⁶DfE. *Governance Handbook*, London: DfE, 2017: section 5.5.1.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/582868/Governance_Handbook_-_January_2017.pdf

³⁷ *Ibid.*, section 5.5.2

the MAT) chooses to give it, means that staff working in or with academies run by MATs now find themselves in a position similar to that which prevailed for maintained schools before 1988 (as above). That is because, they can only do what the MAT allows them to do – indeed, the situation is in some ways analogous to that for maintained schools prior to 1988 when the local authority had more control over the running of schools. In other words, academies run by MATs do not even have the autonomy and ability to make local (school-based) decisions which maintained schools enjoyed from 1988 (and still enjoy), and which stand-alone academies still enjoy. School governance and structures have gone full circle, and certainly *backwards* compared to the vision set out by the Labour Government in establishing its pre-2010 academies, and by the Coalition Government in 2010.

4 Academies and regional schools commissioners

As noted above, the ‘funding agreements’ which give legal life to academies, are in legal form contracts between the academy trust and the Secretary of State for Education. When academies were first established, the Secretary of State delegated the day-to-day exercise of the powers to which these give rise to civil servants in Whitehall; this included the power to enter into contracts and the power to vary them and exercise the powers they give.

However, 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. From 2015, the RSCs also became responsible for approving the conversion of underperforming maintained schools to academies and deciding on sponsors. When the Education and Adoption Act 2016 provided the Secretary of State with new powers to intervene in both maintained schools and academies, these powers were then exercised by RSCs on behalf of the Secretary of State. The RSCs’ responsibilities also include encouraging organisations to become academy sponsors; taking decisions on the creation and growth of multi-academy trusts (MATs); and making recommendations to ministers on free school applications. A Head Teacher Board comprising between six and eight members (four elected current or former head teachers of academies in the region) supports RSCs, but the decisions about the running and organisation of 30 per cent of schools are now – in effect - made by just 8 people. RSCs report to the National Schools Commissioner who also leads the relationship with a small group of large sponsors.³⁸

School Commissioners thus exercise significant powers and responsibility with respect to both academies and maintained schools, but there is a lack of transparency or democratic accountability: they have been established as a ‘structure’, and appointed as individuals, without any real public (or parliamentary) scrutiny or control. Overall, this can be seen to represent a massive centralisation and shift from public scrutiny or democratic oversight of power.

³⁸ Foster, D. and Long, R. Regional Schools Commissioners, Briefing paper no. 7308, 29 August 2017. London: House of Commons Library, 2017. <http://researchbriefings.files.parliament.uk/documents/CBP-7308/CBP-7308.pdf>; DfE. Regional schools commissioners’ decision making framework, London: DfE, 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577885/RSC_decision_making_framework_December_2016.pdf; DfE. About Us. 2018 <https://www.gov.uk/government/organisations/schools-commissioners-group/about>

As regards funding and financial matters, decision making rests with the Education and Skills Funding Agency (ESFA), an executive agency, sponsored by the DfE.

5 Schools and their own destiny

In 2017, 73 per cent of academies were part of a MAT ('the MATs can be part of a wider sponsor arrangement where the sponsor oversees multiple MATs'), and 27 per cent were stand-alone academies³⁹ (some were presumably also under umbrella trusts and some in collaborative partnerships and thus in 'chains' at least by some people's definition of the term). A small number of MATs are very large, with 40 or more schools.⁴⁰ However, most MATs are much smaller with between 2 and 10 schools.⁴¹ Moreover, the MATs are not generally geographically rooted – the larger ones in particular often provide academies which are widely dispersed across the country.

In any event, the structure and arrangements that apply to a particular school (whether, for example, maintained, stand-alone academy, academy under an umbrella trust, academy in a collaborative arrangement or academy run by a MAT, and the particular MAT) will have been driven by the circumstances at a particular moment in time, and may have little to do with its current situation. For example, a maintained secondary school deemed to have been failing prior to the Academies Act 2010 could have been forcibly converted to being, and still in 2018 remain, a stand-alone academy with a 'sponsor'; a school which happened to be deemed 'outstanding' by Ofsted in the period after 2010 might have volunteered at that stage to convert (and with the benefit of generous financial incentives at the time) to being a stand-alone academy, or to be run by a MAT; and maintained schools struggling in the period since then may have been forced to convert to being academies run by a MAT.

For academies which have ended up being run by a MAT, the particular choice of (or imposition of) MAT at the time could make for a completely different experience, because the style and approach of the different MATs are very different (something to which we will return below). Other maintained schools, including those which were neither outstanding nor failing have not been forced to change and many have chosen not to do so; and so they remain as autonomous schools, maintained by local authorities.

What follows for each particular school is that a structure or approach considered suitable or required (by the DfE in most cases, but by the school's governing body in others) by the circumstances at the time (which might have been as transient as a single bad or good Ofsted report), may no longer be appropriate.

³⁹ DfE. Official Statistics: Multi-academy trust performance measures: England, 2016 to 2017. London: DfE, 2018: 6
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684244/SFR02_2018_text.pdf.

⁴⁰ Ibid.

⁴¹ The number of schools for which MATs are responsible has increased over time. In 2013 the largest MATs were: the Academies Enterprise Trust (AET) (29 schools), the Ormiston Academies Trust (19), United Learning (18), E-ACT (18), the Harris Federation (12), Oasis Community Learning (10) and Absolute Return for Kids (ARK) (7). In the case of 30 academies a diocesan board was one of the sponsors; and 19 academies had a local authority sponsor (along with, e.g. a further education college, university or a diocesan board); see West, A. Academies in England and independent schools (fristående skolor) in Sweden: Policy, privatisation, access and segregation. *Research Papers in Education*, 29, 3 (2014): 330-350.

