

# Blocking the Best

Obstacles to new, independent  
state schools

Anna Fazackerley, Rachel Wolf and Alex Massey



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# Contents

Acknowledgements	4
Executive Summary	5
Full list of recommendations	12
Introduction	15
<b>Part One: Obstacles to setting up new schools</b>	
1 Setting up a school- application, accreditation and implementation	17
2 Planning and building regulations	29
3 Building procurement	37
4 Economies of Scale	40
<b>Part Two: Barriers to true independence</b>	
5 Curriculum and learning	47
6 Staff issues	51
7 Accountability for performance	57
8 Discipline	68
9 Admissions	71
10 Governance	74
<b>Part Three: Addressing failure in the system</b>	
76	
Conclusion	82

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# Executive Summary

The desirability of bringing more independent providers into the state schools system has been debated endlessly, yet the practicalities have been largely ignored. It is not enough to make it feasible to set up a school – technically that is possible now. The conditions must make it straightforward. If the majority of potential providers face the current morass of national and local bureaucracies, only a handful of schools will ever be set up.

This report examines the changes required to make an expanded programme of genuinely independent state schools a reality. The first part examines the barriers which prevent new providers entering the system, including a ponderous approval process and overly restrictive planning and building procedures. The second part looks at restrictions on academy independence which curb innovation, including bureaucratic and poorly-focused accountability mechanisms and interference by central and local government. The third part looks at interventions in cases of school failure. A full list of recommendations follows at the end of the Executive Summary.

## Part One: Obstacles to setting up new schools

### Setting up a school – application, accreditation and implementation

There is no mechanism in the state sector by which parents and children, rather than local or national bureaucracies, decide whether a new school should be created. In the case of academies, the DCSF ‘brokers’ a partnership between the local authority, the school to be taken over, and a sponsor they have decided might be suitable. This is certainly not a demand-led system in any real sense.

In February 2010 the Government launched a new accreditation process for academies. Sponsors are now divided into those allowed to run a single school and those allowed to run several. In both cases it is very difficult for organisations not already providing education to run academies. This is a radical shift. The theory behind the original programme was that those with different skill-sets and experiences would benefit schools which had been failed by a traditional education provider – the local authority. Under the new system the organisations must show evidence of “track record, capacity and educational expertise”. As a result the type of sponsor has moved from those with business backgrounds to education organisations: further education colleges, universities, schools and local authorities themselves. At the same time single sponsors are being replaced by conglomerations of two or more groups. The local authority is

“ There is no mechanism in the state sector by which parents and children, rather than local or national bureaucracies, decide whether a new school should be created. ”

often one of these sponsors, remaining involved in schools which have already failed under their control.

The new process has three major flaws. First, it dramatically reduces the pool of potential providers. Many of the existing, highly successful sponsors of several academies would not have qualified with their first schools – or would not have been willing to enter – under this new system. Putting weight on existing education organisations makes it much less likely that innovation and new models will occur.

Second, it confirms the local authority's central role in deciding who should set up schools, what kind of schools they should be, and under what circumstances. The new accreditation process states that local authorities should be acting as 'strategic commissioners' of schools, and that they can now select from the pool of Accredited School Providers and Groups when looking for "a lead sponsor for an academy or lead partner for a majority trust or federation."

Third, the new accrediting system judges a provider solely on its history, not its plans for the future. Rather than allowing any potential provider to demonstrate its vision and competence through an application and through future accountability, the Department for Children Schools and Families (DCSF) will presuppose its capability or lack of it according to the type of organisation involved.

Once permission for a school has been provisionally granted, the sponsor must choose one of about a dozen approved Project Management Companies (PMCs), although under EU rules they are not allowed to meet them in advance. Project management fees are very high – most sponsors we spoke to paid at least £500,000 – and quality is variable and unpredictable. Some sponsors told us that they had to do some of the work the PMC team was contracted to do, without any reduction or transfer of fees. All the sponsors we spoke to were dissatisfied with the service provided.

#### Key Recommendations:

- **There should be a wider range of potential sponsors, with greater emphasis on the different skills non-educationalists can bring. Competence and quality should be the tests for new providers.**
- **The local authority should not have an effective veto on the existence of a new school. Giving local authorities effective control of the set up of academies has created inevitable geographical bias. Cooperation should be encouraged, but should not be mandatory.**
- **Academies should be able to opt for alternative project management arrangements. The expense of project management companies has been a huge drain on resources – which might have been better spent on core staff in the academies unit, amongst other things.**

#### Planning and Building Regulations

In England, land is categorised according to its use. Residential, commercial, shopping - all have different classifications. Schools are classified as D1 land, as are other 'non-residential institutions' such as libraries, museums, church halls and medical buildings. Unfortunately, local authorities have gained permission to sell of a lot of D1 land in the last decade. Where schools, particularly rural and special schools, have been closed and the buildings have become available, they have often been converted to residential use and sold to developers. This is partly because local authorities have a statutory duty to obtain best consideration for the assets they

hold. That usually means selling to the highest bidder, which in turn means changing the classification of land to allow for residential and commercial development.

Schools in England are subject to building restrictions known as ‘building bulletins’. Some of these – such as those on acoustics and ventilation – are statutory. Others are merely ‘guidelines’, yet sponsors are pushed hard to follow them and have to make a strong case to break away from such things as standard classroom sizes. This enforcement adds expense to those wishing to build new schools or refurbish existing buildings and make it difficult for sponsors to innovate or develop a building that matches their educational vision.

In both Sweden and America new schools have sprung up in unconventional surroundings. Commercial space, residential space, under-used school space – all have been used by providers with limited funds, often in densely populated urban areas with minimal amounts of land. They have been able to do this through relaxed planning laws and, in New York’s case, determination of politicians to give public land to new schools.

#### Key Recommendations:

- **The big bang approach would be to exempt schools from local planning investigations to maximise the number of new schools.** All applications could automatically go to the Secretary of State for Children, Schools and Families. Whilst this would iron out many serious problems, we acknowledge that it would be politically both controversial and difficult, and we also suggest a number of smaller measures which would go some way towards liberalising supply.
- **There must be a presumption to keep D1 land, but schools should not be restricted to using it.**
- **New schools should be free from the building regulations and bulletins which currently apply to schools.** Many of the building requirements which apply to schools are an unnecessary block on innovation and should be lifted from all schools. However there is a key difference between the expectations of schools which children have to attend and the expectations of schools where parents make an active choice. In the former case, some basic minimum standards need to be mandated because parents cannot alter what is happening in any other way. In the latter case, if parents are happy with the conditions of a building (beyond basic health and safety) then that should be sufficient.
- **Schools which replace existing supply should be free from space and design regulations, but should still meet minimum requirements on acoustics, ventilation and lighting.**

#### Economies of Scale

The academy movement has seen an increasing number of ‘multi-academy sponsors’ – central institutions which take on administrative functions and leave their individual schools to educate. Like local authorities these have the advantages of scale, but without being a geographical monopoly. Other school providers can compete, and costs are lowered.

But academy sponsors which wish to run more than one school face a number of difficulties. Lack of transparency and continuity between local authorities makes bidding expensive and time-consuming. For federations setting up schools



in different parts of the country a new negotiation with a new public body is needed in each case.

Funding is also an issue. Chains operating in more than one area are frequently frustrated that funding varies according to the local authority. For instance, one academy provider we spoke to had set up two schools in deprived areas sixty miles apart. The difference in funding between the two areas was £1,000 per pupil, leaving one school more than £1 million poorer than the other. This provider added: “The funding formula also needs clarity. When you ask about it, nobody seems to know exactly what it is.” In addition, multi-academy sponsors have been blocked in the past from moving funding from one school to another. If one school is struggling while another is performing well, then being able to move funds within an organisation is important to overall success

At present academy sponsors are barred from making a profit. There is no legislative reason why profit should not be allowed (these schools are simply classified as independent schools). When Tony Blair introduced academies, officials and the most radical ministers (including Lord Adonis and John Hutton) knew that allowing profit would provide a significant boost to the market, but considered the politics unworkable. There is no doubt that the politics are not easy. However, if we seek a large number of chains to drive expansion in the schools sector then this is one nettle that will need to be grasped – at least by allowing management fees between schools and private companies. Barring profit reduces the pool of organisations which want to set up several schools, and means those that do exist do not have a direct incentive to expand.

**Key Recommendations:**

- **There should be uniformity between local authorities, and chains should be allowed to apply for several schools in one application.**
- **Multiple sponsors should be given financial flexibility over operations.**

## Part Two: Barriers to true independence

### Curriculum and Learning

The ability to decide what you are going to teach and how you are going to teach it is of course vital to any notion of real independence in the schools sector. The first wave of academies had total freedom over curriculum. However, over time this freedom, like many others, has been quietly eroded. Independence over curriculum has been a key driver of innovation in both Sweden and the US. All schools in Sweden (both state and free schools) have considerably more pedagogical freedom than schools do in this country, following a very slim 17-page national curriculum that focuses on outcomes but not on content or pedagogy. In the US there is no national curriculum to follow, although curricula are prescribed to some extent by the content and nature of state standardised tests.

Exams are a major issue when it comes to freedom of curriculum. In November 2009 the Government rejected an application to approve International GCSE courses in English, English literature, maths, biology, chemistry, physics and IT, saying the qualifications “fail to meet the requirements of the curriculum” in these key subjects. Instead it restricted approval to nine IGCSEs that do not cover the core curriculum. This decision is frustrating for all schools, and for academies

in particular, who are most likely to want to offer IGCSEs in the core subjects. It appears to be motivated more by politics and an unwillingness to accept an implicit criticism of existing GCSE exams, than by logic. Far from being suspect, low quality examinations, IGCSEs have been accredited by Ofqual, the Government's qualifications and exams regulator.

A similar situation exists with the International Baccalaureate (IB). Independent schools are entirely free to offer IB and are often keen to do so because many leading universities perceive it to be more challenging than A-Level. If an academy wants to offer the IB it has to prove it would raise standards, seek permission from the Secretary of State and change its contractual arrangements with the Government.

#### Key Recommendations:

- **The Government should return to a situation in which academies have total freedom over the curriculum.**
- **Academies, and indeed all schools, should be free to offer both the IGCSE and the International Baccalaureate.**

#### Staffing issues

Nothing is more important to a child's educational experience than the quality of teaching in a school, so staffing issues are of course crucial for academies. In theory academies have considerably more independence than maintained schools, with the ability to set their own pay and conditions. In practice, however, sponsors who are taking over failing schools have their hands tied to a large extent on employment, because they have to take on staff from the old school under the provisions of the Transfer of Undertaking Protection of Employment Regulations 2006 (known widely as TUPE).

Most sponsors cite TUPE as a considerable obstacle to independence. If a school is failing there is a high chance that one of the key problems will be the quality of teaching. Of course, this may be an issue that can be resolved with different leadership, better training and support, and a new culture that re-energises staff who had lost interest. However, in some cases TUPE will mean that the sponsor will be forced to take on teachers who are simply not up to scratch and unlikely to improve. Removing them will often be highly difficult.

The first hurdle for any sponsor taking over an existing school is trying to understand the nature of the workforce they are inheriting. As part of their planning it is essential for a sponsor to find out who is employed and under what terms and conditions. This is often considerably more difficult than it should be. Under TUPE the local authority is obliged to provide a certain amount of information about transferring staff, but unhelpfully the required information is limited in scope and only needs to be provided 14 days before the school opens and the staff transfer is official. This gives ample scope for an obstructive local authority to impede vital planning if it is not keen on the academy going ahead.

In the majority of cases a deeper understanding of the teaching workforce, and how a school functions more generally, is dependent upon the new head teacher successfully negotiating access to the existing school. This may be difficult. One multi-academy sponsor explained that in one of their academies the head of the existing school applied for the position of principal at the new school; when he was rejected he retaliated by blocking all advance access to the school. In such a situation the sponsor is powerless to intervene.

At the moment employment regulations focus, quite understandably, upon protecting the rights of the employee. Yet we must remember that, in the case of a failing school, pupils have already been let down. It must therefore be a priority to protect their rights by doing everything possible to ensure the new school can launch as successfully as possible as quickly as possible. To this end the Government should establish a clear principle of reasonable open access for sponsors once they have been approved. This would mean that the existing school would have a duty to give access to all staff files, and to allow discussion of individual teacher strengths and weaknesses and development needs with the management team, as well as permitting the new academy head to come in and meet teachers.

**Key Recommendations:**

- **The Government should establish a principle of reasonable open access to a predecessor school for approved sponsors.**

**Accountability for performance**

Ofsted has the potential to provide a very solid core to our school accountability system. However, the inspection system as it stands is seriously flawed. First, it is process-driven and bureaucratic. Ofsted requires schools to prepare a vast number of time-consuming policy documents, as well as a Self-Evaluation Form (SEF), before an inspection takes place. Schools are theoretically permitted to decide for themselves the most suitable form in which to submit their self-evaluation, but in practice Ofsted imposes a top-down standard with which schools feel forced to comply.

Ofsted evaluations place considerable weight on non-academic outcomes such as community cohesion, and the wellbeing of children as defined by the Every Child Matters outcomes. The revised school inspection framework also sets out a range of judgements to which inspectors must give ‘particular priority’. Worryingly, these include several non-educational criteria: promoting equality of opportunity, safeguarding children and responding to parents’ views.

The importance placed by Ofsted on non-academic, social outcomes reflects the Government’s use of schools as instruments of social policy. This is problematic in itself: while these aims are certainly desirable for any fair society, they distract from the main mission of schools, which is to educate children. Furthermore, there are clear problems with attempting to quantify or grade a school’s contribution to an aim as intangible as improved community cohesion.