In some of those situations, each school retains a separate legal identity (stand-alone academy, academy under umbrella trust, at least according to some people's definition, academy in collaborative partnership, etc.), so that, in theory at least, the particular trust for that particular school could at least contemplate changing the arrangement; even if the scope for that and the ease with which that could be done in the case of an umbrella trust or collaborative partnership would depend on the nature of the legal ties between the individual school's trust and the umbrella trust (where that is the arrangement) or the other collaborators (in a collaborative partnership).

However, with a school in a MAT, none of that is an option because the school no longer exists as a legal entity: 'it' (because it does not exist as such) cannot (at the initiative of, say, its head teacher or local governing body) decide to leave the MAT (say to join another) any more than the manager in a local Tesco branch can decide one day that the store should become an Aldi.

As it happens, senior political commentators appear to agree that allowing schools to initiate a change in their arrangements is a good idea, but – as follows – it is not always clear which types of arrangements they have in mind, or that they fully appreciate the complexities of the situation in that simple rallying cry. For example, Andrew Adonis, the Labour Minister who oversaw many of the academy creations prior to 2010 explained that: 'Converter academies which have joined chains can leave them pretty well at will since there is rarely an integral governance dimension'.⁴² It seems from the context that, when he used the term 'chain' there he meant just MATs (treating MATs and chains as the same thing, as others have done), but even if he also intended to refer to the other forms of chains, what he wrote still does not reflect the legal position of MATs. That is because, moving a school from the control of one MAT to another is a matter for the MATs and the Secretary of State (in the guise of an RSC, it seems); the school does not exist as a legal entity in order to express a view, let alone to leave 'at will'.

Even in relation to academies not in MATs, but which have put themselves under an umbrella trust or formed a collaborative partnership, then leaving the 'chain' in question would still depend on the nature of the legal relationship between the academy trust and the umbrella trust, or between the academies in the partnership, as the case may be. Those ties may be relatively easy to break, but they may not.

In March 2015, Tristram Hunt, then Shadow Education Minister was concerned for the 'outstanding school leader trapped in a near unbreakable bond with a failing chain'; and noted that 'the Government has never set out a process for good schools to "float off" from poor chains'; and so suggested 'A sort of "Bosman Ruling" for chains, where good schools could leave for a better chain more willing to serve the best interests of parents and pupils'.⁴³ It is not clear whether Tristram Hunt was talking about just MATs, or about the other forms of chain: his reference to 'some academy chains [with] far more control, micro-managing and revenue-skimming than in many a local authority' suggests it was to MATS. But the 'Bosman ruling'⁴⁴ concerned the way in which football transfer rules prevented

⁴² Adonis, A. *Education, Education, Education: Reforming England's Schools*. London: Biteback Publishing, 2012: 206.

⁴³ Tristram Hunt: ASCL Speech Full Text. 2015. <https://schoolsweek.co.uk/tristram-hunt-ascl-speech-full-text/>

⁴⁴ Case C-415/93, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61993CJ0415&from=EN>

professional footballers moving from one club to another, so schools in MATs need much more than a ‘Bosman ruling’; they need first to be reinstated as legal entities. The comparison also does not even actually work for umbrella trusts or collaborative partnerships, because although (like Belgian footballer Jean-Marc Bosman) they at least still exist as legal entities, what prevents them changing those arrangement (perhaps to enter a new collaboration) depends on what they agreed to when setting up the collaboration, not some external rules like those of the football authorities.

From another direction, Graham Brady, chairman of the 1922 Committee, was reported to have said in 2016 when full academisation of state funded secondary schools was proposed, that there might be a place for limited legislation on aspects of school reform in the Queen’s speech – such as measures to help schools leave academy trusts they found unsatisfactory.⁴⁵ He appears here to have been referring to the position of schools in MATs (though it would also include umbrella trusts). If so, then his proposal implies creating (or re-creating) schools as individual legal entities. We will return to that idea below.

6 Academy freedoms?

As we have seen, there is a mixed economy of state-funded schools including maintained schools (free-standing legal entities maintained by local authorities); stand-alone academies (private not-for-profit entities running a single independent schools under a contract with the Secretary of State), some of which operate under an umbrella trust, some in collaborative partnerships; and MATs (private not-for-profit entities running multiple independent schools under a contract with the Secretary of State). Different sets of rules apply to schools in these different categories and (when it comes to academies) from school to school or MAT to MAT.

One of the original aims of allowing schools to convert to academy status was said to be that academies would have more *autonomy* than other schools, partly in not being maintained by local authorities, and partly in the relaxation of the particular requirements which applied to them as schools.⁴⁶ For example, academies are not obliged to follow the national curriculum (unlike maintained schools); the current model funding agreement does not require teachers in academies created using that model to have qualified teacher status; academies are not obliged to pay teachers in accordance with the School Teachers Pay and Conditions statutory guidance; and academies are also responsible for their own admissions (unlike community schools).

There are also a number of other differences. Policies regarding capability of staff and teacher appraisal are required by maintained schools, but not academies. Certain information must be published on the web-sites of maintained schools; however whether or

⁴⁵ Helm, T. Tory MPs call for compulsory academies plan to be dropped from Queen’s speech, 23rd April 2016. <https://www.theguardian.com/education/2016/apr/23/tory-mps-call-for-academies-plan-dropped-from-queens-speech>

⁴⁶ DfE. The Importance of Teaching Cm 7980. London: DfE, 2010: 52, 54. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175429/CM-7980.pdf

not such information is published on the academy's web-site varies according to the funding agreement.⁴⁷

In the following sub-sections we focus on four key issues: admissions, the curriculum, governance and financial matters. Before turning to those, it is worth recalling that, for a school run by a MAT, it is the MAT which decides on those things - any local governing body or head teacher has only as much decision-making freedom as the MAT chooses to give at any particular time. In those within the other forms of chain (umbrella trusts and collaborative partnership) each academy trust may have agreed to some common approach.

Admissions

'Stand-alone' academies are responsible for their own admissions, although the process is co-ordinated by local authorities and subject to statutory guidance via a School Admissions Code.⁴⁸ Whilst some academies adopt the same criteria as community schools, others have complex arrangements.⁴⁹ As with all schools responsible for their own admissions, decision-making takes place behind closed doors – unless the academy trust requests that the local authority takes on this role.⁵⁰ In 2013, the Academies Commission reported that 'numerous submissions to the Commission suggest some academies are finding methods to select covertly'.⁵¹

Complaints about the admissions process are the responsibility of a statutory body, the Office of the Schools Adjudicator (OSA). During 2016/17, the OSA dealt with 200 new admissions objections: 97 of these concerned admission arrangements for 49 different academy schools, including free schools.⁵²

The admission arrangements for academies run by MATs are ultimately for the MAT to decide on, though in practice operationally determined in different ways. The MAT may directly determine the arrangements for all the academies it runs; it may set parameters within which the local governing bodies of individual schools determine arrangements

⁴⁷ DfE. Statutory policies for schools. London: DfE, 2014.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357068/statutory_schools_policies_Sept_14_FINAL.pdf

⁴⁸ The proportion of schools responsible for their own admissions has increased with the introduction of academies. For example, in London the proportion of secondary schools that are their own admission authority has increased from just over 40 per cent in 2001 to nearly 80 per cent in 2015 and the complexity and diversity of admissions policies has concomitantly increased (see West, A. and Hind, A. Secondary school admissions in London 2001 to 2015: Compliance, complexity and control, Clare Market Papers 20. London: LSE, 2016.)

<http://www.lse.ac.uk/socialPolicy/pdf/SECONDARYSCHOOLADMISSIONSLONDONREPORTFINAL2016.pdf>

⁴⁹ One academy with a religious character had 12 pages on the admissions arrangements (Ibid.)

<http://www.lse.ac.uk/socialPolicy/pdf/SECONDARYSCHOOLADMISSIONSLONDONREPORTFINAL2016.pdf>

⁵⁰ West, A., Barham, E. and Hind, A. Secondary school admissions in England 2001 to 2008: Changing legislation, policy and practice, Oxford Review of Education, 37, 1 (2011): 1-20,

⁵¹ Academies Commission. Unleashing greatness: Getting the best from an academised system. London: Pearson/RSA, 2013: 65

⁵² Office of the Schools Adjudicator. Annual Report September 2016 to August 2017. Office of the Schools Adjudicator, 2018.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/680003/2017_OSA_Annual_Report_-_Final_23_January_2018.pdf

locally; or it may – from a period – delegate the determination of arrangements to individual governing bodies entirely. According to the OSA, the roles of the trust and local governing bodies are not always clearly set out or understood by the parties concerned; this can make it difficult to ascertain whether admission arrangements have been determined as legally required.⁵³

A number of objections to the OSA regarding admission arrangements have concerned MATs in which secondary schools prioritise children from primary schools run by the same MAT, regardless of local links, and where the schools are outside what is felt to be a school's normal catchment area. The OSA reported that this affects local authority planning, and can also lead to a fall in the number of successful preference allocations, increases in transport costs, and insufficient places within the local area.⁵⁴

The OSA noted that arrangements for schools that are their own admission authority, such as academies, are less clear than those for community and voluntary-controlled schools (where the local authority is the admission authority); in the case of these other two types of schools, arrangements are 'almost always clear and uncomplicated so it is easy for parents and others to understand how places will be allocated'.⁵⁵

Local authorities can in certain circumstances direct a maintained school to admit the child or ask the ESFA, on behalf of the Secretary of State, to direct an academy to admit the child. One local authority reported to the OSA:

A limited number of academies will create obstacles to delay and/or refuse to take children who are harder to place and with the very limited mandate of the local authority and the bureaucratic process to enforce direction, it is the vulnerable children who remain disadvantaged.

The OSA report also noted that 'some admission authorities appear to seek to delay or discourage the in-year admission of looked after children'. An example was given as follows:

...in March 2017 the local authority referred a case to the ESFA for direction for an academy to comply with the binding decision of the independent appeals panel to uphold an appeal to admit a Year 5 looked after child. To date (5 July 2017) no direction has been made.⁵⁶

⁵³ Office of the Schools Adjudicator. Annual Report September 2015 to August 2016. Office of the Schools Adjudicator, 2016.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585915/OSA_Annual_Report_2016.pdf

⁵⁴ Ibid.

⁵⁵ Office of the Schools Adjudicator. Annual Report: September 2014 to August 2015. Office of the Schools Adjudicator, 2015: 31. See also West, A., Barham, E. and Hind, A. Secondary school admissions in England 2001 to 2008: Changing legislation, policy and practice. Oxford Review of Education, 37, 1 (2011): 1-20; West, A. and Hind, A. Secondary school admissions in London 2001 to 2015: Compliance, complexity and control, Clare Market Papers 20. London: LSE, 2016.

<http://www.lse.ac.uk/socialPolicy/pdf/SECONDARYSCHOOLADMISSIONSLONDONREPORTFINAL2016.pdf>

⁵⁶ Office of the Schools Adjudicator. Annual Report September 2016 to August 2017. Office of the Schools Adjudicator, 2018: 33, 27.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/680003/2017_OSA_Annual_Report_-_Final_23_January_2018.pdf

Curriculum

Unlike maintained schools, academies do not have to follow the national curriculum; instead they are required to offer a balanced and broadly based curriculum including English, maths, science, and religious education (RE).