Despite the near impossibility of quantifying a school’s contribution to non-academic outcomes, Ofsted classifies two of them as ‘limiting judgements’. This means that a school may provide an excellent education to its students, yet be labelled ‘inadequate’ overall if Ofsted inspectors find fault with its procedures for promoting equality, or for safeguarding its pupils. This can lead to perverse judgements. In one case a school was reported to have been classified as inadequate overall because inspectors had not been asked for identification on arrival, while in another a school was judged inadequate because a fence surrounding the playground had been deemed to be too low.

The basis of a school’s Ofsted rating should undoubtedly be its academic performance rather than any non-educational criteria. However, care must be taken to ensure that schools which make use of innovative or unusual pedagogies

are not disadvantaged. An example is the Steiner Academy in Herefordshire, which is permitted to teach the Steiner Curriculum. This is an essential part of its identity, and indeed the identity of all Steiner Schools. Yet the school is subject to an Ofsted inspection framework under Section 5 which is designed to assess traditional pedagogy based on the National Curriculum. Steiner's two hour lessons, unique curriculum and focus on teacher-led rather than pupil-led interaction place it at a disadvantage when the inspectors come calling. If the goal of diversity of provision is to be realised, Ofsted must ensure that it is capable of effectively monitoring those academies which make use of their independence to offer genuinely unusual provision

#### Key Recommendations:

- **Self-evaluation must to be an ongoing internal process and not one that is rigidly controlled from the centre.**
- **Ofsted should not attempt to grade schools based on unquantifiable outcomes.**
- **Ofsted should abandon its use of limiting judgements.**
- **Ofsted should be required to inspect academies in relation to their legal and particular contractual (funding agreement) obligations, not its maintained school framework.**

### Part Three: Addressing failure in the system

The question of how to deal with failure is absolutely crucial to a reformed education system in which we empower parents and protect pupils. A national evaluation of performance at charter schools across 16 US states published by Stanford University last year showed real variability and a worrying proportion of underperforming charter schools. This reminds us that a fully deregulated approach simply does not work. For a start there must be proper oversight of who is allowed to open a new academy school, and robust but properly focused accountability for performance within all schools. But in addition, there must be a fundamental principle that poorly performing schools should not be allowed to stay open, whether under the control of the local authority or an independent sponsor.

If a school is failing to provide an acceptable standard of education and the school leaders do not demonstrate the capacity to secure improvement, Ofsted classifies it as requiring Special Measures. Once Ofsted has given a school the special measures label, the school is currently given a further two years to improve. This is unacceptable as it means a further two years of failure for the children attending that school. If Ofsted has classified a school as failing to provide an acceptable standard of education and critically has also judged that the school leaders do not demonstrate the capacity to secure improvement, the Government should have the courage of its convictions and act swiftly to close the school and turn this failure around.

#### Recommendations:

**If a school placed in special measures by Ofsted has not shown signs of improvement by the time of the follow-up inspection, four to six months later, it should be opened up to competition as a new academy.**

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# Full list of recommendations

## Part One: Obstacles to setting up new schools

### Chapter 1: Setting up a school – application, accreditation and implementation

- The local authority should not have an effective veto on the existence of an academy. Cooperation should be encouraged, but should not be mandatory.
- There should be a wider range of potential sponsors, with greater emphasis on the different skills non-educationalists can bring.
- There should be a universal, transparent application system for groups who want to set up a new school.
- Demand from parents should be considered a good reason for a new school.
- Competence and quality should be the tests for new providers.
- Academies should be able to opt for alternative project management arrangements.
- As the number of academies and new schools grow, the Government should move from a central unit to multiple authorisers.
- There should not be a geographical monopoly on authorisation.
- All multiple authorisers should be of high quality and properly regulated.

### Chapter 2: Planning and Building Regulations

- ‘Big Bang’ option: To maximise the number of new schools, you could exempt them from all local planning investigation.

#### *Alternatively:*

- Schools which are additional alternatives should be free from the building regulations and bulletins which currently apply to schools.
- Schools which replace existing supply should be free from space and design regulations, but should still meet minimum requirements on acoustics, ventilation and lighting.
- Building Schools for the Future should be more flexible about BRE Environmental Assessment Method ratings in order to take into account the impact on the area, not just the building.
- There must be a presumption to keep D1 land.
- Schools should not be restricted to D1 land.
- New schools should be encouraged to lease, not buy.

### Chapter 3: Building Procurement

- The BSF programme should be radically simplified.
- Experienced sponsors should be allowed to undertake procurement themselves.
- Small and new sponsors should be provided with cost-effective procurement support.
- The Government must ensure that the sponsor’s vision is at the heart of the procurement process.

#### Chapter 4: Economies of Scale

- Multiple sponsors should be given financial flexibility over operations.
- A national per-pupil funding formula, weighted to account for variations in employment costs, should be introduced.
- There should be uniformity between local authorities, and chains should be allowed to apply for several schools in one application.
- There should be a limit on the geographical presence of a particular federation.
- There must be quality control.
- Given the two conditions above, school federations should be encouraged to expand.

### Part Two: Barriers to true independence

#### Chapter 5: Curriculum and Learning

- The Government should return to a situation in which academies have total freedom over the curriculum.
- The Government should redefine the requirement for a broad and balanced curriculum, making clear that this applies to full-scale secondary schools, and is something that smaller start-ups must work towards.
- Academies, and indeed all schools, should be free to offer both the IGCSE and the International Baccalaureate.
- The Government must be prepared to loosen its grip on the status quo and welcome innovative teaching models.
- A support and advisory organisation should be established to help academies translate their vision into reality.

#### Chapter 6: Staff Employment Issues

- The Government should establish a principle of reasonable open access to a predecessor school for approved sponsors.
- The Department should avoid delays in sponsor approval.
- The maximum of three hours' classroom observation of teachers per performance management cycle should be removed for academy schools as a minimum, and ideally should be removed across all schools.
- The redundancy process should be made as predictable and easy to understand as possible for sponsors.

#### Chapter 7: Accountability for performance

- The accountability system must reflect the achievement of all pupils. Increasing supply of school places allows parents to hold schools accountable as well as politicians.
- The YPLA's oversight functions for academies should be abolished.
- Self-evaluation must be an ongoing internal process and not one that is rigidly controlled from the centre.
- Ofsted should not attempt to grade schools based on unquantifiable outcomes.
- Ofsted should abandon its use of limiting judgements.
- Ofsted should be required to inspect academies in relation to their legal and particular contractual (funding agreement) obligations, not its maintained school framework.

- Ofsted must ensure that its assessment framework is capable of effectively monitoring those academies which offer genuinely unusual provision.
- High-performing schools should be freed from inspection by Ofsted, unless performance data indicates a drop in standards.
- The use of SIPs should be optional for academies.
- Academy cooperation with local Children's Trusts should be optional.