There are some controls – the DfE model funding agreement has been changed so that more newly created academies cannot teach pseudoscience and must teach evolution. There are also new rules (but again applying only to academies created after the particular model which introduced them was introduced) to restrict the religious ethos extending beyond admissions, RE and assemblies.⁵⁷ The Academy Trust must also ensure that principles are promoted which support fundamental British values.⁵⁸

Stand-alone academy trusts have autonomy over the curriculum within these parameters. However, academies within a MAT do not have that autonomy as explained above. MATs may seek to standardise the schools they run, giving less freedom and flexibility than the schools enjoyed when they were maintained. Research has found that most MATs prescribe the curriculum to some extent but permit some flexibility in terms of how individual academies teach and deliver the curriculum.⁵⁹

Governance

With maintained schools, the composition of the school's governing bodies is set by statute⁶⁰ and minutes of meetings of the governing body are open to public scrutiny. Crucially, the governing body of the maintained school (itself a free-standing legal entity) runs the school. For example, section 21 of the Education Act 2002, 'the conduct of a maintained school shall be under the direction of the school's governing body'; by regulation 6(1) of the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013, the governing body's 'core functions' in a maintained school include:

⁵⁷ See Wolfe, D. A can of worms. 2014. <http://davidwolfe.org.uk/wordpress/archives/1502>

⁵⁸ For maintained schools the promotion of the spiritual, moral, social and cultural development of pupils is required by section 78 the Education Act 2002; see DfE. Promoting fundamental British values as part of SMSC in schools: Departmental advice for maintained schools. London: DfE, 2014. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380595/SMSC_Guidance_Maintained_Schools.pdf.) Independent schools (including academies and free schools) must meet the SMSC standard that is set out in Part 2 of Schedule 1 to the Education (Independent School Standards) (England) Regulations 2010, as amended; see DfE. Improving the spiritual, moral, social and cultural (SMSC) development of pupils: supplementary information Departmental advice for independent schools, academies and free schools, London: DfE, 2014. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380396/Improving_the_spiritual_moral_social_and_cultural_SMSC_development_of_pupils_supplementary_information.pdf

⁵⁹ Cirin, R. Academy trust survey 2017, London: DfE, 2017. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629779/Academy_Trust_Survey_2017.pdf

⁶⁰ DfE. The constitution of governing bodies of maintained schools: Statutory guidance for governing bodies of maintained schools and local authorities in England, London: DfE, 2017. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/640562/The_constitution_of_governing_bodies_of_maintained_schools_2017.pdf

(a) ensuring that the vision, ethos and strategic direction of the school are clearly defined; (b) ensuring that the head teacher performs his or her responsibilities for the educational performance of the school; and (c) ensuring the sound, proper and effective use of the school's financial resources.

By regulation 15(5), the governing body of a maintained school decides who should be appointed as the head teacher. By regulation 6(5), 'The head teacher is accountable to the governing body for the performance of all his or her responsibilities'. And by regulation 6(6), 'The head teacher must comply with any reasonable direction of the governing body'.

Academy trusts have autonomy as regards to their trustees and governance arrangements, although the board of trustees must include at least two elected parent trustees – in a MAT the parents can be at board level or on each local governing body.⁶¹ However, there is no requirement for an academy that is run by a MAT even to have its own governing body.

For any academy run by a MAT (i.e. 73 per cent of academies) any school 'governing body' which the MAT puts in place is at most, a committee of the MAT trustees. It only acts with those powers (if any) delegated to it by the MAT trustees, with the 'scheme of delegation' being something which the MAT can vary at will from time to time, thus changing the degree of local management. Therefore, the governing bodies (where they exist at all) of the 4000+ academies run by MATS have considerably less decision-making power and freedom than the other 27 per cent of academies and the two-thirds of schools which remain as maintained schools. The items listed above (for example) – finance, the head teacher, strategy, etc. – are matters over which the MAT, not any governing body the school may have, has ultimate control.

At least one MAT, E-ACT, explicitly scrapped the notion of a school governing body for the 25 academies which it runs in 2016, with very little left to be decided at the school level (by a head teacher)⁶² apparently claiming at the time that other MATs had already done the same 'without being "honest" about it' and apparently contrary to the wishes of governors who had previously operated in its schools.⁶³

Overall, in many MATs, individual schools now have relatively little (if indeed any) control over key decisions, including those relating to pay, appraisal, the curriculum, pedagogy and behaviour management.⁶⁴ Head teachers who had (for example) been able to enter into contracts for services and so on when their school was a maintained school, have been surprised to realise that, as head teachers of schools run by MATs, they can only do what the MAT allows, since it is the MAT which is the purchasing body not their schools.

As well as showing the loss of autonomy of individual schools, this also shows the way in which arrangements can be changed unilaterally (delegation arrangements are not

⁶¹ DfE. Governance handbook for academies, multi-academy trusts and maintained schools, London: DfE, 2017. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/582868/Governance_Handbook_-_January_2017.pdf

⁶² E-ACT Scheme of Delegation. 2017. <https://www.e-act.org.uk/wp-content/uploads/2017/12/E-ACT-Scheme-of-Delegation-Dec-17.pdf>

⁶³ Dickens, J. E-ACT academy chain abolishes local governing bodies, 19th January 2016. <https://schoolweek.co.uk/e-act-academy-chain-abolishes-local-governing-bodies/>

⁶⁴ NASUWT. Academies: A guide for governors. 2016. <https://www.nasuwt.org.uk/uploads/assets/uploaded/86fbc30a-2de6-4a46-8be62b1089104078.pdf>

prescribed by the funding agreements) by the MAT. Therefore, the governing body of a maintained school contemplating converting to being an academy run by a MAT, or for that matter the governing body of a stand-alone academy (perhaps one of those which converted, with significant financial incentives in the immediate aftermath of the Academies Act 2010),⁶⁵ which is contemplating allowing itself to be taken over by a MAT, might feel it risky to place reliance on what is said about life for the school when in the MAT: whatever delegation arrangements are in place today might change tomorrow. Meanwhile, for academies under umbrella trusts or in collaborative partnerships, the arrangements for the 'umbrella' or the 'partnership' would also be in play.