#### Chapter 8: Discipline

- Academy collaboration with local behaviour partnerships should be optional and non-statutory.
- The requirement for academy governing bodies to hear exclusion appeals should be scrapped.
- Academy funding agreements should not include targets for exclusion numbers.
- The requirement for academies to pay local authorities for taking excluded children, and vice versa, should be scrapped.

#### Chapter 9: Admissions

- Local authorities should not be able to override admissions limits agreed with the Secretary of State.
- Academies should remain their own admissions authorities.

#### Chapter 10: Governance

- The requirement for academy governing bodies to include a local authority representative should be removed.
- Sponsors should be able to select governors according to their requirements.
- New sponsors should be offered sensible advice on appointing a strong governing body.

### Part Three: Addressing failure in the system

- If a school placed in special measures by Ofsted has not shown signs of improvement by the time of the follow-up inspection, four to six months later, it should be opened up to competition as a new academy.
- The clause allowing funding agreements to be terminated without a reason after a seven year notice period should be removed.
- A clause which allows termination in the case of poor performance – with relatively short notice periods – should be inserted into funding agreements.
- The Department should approach established chains with a proven record of success with a view to taking over any failed academies in the future.

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# Introduction

The desirability of bringing more independent providers into the state school system in order to drive up standards and give parents more choice has been debated endlessly. Yet the practicalities have been largely ignored. As we stand on the brink of a General Election the three main political parties all support the idea of encouraging new schools to some degree and all at least talk of giving more freedom to those who run them. But any new Government must face reality. It must identify and resolve the many legislative, bureaucratic and political barriers within the system. It is not enough to make it feasible to set up a school – technically that is possible now. The conditions must make it straightforward. If the majority of potential providers face the current morass of national and local bureaucracies, only a handful of schools will ever be set up.

This report explores the changes required to make an expanded programme of genuinely independent state schools a reality. The first part examines the barriers which prevent new providers entering the system, including a ponderous approval process, overly restrictive planning and building procedures, and a centralised and inflexible system of building procurement. The second part looks at restrictions on academy independence which curb innovation, including bureaucratic and poorly-focused accountability mechanisms and interference by central and local government in curriculum, discipline, admissions, and staffing.

However, as recent US evidence has demonstrated, a fully deregulated approach to new education provision doesn't work. Poorly performing schools should not be allowed to stay in the hands of a failing provider, whether that is the local authority or another organisation. Similarly, a degree of oversight for those applying to set up schools is essential. These are the real problems a reforming Government must face. This report will address those issues.

During our research for this project we conducted interviews with more than 30 existing academy sponsors and potential sponsors in the UK, to understand which elements of the current programme were working – and which were not. In addition we hosted a roundtable discussion with 20 experts from the worlds of education, law and local government to understand and debate some of the key issues on planning and building in particular. Finally, we spoke to experts from the independent schools sector to explore where they enjoyed more freedom – and where they did not.

As well as learning the lessons of existing reforms in this country, we looked to the 'free schools' system in Sweden and the charter schools system in the US to garner further advice on good and bad practice. We spoke to experts such as the Swedish Association of Independent Schools and Swedish free school providers, as well as researchers looking at the US charter school movement, and people involved in running and authorising charter schools. In each section of this report you will see a comparison between the situation for academies (and other schools) in the UK at the moment, and the situation in Sweden and the US.



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# Part One

## Obstacles to setting up new schools

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# 1

## Setting up a school – application, accreditation and implementation

The English school system is an uneasy combination of central control and circumscribed choice. While the supply of new schools is extremely limited, drastically underperforming schools are replaced by new academy providers. The nature of those providers is restricted, but the number of schools they operate is growing. Local authorities have wide ranging controls over academies, but not as much as they do with their own state schools.

Meanwhile the Swedish system is firmly on the side of choice. Schools are set up according to parental demand. There is one body which makes a decision on whether schools should be permitted, and it judges on clear criteria. Almost any institution – a group of parents or teachers, a private company or a charity – can set up a school.

The US has everything in between. Some states control new providers as strictly as in the UK. Others are extremely permissive. In the middle are a significant and growing number with highly effective new schools which must demonstrate competence – but can provide extra places in areas where parents want them.

In all three countries, the process involved in setting up a school involves making some kind of application, a body deciding whether that application is accepted and the school provider is accredited, followed by implementation of that application.

### How to apply for a school – routes in the UK

There are three current routes to setting up a school. First, a local authority can identify a need for a new school and announce a school competition. Second, a community may make an argument to the local authority on the basis of ‘need’ in the area. Third, a new school may be set up through the Government’s academy programme – usually focused on taking over and rebuilding an existing secondary school.

For the sake of simplicity and comparability with other countries – and because it is the most common route for new providers to enter the state sector - we will focus on the academy programme. However, the other two routes are described briefly below.

#### Competitions

When local authorities identify a need for a new school they are statutorily required<sup>1</sup> to initiate a competition that any bidder can enter. The winner of the bid

1. See Section 7 of the Education and Inspections Act 2006 and the School Organisation Establishment and Discontinuance of Schools (England) Regulations 2007

will then run the new school. This seems an obvious route for new providers. Unfortunately, local authorities almost never initiate competitions unless there are significantly more pupils than they have made provision for. Choice, competition and the quality of existing schools are rarely factors.

Even when additional places are required in an area, local authorities often opt for an academy (in which they now have considerable control over the sponsor, or even act as co-sponsor, as we will explore later), or seek permission from the Secretary of State to publish proposals for a new or expanded foundation or community school without running a competition.<sup>2</sup> Since September 2006 there have been 154 applications for exemptions from competition to the Department for Children, Schools and Families (DCSF) in total, of which 89% were granted.<sup>3</sup> In the same period there have been only 47 competitions.<sup>4</sup>

When a competition is announced, authorities can become a bidder – while also being responsible for the consultation process. This is a glaring conflict of interest. Tellingly there have only been two cases where the local authority has been a bidder in the competition and not won it.<sup>5</sup> Whoever wins the competition must set up a traditional school. They must teach the National Curriculum, abide by national pay and conditions and to an extent be responsible to the local authority.

### Need

Occasionally a group of parents or a community group can convince an authority to set up a new school. Their case must be made on ‘need’, which in reality almost always means one of two things. Either they need to demonstrate that there are not enough places for the number of children in the area. Or, more rarely, they need to show that a particular kind of education (typically a particular kind of religious education) is not being catered for.

Parents cannot propose a school which is free from the National Curriculum, national pay and conditions, or the other regulations which govern maintained schools. The greatest diversity possible through this route is a different ethos and admissions procedure based on faith.<sup>6</sup>

### Academies

The academy programme – a successor to the City Technology Colleges launched in the 1980s – was started under Tony Blair in 2000. The first academy opened in 2002, and the programme swiftly expanded. In 2004 the Government set a target of 200 academies by 2010 and in 2006 Blair expanded this to a target of 400. As of the beginning of 2010 there were 203 academies open with a further 100 due to open by September 2010.<sup>7</sup>

Only secondary schools and ‘all-through’ schools incorporating both primary and secondary provision can currently become academies.<sup>8</sup> Accordingly we will confine our discussion of academies to these schools. As the programme expands, however, there is no reason why stand-alone primary schools should not be included.