In any event, there is no transparency regarding the *decision making* of academy trusts – for example, regarding the curriculum, staffing, expenditure, or procurement. As Robert Halfon, the Chair of the House of Commons Education Committee, in a letter to the Parliamentary Under Secretary of State for the School System, Lord Agnew, noted: 'It seems to us that parents, staff and students are in the dark over who is running their schools and that decisions are being taken behind closed doors'.⁶⁶ To that list we would add parliamentarians.

This opens up a further question as to whether academies run by MATs remain, in law, 'schools' at all, or whether for many the MAT itself is actually a 'school' operating on a split-site basis. The context for the point is that, in law, a 'school' is essentially defined as an 'institution' providing primary or secondary education or both.⁶⁷ The definitional focus therefore shifts to the notion of an 'institution'. This is particularly difficult when evaluating a split-site school: at what point does a split-site school become (in law) two schools or vice versa?

This question came to the fore when the Secretary of State needed to consider whether Tonbridge Grammar School's plan to open an 'annexe' 10 miles away in Sevenoaks should be seen as amounting to a single, split-site, school or to the creation of a new grammar school (which would not have been allowed under the ban on new grammar academies coming from the Academies Act 2010). The initial proposal was rejected, because the arrangements for the two locations were considered too discrete (and so amounted to the impermissible creation of a new grammar academy). But a fresh application, with harmonised and integrated governance arrangements, was approved as an 'expansion' (rather than a new school) in October 2015.⁶⁸

Applying that analysis to MATs opens up the possibility of those MATs which retain much or all decision-making at the centre (such that everyone at the local level is only 'advisory')⁶⁹ actually, in law, being themselves split-site schools (rather than a central MAT which runs a

⁶⁵ See for example, West, A. and Bailey, E. The development of the academies programme: 'Privatising' school-based education in England 1986-2013, *British Journal of Educational Studies*, 61, 2 (2013): 137-159.

⁶⁶ Halfon, R. Letter to Lord Agnew, 15th January 2018: 1. <https://www.parliament.uk/documents/commons-committees/Education/Evidence/2017-19/Correspondence-to-Lord%20Agnew.pdf>

⁶⁷ Education Act 1996 section 4

⁶⁸ Coughlan, S. First 'new' grammar school in 50 years, 15th October 2015 <http://www.bbc.co.uk/news/education-34535778>.

⁶⁹ DfE. Governance Handbook, London: DfE, 2017

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/582868/Governance_Handbook_-_January_2017.pdf

series of schools). In other words, what had been thought of as the ‘schools’ have not only ceased to exist as legal entities (and thus lost local control) but have also ceased to be ‘institutions’ in their own right and thus ceased to be ‘schools’ at all, instead simply becoming sites or branches of the MAT. The position is even more confusing because the level of central control and delegation can be varied (by a MAT) over time. A school could cease to be a school and simply become a site as power was brought to the centre by the MAT trustees changing the scheme of delegation, or vice versa.

This leads on to a further point, namely ‘schools no-one wants’ (known as ‘SNOWs’). In 2017, two MATs ‘divested themselves’ of their schools – the Education Fellowship Trust (12 academies) and the Wakefield City Academies Trust (21 academies). In both cases the decision was taken following concerns raised about the schools’ educational standards and the improvements needed.⁷⁰ That left the DfE to ‘broker’ the schools ‘into’ (i.e. arrange for them to be run by) another MAT,⁷¹ a process which involved no consultation with parents (or any other public process).⁷² As the Chair of the Education Committee, Robert Halfon noted: ‘Parents seemed to be the last people to know about the imminent collapse of Wakefield City Academies Trust...and parents are the last to know about the re-brokering or preferred sponsor for a school in other cases’.⁷³ During this ‘re-brokering’ process, the schools are ‘often unable to make long-term planning decisions, hire new permanent members of staff or organise pay rises’.⁷⁴

These are instances of changes being driven from the MAT or the DfE. As above, for an academy with its own trust which had put itself under an ‘umbrella trust’, the process could at least be initiated by its own trust (albeit constrained by whatever arrangements were in place with the ‘umbrella’). But in all those cases the process would be (or certainly could be) entirely behind closed doors, without any public involvement or even transparency

⁷⁰ In 2017, there were 19 MATs (31 per cent) performing above the national average for state-funded mainstream schools at key stage 4 (around the age of 16) by a statistically significant amount. There were 28 MATs (45 per cent) performing significantly below average. The remaining 15 MATs (24 per cent) performed close to the national average; see DfE. Official Statistics: Multi-academy trust performance measures: England, 2016 to 2017, London: DfE, 2018. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684244/SFR02_2018_text.pdf.

⁷¹ Re-brokering is the process whereby an academy trust is asked by the RSC ‘to transfer one, some or all of its academies to another academy trust....The RSC may seek to re-broker an academy as a method of school intervention in three situations: 1. the academy is rated as inadequate by Ofsted; 2. the academy is ‘coasting’; 3. the trust has failed to comply with a Termination Warning Notice issued under its funding agreement’ Brownejacobson, FAQs – academy re-brokering, 10th August 2017: para 3 <https://www.brownejacobson.com/education/training-and-resources/guides/2017/08/faqs-academy-re-brokering>

⁷² This is in contrast to the situation if a school wishes to convert to become an academy, when the governing body must consult formally ‘with anyone who they think will have an interest’ in the school changing its status. ‘This will include staff members and parents, but...should also involve pupils and the wider local community. The law doesn’t specify how long the consultation should last, but it is important that [the school] can show that interested groups, individuals and organisations have had a reasonable opportunity to respond’ DfE. Convert to an academy: guide for schools, 2016. <https://www.gov.uk/guidance/convert-to-an-academy-information-for-schools/3-prepare-for-conversion#consultation>

⁷³ Halfon, R. Letter to Lord Agnew, 15th January 2018: 1. <https://www.parliament.uk/documents/commons-committees/Education/Evidence/2017-19/Correspondence-to-Lord%20Agnew.pdf>

⁷⁴ Perraudin, F. 40,000 children trapped in ‘zombie’ academy schools, The Guardian, 3rd December 2017. <https://www.theguardian.com/education/2017/dec/03/thousand-pupils-trapped-in-zombie-academy-schools>

whatsoever. For parents and communities with experience and the expectation of being involved in the governance of their local school this would be a stark outcome. It also completely undermines the original notion of schools being set free and given autonomy (including from central government) by academisation: the outcome is that central government, in the form of the RSCs, completely and privately decides what happens when it comes to school re-organisation, at least for those academies (the majority) run by MATs.

Financial matters

The accounts of the academy trust must be audited by external auditors, but the accounts do not provide a detailed account of how (public) money is spent. This is in contrast to maintained schools. Established trusts should also include in their annual accounts an assessment of the trust's governance, including a review of the composition of the board in terms of skills, effectiveness, leadership and impact.⁷⁵

Academies (or MATs for those academies run by MATs) are responsible for setting the salaries of their staff and are not bound by the School Teachers Pay and Conditions statutory framework. The House of Commons Committee of Public Accounts (PAC) expressed concerns that some academy trusts appeared 'to be using public money to pay excessive salaries'.⁷⁶ It noted that the average annual salary of a head teacher in an academy was £92,000 (for a maintained school it was £88,000). However, in 2015-16, there were 102 instances of trustees employed at the trust⁷⁷ being paid salaries which were in excess of £150,000.⁷⁸ The PAC noted that 'unjustifiably high salaries use public money that could be better spent on improving children's education, and do not represent value for money'.⁷⁹

Academy trusts are able to procure goods and services for their schools in a variety of ways including via 'related party transactions'. These are business arrangements between an academy trust and body with which those responsible for the governance of an academy trust might have a personal connection; they can include family members.⁸⁰ According to the PAC, academy trusts undertook over 3,000 of these transactions worth a total of £120 million in 2015-16. The DfE reported that 40 per cent of academy trusts had 'related party transactions' involving the academy's head teacher or governors:

⁷⁵ ESFA. Academies financial handbook 2017. London: DfE, 2017.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633375/Academies_Financial_Handbook_2017.pdf

⁷⁶ House of Commons Committee of Public Accounts. Academy schools' finances. Thirtieth Report of Session 2017–19 HC 760. London: House of Commons, 2018: 6, 11

<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/760/760.pdf>

⁷⁷ Staff working across the MAT such as a chief executive or finance director; and staff working at an individual academy (e.g. a head teacher of an academy within a MAT).

⁷⁸ DfE. Academy Schools Sector in England Consolidated annual report and accounts For the year ended 31 August 2016, HC 425. London: House of Commons, 2017

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/654811/Academy_Schools_Sector_in_England_Consolidated_Annual_Report_and_Account...pdf

⁷⁹ Richardson, H. 'Unjustifiably high salaries' paid by some academies 30th March 2018.

<http://www.bbc.co.uk/news/education-43569932>

⁸⁰ House of Commons Committee of Public Accounts. Academy schools' finances. Thirtieth Report of Session 2017–19 HC 760, London: House of Commons, 2018: 6, 11

<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/760/760.pdf>

We heard of related party transactions where the rules were not properly followed, or where there were doubts about the propriety of the transactions. For example, Wakefield City Academies Trust purchased IT services worth £316,000 from a company owned by the Chief Executive of the Trust, and paid a further £123,000 for clerking services provided by a company owned by the Chief Executive's daughter.⁸¹

Other examples of failure to adhere to proper procurement processes have also been identified.⁸² In an investigation of one trust, the ESFA noted:

The trust 2015/16 financial statements...confirm the trust had 4 members and 7 trustees. Two of the trustees are also directors of the sponsor company [X] Ltd and provide school improvement services to the trust. .. The trust's engagement of a related party, [X] Ltd, to provide leadership, management and school improvement services did not follow a proper procurement process in breach of the [Academies Financial Handbook], the trusts own procurement policies and EU procurement rules.⁸³

The PAC also reported problems with related party transactions at the Bright Tribe Academy Trust, which resulted in schools being removed from the trust.⁸⁴

There have also been cases of money having been siphoned off by academy trustees⁸⁵ and criminal prosecutions. For example, £4.1m was siphoned from Haberdashers Aske Foundation Trust (HAFT) by a former school accountant who was jailed for nine years after being found guilty of fraud and theft: he had used bank transfers to shift money into his overseas company.⁸⁶

The PAC reported that the founder of another academy who was a former teacher, was ordered to repay £35,000 after being sentenced to prison for defrauding the school. The founder, and other former members of staff at another academy, paid £69,000 of government grants into their own bank accounts. The Chair of the Education Committee,