### Permission to set up an academy

Academies are established through a ‘brokering’ process. The DCSF matches potential sponsors with schools which have been identified by the local authority

2. See section 10 of the Education and Inspections Act 2006

3. DCSF, Details of Current and Completed School Competitions, 8 March 2010

4. DCSF, Details of Current and Completed School Competitions, 26 January 2010

5. *ibid*

6. DCSF, Guide for people wishing to set up a new school outside a competition, 2007

7. DCSF Academies Unit

8. Patrick Wintour and Nicholas Watt, “Tories plan to create thousands of primary academies,” *Guardian Education*, 25 April 2009 <http://www.guardian.co.uk/education/2009/apr/25/conservatives-school-policy-primary-academies>

and the Department as suitable for transfer to academy status. Before this can happen the authority must go through a long statutory consultation on the closure of the school the academy will replace. There is one unit in the DCSF to whom potential sponsors apply, but the local authority that has agreed to the academy also has a say in whether a particular sponsor is suitable.

Once brokering has occurred the academy sponsor must put in an Expression of Interest to the Department demonstrating their vision and plan for the school. This is signed by the local authority, the Department and the sponsor as formal commitment to the academy. From that point the sponsor enters 'feasibility'. Much of this is taken up by a consultation with a variety of stakeholders. Although

### The surplus place rule

One of the key differences between the American and Swedish models and the UK system is this country's presumption against "surplus places". The catch is that unless there are more places than there are children you can never have true competition or choice. Someone will always have to go to the school at the bottom of the preference heap because of a lack of places left elsewhere. In 2009, 34.3% of pupils in London did not get into their first-choice school, while over 5% of pupils in the capital were not allocated a place at any of their top six choices.<sup>9</sup>

The Government denies that there is a rule against surplus places.<sup>10</sup> Technically that is true, but there is an enormous amount of surplus place guidance, as well as no pressure or duty for the local authority to allow surplus places. The DCSF guide to setting up schools explicitly states that where approval is given for a new school which adds surplus capacity, local authorities will need to "consider parallel action to remove the surplus capacity thereby created".<sup>11</sup> The admissions code has similar guidance – if a school expands, the local authority should shrink another.<sup>12</sup>

In reality, local authorities do not let schools expand. Many academy sponsors have been refused permission to create more places in their highly oversubscribed schools because it would have an effect on a failing school in the area – which children are sent to when they don't get into the academy.

Those who are opposed to bringing new providers into the education market frequently argue that the whole education system could become much more expensive because of the inefficiency of allowing surplus places. Ed Balls has attacked the Swedish model, arguing: "This approach has huge costs – because of the huge expense of creating all the surplus places this relies upon."<sup>13</sup>

In fact the experience of Sweden suggests there is no evidence for this assertion. Of five studies investigating the impact of free schools on costs, only one (which has been widely discredited by other researchers) shows a significant effect. This study, funded by the Trade Unions Congress, found that in 2001 a 1% increase in the number of free schools increased costs by about 250 krona (about £20) for each student in the municipality. In its own study the Swedish School Board concluded that there was no clear causal effect between an increase in free schools and an increase in costs.<sup>14</sup> One study found a marginal increase in costs of 2% for a 10% increase in private school share, which they concluded was "a very high return" given in the improvement in attainment.<sup>15</sup>

9. BBC News, "Delay over for parents waiting to hear on school places," 2 March 2010, <http://news.bbc.co.uk/1/hi/education/8545182.stm>

10. Sturdy, E and Freedman, S, *Choice? What Choice? Supply and Demand in English Education*, Policy Exchange 2007 p.22

11. DCSF, *Decision Makers' Guidance for establishing a new maintained mainstream school*, 2009

12. DCSF, *School Admissions Code*, February 2010, p15

13. Ed Balls, *Guaranteeing a Good School for All*, Lecture to the Cass Business School, Thursday 13 November 2008, p15

14. See Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009, pp. 33-34 for a more detailed discussion of this evidence.

15. *ibid*

the only statutory consultation is with the local authority, the Department ensures a wider consultation occurs. Even though the authority must already have agreed to an academy in order to reach this stage, they are still formally consulted, and the consultation period takes three months.

What is clear from this process is the extent to which the local authority remains involved through every stage. Furthermore, potential providers can apply or appeal to only one organisation in their bid to run schools. This is certainly not a demand-led system in any real sense of that phrase.

### Changes to the academy process

Local authorities were not always this involved. In the ten years since they were announced, the purpose of academies has changed dramatically. Initially the sponsors were charities and wealthy individuals taking over large, failing secondary schools from a local authority. They had almost total freedom over the curriculum, the building, and over pay and conditions. The sponsors were asked to bring in two

“ In the ten years since they were announced, the purpose of academies has changed dramatically ”

million pounds to the project (although in reality many have not paid the full amount, or have had at least partial exemptions) and the DCSF spent significant amounts of time and money on the implementation of each school. Crucially, the programme was explicitly designed to tackle local authority failure.

Announcing the scheme in 2000, the then Education Secretary David Blunkett said that where a local authority was failing to provide a good quality education “we have an obligation to do something for those children and for the community”.<sup>16</sup>

This presented a challenge from the beginning. Almost all academies were replacements of existing schools, which meant that the local authority had to agree to transfer the building and land. As the programme expanded, cooperation with the authority became increasingly important. This need for cooperation was strengthened when Ed Balls became the new Secretary of State for Children, Schools and Families. The local authority was given a larger role in the planning of the academy, and often became a ‘junior sponsor’, meaning that they had some representation on the board of the academy, and were involved in the development of the Expression of Interest and all other plans for the school.

Autonomy has also been reduced in other areas, as we will discuss later. The incorporation of academy procurement into a large, national system for school building projects – the Building Schools for the Future programme (BSF) administered by the quango Partnership for Schools (PFS) – has reduced the amount of autonomy and control sponsors have over school building. BSF also rolls academies into local authorities’ strategic plans for schools – documents which plan a decade ahead for the exact shape and provision of the school landscape in a particular area. We will discuss the impact of the BSF programme on academies in more detail in chapter three.

### Academy accreditation

If making an application through a competition or on the basis of need, the local authority (or occasionally the office of the Schools Adjudicator, which is appointed

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16. BBC News, Anger at Scheme for failing Schools, 15 March 2000, <http://news.bbc.co.uk/1/hi/education/677996.stm>

## 16-19 commissioning

Following the Apprenticeships, Skills, Children and Learning Act 2009, responsibility for the commissioning of education provision for 16-19 year olds will transfer from the Learning and Skills Council to local authorities from April 2010.<sup>17</sup> This has raised fears amongst advocates of academies that the creation of academy sixth forms- either through the expansion of an existing academy, or the creation of a new academy incorporating a sixth form- will be blocked by local authorities seeking to protect existing local post-16 provision from competition.