⁸¹ Ibid., 10

⁸² See for example: ESFA. Financial management and governance review Enquire Learning Trust, London: DfE, 2017.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630462/Financial_management_and_governance_review_Enquire_Learning_Trust.pdf; ESFA, The Rodillian Multi Academy Trust, London: DfE, 2017.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/622124/Financial_management_and_governance_review_Rodillian_Multi_Academy_Trust.pdf

⁸³ ESFA. Financial management and governance review Enquire Learning Trust, London: DfE, 2017.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630462/Financial_management_and_governance_review_Enquire_Learning_Trust.pdf

⁸⁴ House of Commons Committee of Public Accounts. Academy schools' finances. Thirtieth Report of Session 2017–19, HC 760, London: House of Commons, 2018: 6, 11

<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/760/760.pdf>

⁸⁵ NAO. Investigation into the Education Funding Agency's oversight of related party transactions at Durand Academy, London: NAO, 2016.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534413/Notice_of_provisional_intention_to_terminate_to_Durand_Academy_Trust.pdf

⁸⁶ Downs, J. £4m fraud at another of Gove's favourite academy chains, 28th June 2016.

<http://www.localschoolsnetwork.org.uk/2016/06/4m-fraud-at-another-of-goves-favourite-academy-chains>

expressed his concern about asset stripping: 'We are particularly concerned by the extent to which failing trusts are stripping assets from their schools'.⁸⁷

The PAC also expressed concern that some multi-academy trusts were 'so big, that any failure of the multi-academy trust would have a negative impact on the education of a large number of children' and noted that the DfE 'could not clearly explain how it protects schools' funds and assets when a multi-academy trust fails'.⁸⁸ Nor could the DfE say how many trusts were currently in deficit:

Press reports have noted that eight of the largest 13 academy trusts, including Ormiston Academies, Academies Enterprise Trust, Greenwood Academies and Ark Schools, have issued warnings that funding was not sufficient to meet expenditure pressures. ESFA confirmed that 39 academy trusts were still operating under a Financial Notice to Improve, which means that the trust has serious financial problems. The Department was unable to tell us the number of times that it had had to intervene in an academy trust in difficulties, but reported that around 2.5% of trusts had to be re-brokered in 2016–17.⁸⁹

7 Issues and possible solutions

Issues

Bringing all of this together reveals important issues. These include fragmentation, loss of school autonomy, loss of transparency and democratic oversight, undermining local strategic planning, no formal public involvement, and a lack of reliable information.

Fragmentation

Many key features in state funded schools vary from school to school, and not just between maintained schools and academies, also between academies, depending, in part on nothing more than the timing and circumstances of their creation with no consideration of their present needs.

Schools have lost autonomy and identity

Despite the academy programme having been initially driven by a wish to give schools freedom and autonomy, those (the majority of academies) which are now run by MATs have no freedom – they do not even exist as legal entities to enjoy such freedoms; the process has rather back-fired.

Indeed, some MATs may well actually now be multi-site schools rather than a central organisation running a number of schools as they present to be. From a school point of view, the position for many is worse even than in maintained schools pre-1988.

⁸⁷ Halfon, R. Letter to Lord Agnew, 15th January 2018: 1. <https://www.parliament.uk/documents/commons-committees/Education/Evidence/2017-19/Correspondence-to-Lord%20Agnew.pdf>

⁸⁸ House of Commons Committee of Public Accounts. Academy schools' finances. Thirtieth Report of Session 2017–19 HC 760, London: House of Commons, 2018: 14, 6
<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/760/760.pdf>

⁸⁹ Ibid., 14

Loss of transparency

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 and meetings which are not subject to rules on openness which apply across other areas of public life. There is also a lack of transparency with regards to the use of (public) funds, as academies are not required to provide the same level of detail in financial reports as maintained schools. This can lead to misuse of funds, impacting resources available to educate students.

Lack of open democratic oversight

Decisions which, in relation to maintained schools, are taken by local authorities under the oversight of elected local councillors who operate in meetings subject to ‘public participation’ obligations, are – for academies – taken by the eight RSCs: individuals appointed by central government, who exercise considerable power without any local democratic oversight or requirement for open process. That includes decisions about opening and closing academies, or ‘re-brokering them’ from one MAT to another.

Undermining local strategic planning

Local authorities remain under a duty to ensure there are sufficient schools in their areas, but have no direct power to do anything about it given the role played by the RSCs.

No formal public involvement or process

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: the MAT or RSC (depending on the issue) merely makes a decision as to how to proceed.

Unreliable information

There is a lack of reliable information and apparent misunderstanding of the way in which the academies policy is working, even from people and organisations directly concerned with its operation.

Too much autonomy?

Academies are not required to follow the national curriculum, so 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 recruitment to and retention by maintained schools.

Some possible solutions

In light of these concerns, we offer some proposals and possible mechanisms for improvements.

Reduce fragmentation in the operational specifics

There are various ways in which fragmentation could be reduced; below we give two examples, admissions and the curriculum.

As regards admissions, there is a strong case to be made for simplifying admissions arrangements to academies and ensuring alignment between maintained schools and academies, and across the various academies created over time.

Meanwhile, the rationale for there being different curricular requirements in academies and maintained schools has the clear potential to lead to pupils receiving different and unequal educational opportunities: there would seem to be a *prima facie* case for all schools to be required to teach broadly the same curriculum.

In overall terms, it is entirely 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, entirely incoherent and fragmented, set of provisions are brought together in a single framework around aspects of school governance such as admissions, the curriculum and so on. 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. It would at least ensure a common framework for all publicly-funded schools (including both academies and maintained schools).

The template for this could be in the way in which a common framework for special educational needs (SEN) and exclusions has been introduced for academies (apparently without any great dissent) and maintained schools, overriding the previous incoherence as between maintained schools and academies, and as between one academy and another. As happened in those instances, it 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 also be adopted with regard to teachers' pay and conditions.

A further issue relates to admission and exclusion panels. The Local Government Ombudsman has jurisdiction in relation to panels run by maintained schools (and can consider complaints of maladministration in that process). However, this is not the case with academies. There is no justification for this difference.

Introduce transparency

At a minimal level, there is a need for more transparency regarding the governance of academy trusts. The government could consider imposing rules such as making it obligatory for the trust to publish its policy for pupils with SEN. Whilst academies and free schools *should* publish an online report on their policy for pupils or students with SEN and how they

put the policy into effect,⁹⁰ a maintained school *must* publish an SEN information report on the school's policy for pupils with SEN, and should update it annually.⁹¹

Information about the expenditure of individual academies could be required in the same format as for maintained schools. Multi-academy trusts (MATs) supply their financial data to the DfE at trust level. Although individual academies do provide breakdowns of their own income and expenditure there are certain items which are managed at trust level and cannot be split between individual academies.⁹² In a similar vein, the PAC noted: 'The accounts would better support transparency and accountability if they included more detailed analysis'; it also stressed that the DfE's 'rules around related party transactions are too weak to prevent abuse'.⁹³

Such transparency arrangements could include the arrangements around governance, the operation of academy governing bodies, and so on. Again, a simple statutory framework could be introduced to apply to both academies and maintained schools.

Restore autonomy for schools

It seems unlikely that the promoters of academies as a means of giving schools 'freedom' envisaged the way in which the emergence of MATs has led to individual schools having no freedom at all, if indeed they exist as being more than a particular site or branch through which a particular MAT delivers education rather than as a 'school' at all.

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 all 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 layer was to remain (see also below). 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). In Sweden, for example, where a significant proportion of schools are run by private bodies and funded by the state, all licences (contracts) are broadly similar: older licences are transferred in line with changes in legislation which also means that an operator is unable to invoke the wording or the terms of an old licence.⁹⁴

⁹⁰ DfE. What academies, free schools and colleges should publish online. 2017.

<https://www.gov.uk/guidance/what-academies-free-schools-and-colleges-should-publish-online>

⁹¹ DfE. What maintained schools must publish online. 2017. <https://www.gov.uk/guidance/what-maintained-schools-must-publish-online#special-educational-needs-sen-and-disability-information>

⁹² DfE. Income and expenditure in academies in England, 2015 to 2016, London: DfE, 2017.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633153/SFR32_2017_Main_Text.pdf

⁹³ House of Commons Committee of Public Accounts. Academy schools' finances. Thirtieth Report of Session 2017–19 HC 760. London: House of Commons, 2018: 5

<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/760/760.pdf>

⁹⁴ West, A. and Nikolai, R. The expansion of 'private' schools in England, Sweden and Eastern Germany: A comparative perspective on policy development, regulation, policy goals and ideas, *Journal of Comparative Policy Analysis: Research and Practice*, 19, 5 (2017): 452-469.

Restore local democratic oversight

As we have seen, 70 per cent of primary and secondary schools are still maintained schools.⁹⁵ Even if the other 30 per cent are to remain as academies we would propose that the contracts under which they operate (newly separated out in relation to MATs, as above) should be with the local authority rather than the Secretary of State (or, in form now, the eight RSCs). This move would restore the linkage with local authorities whilst (assuming this is what is wanted) keeping the relationship a contractual rather than statutory one.

In other words (and unless the process went further, as below), the local authority would have no greater power over the academy than does the RSC at present, but at least it would restore a local connection and democratic oversight. There would be no basis for a complaint that government was taking back greater control over schools – it would simply be a shift from central government (and indeed RSCs) to local government: localism, it might be called.

Obviously, this (particularly in the reinstatement of schools currently in MATs as legal entities in their own right) would create a range of issues to be considered, such as the continuing role of the existing MAT organisations. However, where they add real value (in actually supporting the local running of schools, for example) the MAT organisations could continue as a service which individual schools could call on, perhaps by buying it in, just as maintained schools can choose to buy in support services from the local authority or from external providers. Those academy schools would regain the freedom (already and still enjoyed by maintained schools) to decide from where to purchase the support they needed.

Finally, there is a case to be made for local democratic accountability as regards the provision of school-based education. If this were to be a policy goal, the presumption of a ‘free school’ when a new school is needed could be removed.

Beyond that

Taken together, those measures would deal with the key problems which have arisen, as described above. However, they 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 reinstated as separate legal entities as above) if they so wished to convert back into maintained schools. A new legal framework directly enabling such a transition would be required.⁹⁶ At present the only way an academy can become maintained again is for the academy to close and then for the local authority to

⁹⁵ DfE. Schools, pupils and their characteristics: January 2017, London: DfE, 2017.
<https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2017>

⁹⁶ Wolfe, D. Schools: The Legal Structures, the Accidents of History and the Legacies of Timing and Circumstance, *Education Law Journal*, 14, 2 (2013): 100-113.

open a new maintained school,⁹⁷ the reverse of how academies were created from maintained schools pre-Academies Act 2010. It would not be difficult to design a bespoke mechanism by which a school, reinstated as a legal entity (if necessary, as above, with its trust's contract then with the local authority (as above), could make the modest further step of being a maintained school (again).

Over time, or perhaps if there were a political will to do so more quickly, that process could be made compulsory. But, as we explain, that 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.

⁹⁷ BBC. Academy to close to create council-run school, 27th October 2017. <http://www.bbc.co.uk/news/uk-england-hampshire-41780867>