This point was previously raised in a Committee debate on the bill in the House of Lords. It was reported that the Harris Foundation had already been told that they could not open sixth forms in two academies because it did not fit with the local authority plan.<sup>18</sup> Baroness Perry of Southwark stressed “the need for an academy to be able to develop a sixth form if it so wishes without any intervention from the local education authority that may prevent it from developing it in a way in which it logically needs to develop if it is to fulfil its academic purpose.”<sup>19</sup> Baroness Morgan of Drefelin replied that “if there is a disagreement locally about the number of academy places to be funded, the matter would be referred to the Young People’s Learning Agency, acting on behalf of the Secretary of State.”<sup>20</sup>

Given the close strategic links between the YPLA and local authorities (see the accountability section below), this statement is not entirely reassuring. There remains “genuine anxiety that academy sixth forms will lose out” due to “the possible self-interest of other local organisations.”<sup>21</sup> Academies must be able to judge for themselves whether their duty to improve local standards and raise community aspirations is best served by the incorporation of sixth-form provision.

to decide on competitions when the authority enters) decide who the successful bidder is. There is a range of criteria, from the sensible – the level of finances available for the school, the provision of land – to the restrictive, such as the number of places and whether the new school will tackle divisions within the community. As of March 2010 only one secondary school has been set up by a group of parents on the basis of need under the current arrangements, and in this case there was both a clear shortage of places and a local authority which was extremely enthusiastic about the idea.<sup>22</sup>

In February 2010 the Government launched a new accreditation process for academies.<sup>23</sup> Sponsors are now divided into those allowed to run a single school and those allowed to run several. In both cases it is very difficult for organisations not already providing education to run academies. This is a radical shift. The theory behind the original programme was that those with different experiences and skill-sets would benefit schools which had been failed by a traditional education provider – the local authority. Under the new system the organisations must show evidence of “track record, capacity and educational expertise”.<sup>24</sup> As a result the type of sponsor has moved from those with business backgrounds to education organisations: further education (FE) colleges, universities, schools and local authorities themselves. At the same time single sponsors are being replaced by conglomerations of two or more groups. The local authority is often one of those

17. See DCSF website <http://www.dcsf.gov.uk/14-19/index.cfm?go=site.home&sid=57&pid=505&lid=669&ctype=Text&ptype=Single>

18. House of Lords debate on the Apprenticeships, Skills, Children and Learning Bill <http://www.theyworkforyou.com/lords/?id=2009-07-02a.373.4>

19. *ibid*

20. *ibid*

21. Open letter from Mike Baker to Jim Knight, [http://www.spectator.co.uk/coffeehouse/archive/2009/February/page\\_5/](http://www.spectator.co.uk/coffeehouse/archive/2009/February/page_5/)

22. Elmgreen School in Lambeth, see <http://www.lambeth.gov.uk/Services/EducationLearning/BSF/BSFSchools/BSFElmgreen.htm>

23. Department for Children, Schools and Families press notice, ‘Ed Balls invites bids for new school chains, 10 February 2010 [http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn\\_id=2010\\_0036](http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2010_0036)

24. Department for Children, Schools and Families, ‘Guidance on becoming an Accredited School Provider or an Accredited Schools Group in the secondary phase,’ 2010 <http://www.dcsf.gov.uk/accredited/downloads/guidance.pdf>

sponsors, remaining involved in schools which have already failed under their control. Ultimate responsibility, and liability, is unclear.

The new process has three major flaws. First, it dramatically reduces the pool of potential providers. Many of the existing, highly successful sponsors of several academies would not have qualified – or would not have been willing to enter – under this new system. Putting weight on existing education organisations makes it much less likely that innovation and new models will occur.

Second, it confirms the local authority's central role in deciding who should set up schools, what kind of schools they should be, and under what circumstances. The new accreditation process states that local authorities should be acting as 'strategic commissioners' of schools, and that they can now select from the pool of Accredited School Providers and Groups when looking for "a lead sponsor for an academy or lead partner for a majority trust or federation."<sup>25</sup>

Local authorities, it seems, do not need to have a demonstrable track record of success to be providers – but they can decide if others do. Given that some local authorities are hostile to diversity and devolution in general, bringing academies further under their control can only make them increasingly similar to the schools they replaced.

Third, the new accrediting system judges a provider solely on its history, rather than on its plans for the future. Rather than allowing any potential provider to demonstrate its vision and competence through an application and through future accountability, the DCSF will presuppose its capability or lack of it according to the type of organisation involved.

In summary, there are three key problems with the current routes to setting up new schools. The process is not demand-led, local authorities have an effective veto on the success of a bid, and there is a lack of transparency in the process.

There is no mechanism in the state sector by which parents and children, rather than local or national bureaucracies, decide whether a new school should be created. If an application is made on need, the local authority decides whether that need is already met. If a local authority decides on a competition and designs a process, the Office of the Schools Commissioner evaluates the bids. In the case of academies, the DCSF 'brokers' a partnership between the local authority, the school to be taken over, and a sponsor they have decided might be suitable.

This means the local authority now decides on who runs a school- to a considerable or total extent- whatever route potential providers go down. In some cases local authorities are extremely good, but even if they are not they have the ability to block any provider who might offer something better. There is an enormous geographical bias within the academies programme, with many children not benefiting purely because of the borough in which they live. Those children are inevitably the poorest, without the ability to move into catchment areas with good schools.

Even when new providers are allowed in, the basis on which those bureaucracies make that decision is not always obvious. While the bids ('Expressions of interest') from academy sponsors are published, a detailed analysis of why one sponsor was considered more suitable than another is not. Nor is it always obvious why one organisation won a school competition over another, making it very difficult for anyone to learn from the process.

25. *ibid*

## Recommendations

- **The local authority should not have an effective veto on the existence of an academy. Cooperation should be encouraged**, but should not be mandatory. Giving local authorities effective control of the set up of academies has created inevitable geographical bias. While cooperation is usually sensible, it should not be a deal-breaker. Funding agreements and Expressions of Interest should be signed between the Sponsor and the Department – and no other body.
- **There should be a wider range of potential sponsors, with greater emphasis on the different skills non-educationalists can bring.** The original concept behind academies was that business expertise could be of use in education. That concept has been lost, and as a result extremely effective potential sponsors are blocked from taking over failing schools. It is not clear that ARK or Harris – two of the most successful academy groups – would have qualified under the new accreditation system.
- **There should be a universal, transparent application system for groups who want to set up a new school.** It should be completely clear what groups have to do, who they have to apply to, and under what conditions they will be accepted. It should not be any more difficult to start a school in Bradford than Bristol.
- **Demand should be considered a good reason for a new school.** Parental demand – whether because of underperformance in local schools, a lack of provision, or because they believe their child will benefit from a different curriculum or ethos – should be the basis of evaluating new school applications, regardless of whether there are enough places in the area.
- **Competence and quality should be the tests for new providers.** Any group which is neither extremist nor criminal, is able to demonstrate financial competence, has a good and viable plan for a curriculum, can demonstrate demand from parents and will accept appropriate accountability should be able to set up a school. The application for a new school should be based on what the provider wants to do, what they can do, and a considered judgement by the authoriser - not whether they have a background that is considered suitable.

## Implementation

Once permission for a school has been provisionally granted, academies go into what is known as the ‘pre-feasibility phase’. The sponsor must choose one of about a dozen approved Project Management Companies (PMCs). The Government states that because of EU procurement rules sponsors are not allowed to meet project management teams before appointing them. While a few of the bigger academy sponsors have gained special permission from the Department to manage their own projects, most must still use one of the outside organisations.

Project management fees are very high. Most of the academy sponsors we consulted paid at least £500,000 for the work and many paid more. As some PMCs have privately admitted, this allows them to make enormous profits from taxpayer funds. Quality appears to be variable and unpredictable. Some sponsors told us that they had to do some of the work the PMC team was contracted to do, without any reduction or transfer of fees.



### A new vision for local authorities: Hackney

Hackney has had two attempts at outsourcing its education provision. At first this was unsuccessful, yet Hackney can now be seen as a strong model for transforming education within a local authority. Whereas once local parents fought to get their children into schools outside the borough, now Hackney's problem is schools being oversubscribed.

In 1999 Nord Anglia was contracted to provide the Schools Improvement Scheme and the Ethnic Minority Achievement Scheme for the struggling local education authority (LEA).<sup>26</sup> However, a heavily critical Ofsted report of November 2000 stated: "We do not believe that Hackney LEA has the capacity to provide a secure, stable context for continuous educational improvement,"<sup>27</sup> adding that "the outsourced school improvement functions have been too slow to take effect".<sup>28</sup> Ofsted noted that there was no process of school self-evaluation, nor of disseminating good practice in teaching and learning.<sup>29</sup> Consequently, in 2001 the Government announced that an independent trust would be contracted to "plan, provide and manage education and educational related services in Hackney."<sup>30</sup>

In 2002 the Learning Trust, a private, not-for-profit company, took over the provision of education in Hackney under a ten-year contract signed by the Trust and the Secretary of State for Education and Skills. All but a few of the statutory functions of the Education Authority were transferred, although ownership of school buildings remained in council hands.

Since 2002, the Learning Trust has successfully established five new academies in the borough, each with different sponsors – Sir Clive Bourne, Jack Petchey, UBS, the City of London Corporation in partnership with KPMG, and the Skinners Foundation livery company. The Mossbourne and Petchey Academies opened in 2006, the Bridge Academy (UBS) in 2007, and the City Academy in 2009. The Skinners Academy is due to open in September 2010. Mossbourne, in particular, has become famous as a shining example of what the academies programme can achieve in a deprived community. The academy was set up on the site of the failed Hackney Downs school, notorious in the 1980s and 1990s, and finally closed in 1995. This year 87% of pupils received 5 A\*-C grades at GCSE including English and Maths, and the academy has received two 'outstanding' judgements from Ofsted.

The Trust is overseen by a board including Richard Hardie, Vice-Chair of UBS, and Alan Wood, the former Director of Education at Hackney LEA, as Chief Executive.<sup>31</sup> The Trust must present its annual budget to the council as well as an annual plan listing its objectives and priorities. The council can ask for changes but cannot reject the plan outright unless it can prove the trust is not meeting its obligations.

Nor is there much difference between PMCs. There is a highly formal process of management which the Department prescribes. There are almost 200 items on the checklist from developing an ICT Education Vision to creating an 'issues log'. While the sponsor is technically responsible for the school, it is the Department to whom the PMC reports and is accountable.

Other than these companies, with which all the sponsors we spoke to were dissatisfied, advice is extremely limited. Many felt the advice they were given by the PMCs was superfluous, but wished they had had access to more help on

26. Local Government Chronicle article, <http://www.lgcplus.com/news/nord-anglia-education-plc-named-as-contractor-for-key-hackney-lea-services/1416278.article>

27. Ofsted Inspection of Hackney Local Education Authority November 2000 [http://www.ofsted.gov.uk/oxcare\\_providers/la\\_download/\(id\)/549/\(as\)/LA/la\\_204\\_200.pdf](http://www.ofsted.gov.uk/oxcare_providers/la_download/(id)/549/(as)/LA/la_204_200.pdf) (p.6)

28. Ofsted Report, Inspection of Hackney Local Education Authority, November 2000, p. 3

29. Ofsted Report, Inspection of Hackney Local Education Authority, November 2000, p. 13

30. Report of the Leader and Cabinet Member for Education, Hackney, 'Contract with the Learning Trust', July 2002

31. The Learning Trust, [http://www.learningtrust.co.uk/about\\_us/docs/jar\\_summer\\_2006.pdf](http://www.learningtrust.co.uk/about_us/docs/jar_summer_2006.pdf)

employment issues, on making contact with parents and others who mattered, on dealing with hostile media, or on how to handle legal challenges. There were many cases of sponsors asking technical and practical questions of civil servants who did not know the answer. Nor are sponsors given the information needed to do a good job once the school opens. As we will discuss later, access to the predecessor school is patchy, and performance management and observation pre-opening is extremely difficult.

### Recommendation

- **Academies should be able to opt for alternative project management arrangements.** The expense of project management companies has been a huge drain on resources – which might have been better spent on core staff in the academies unit, amongst many other things. Many sponsors have significant expertise in project management, and more should be allowed to manage the process themselves. Where project management companies are hired, it should be on the basis of outcomes and work done – and they should be responsible to the sponsor, not just the department.

### Authorisation of Swedish schools

Our discussion so far has focused on the academy programme, because few schools are set up by any other route, and those that are do not have independence. However, there is a crucial difference between the academy programme and the schools which are seen in Sweden and the United States. Where academies are usually takeovers of existing secondary schools, ‘free schools’ and ‘charter schools’ respectively are usually completely new supply. They do not inherit teachers, pupils or buildings, but are new ventures.

This makes authorisation considerably simpler. Starting a new school is a simpler task than taking over a large failing one, and there is less need for widespread agreement because parents, teachers and pupils are not being affected as directly.

Sweden has the simplest and most transparent authorisation system for new schools of the three countries which have recently introduced alternative providers. All schools apply to the Swedish Inspectorate for permission to set up a school. The emphasis in the application is on the financial viability and competence of the organisation, not its pedagogy, and the process usually takes under six months. The simplicity of the application encourages providers to be flexible and innovative in the use of space and facilities. If parents want to send their child to a school in an office block, no one will prevent them from doing so.<sup>32</sup>

The emphasis in the Swedish system is on demand. The application form asks providers to demonstrate that at least 20 parents are signed up, and the success of the school depends wholly on the number of pupils attracted. Funding for buildings, teaching and other equipment flows from pupil numbers.<sup>33</sup>

“ Sweden has the simplest and most transparent authorisation system for new schools of the three countries which have recently introduced alternative providers ”

32. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.31

33. *Ibid* p.32

However, municipalities (the equivalent of our local authorities) in Sweden are consulted in the process of setting up a school. They present facts and opinions to the inspectorate on whether a new school could have a damaging effect on neighbouring schools. Approximately 40% of applications are rejected on this basis.<sup>34</sup> Partly because of this there has been fairly little excess capacity created as a result of the Swedish reforms. The large growth in the population of school-age children has meant that most new schools have dealt with increasing numbers of pupils, and not created significant competition. This is also likely to be the case in the UK in the next few years.<sup>35</sup>

#### Authorisation of US Charter schools

There is no such thing as a standard charter school. While there are over 5,000 schools with that title, what a charter means varies massively between states and laws vary from the excessively permissive to the ludicrously restrictive. As of 2009 the number of schools which have been approved in different states range from four in Virginia to 860 in California.

Some states, such as Iowa, will only allow public school ‘conversions’ rather than new charter schools - akin to the academy programme in the UK. Others focus on completely new schools run by different providers.

“ Like the UK, most US states have explicit restrictions on the kind of bodies that can set up charter schools ”

Quality is similarly variable. New York, Newark, Boston and Chicago have superb charter schools. Other areas have fared less well. A recent study by Stanford University found that while some states had charters which significantly improved results, others had

lower performance than traditional public schools.<sup>36</sup> They found that artificial limits on the number of charter schools, poor authorisation, and not allowing a route for a rejected provider to appeal all reduced the likelihood of charter schools succeeding.

Like the UK, most US states have explicit restrictions on the kind of bodies that can set up charter schools. Only a couple allow for-profit companies to hold charters directly. Several states also prevent charters from having contracts with for-profit companies.

Most states also restrict the number of schools a charter organisation can hold. They limit each charter to a single school overseen by a unique board. Some allow more than one school, but require each to have its own governing board. This is clearly a barrier to supply – and to the replication of good models. Many of the most successful charter schools are chains because they can transfer knowledge from one school to another. The Knowledge is Power Programme (KIPP), which is widely recognised for the excellence of its schools, runs 82 different schools across 19 states.

Again, states vary enormously when it comes to authorisation of charter schools. In a number there is a single authoriser – as the DCSF is in England - to whom the operator applies. At the other extreme is Ohio in which more than 60 different organisations can decide if an operator is suitable.<sup>37</sup>

Fifteen states have multiple authorisers. This has three advantages. First, it means that there is no geographical monopoly on authorisation, making it less

34. Private information

35. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.26

36. Stanford CREDO Report Summary <http://credo.stanford.edu/reports/CREDO%20NYC%20Report%20Press%20Release%20-%20FINAL.pdf>

37. Information from interview with Thomas Fordham Foundation, an Ohio-based authoriser.

likely that the entire programme can become more restrictive overnight. Second, it allows more capacity: in England the DCSF Academies Unit is already struggling with the number of schools it must monitor. Multiple authorisers lessen those constraints. Third, it allows organisations such as universities to be involved in school creation. Their experience can have a positive effect on the quality of schools whose aim is to get their pupils into higher education institutions.

In some states the local school board (effectively the local authority) decides whether a charter school can be set up. Unsurprisingly, they do not approve many. Creating a new charter school means that some pupils will be diverted away from the local schools, removing funds from the school board and challenging their schools to compete.

But there are also potential dangers associated with having multiple authorisers. In particular, where authorisers are not themselves monitored properly they can be poor at quality control. Multiple authorising systems which are successful – such as those in New York – combine independence from traditional educational bureaucracies with being held clearly accountable in law and regulation for the quality of the schools they authorise.

The Stanford study mentioned above came to a number of conclusions based on their data about what made a charter law successful, from which the UK can learn. Key findings were:

- **Caps on charter school numbers lower achievement.** Many states artificially limit the number of new schools. This lowers the impact on achievement that charter schools have.
- **Not allowing appeals on application refusals lowers achievement.** If providers are not allowed to make a case when their application is refused, potentially good schools are blocked. This has been shown to lower achievement.
- **Giving potential schools the opportunity to go to an ‘easier’ authoriser lowers achievement.** If providers can choose an authoriser which will be less rigorous in analysing applications, then the quality of schools will go down. This is particularly true in states with very large numbers of authorisers which are not regulated.

#### **Recommendations for the UK:**

- **As the number of academies and new schools grow, the Government should move from a central unit to multiple authorisers.** The Department is already struggling with the number of schools it maintains, and it cannot be as aware of issues as a more local body which knows the area. As the number of academies and new schools increase, universities, regional bodies and even local authorities (provided they do not have a geographical monopoly on authorisation) should be given the right to authorise schools. They should be monitored to ensure that they are maintaining quality, but allowed to make local decisions.
- **There should not be a geographical monopoly on authorisation.** Evidence from America shows that where groups can appeal against refusal of their application, the benefits for children in the state are greater. A multiple autho-

rising system will not work if there is only one body in a given area a provider can apply to. In New York providers can apply to the State, the City and the University. A similar set up should be considered here.

- **All multiple authorisers should be of high quality and properly regulated.** It is essential that authorisers are monitored to ensure they are not giving out applications to groups which are clearly not competent, are extremist, or are guaranteed to fail.

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# 2

## Planning and Building Regulations

Of course, technical permission to set up a school does not mean very much if you cannot get a site. Currently there are a variety of restrictions on what kind of land you can use, what sort of building you can build (or refurbish) and what you have to do around the building to be allowed a school.

### Land

In England, land is categorised according to its use. Residential, commercial, shopping – all have different classifications. Schools are classified as D1 land, as are other ‘non-residential institutions’ such as libraries, museums, church halls and medical buildings.<sup>38</sup>

If you want to set up a school it makes sense to use D1 buildings where possible. In the absence of permitted development rights (changes allowed without planning permission), changing the use of a building from one use to another requires express planning permission from the local planning authority,<sup>39</sup> which is time consuming, potentially expensive and does not offer guaranteed success. Second, having land which remains in the D1 category artificially lowers its price because it is not useable by commercial and residential developers (unless they can get permission to change it out of D1) – making it more likely that a school provider could afford the site.

Unfortunately local authorities have gained planning permission to sell off a lot of D1 land in the last decade. This is probably made easier by the fact that the local authority is the freeholder, but also the body which grants planning permission. Where schools, particularly rural and special schools, have been closed and the buildings have become available, they have often been sold to developers for conversion to residential use. This is partly because local authorities have a statutory duty to obtain best “consideration” (usually meaning value) for the assets they hold. That generally means selling to the highest bidder, which in turn means changing the classification of land to allow for residential and commercial development, removing the price deflation that D1 classification creates.<sup>40</sup>

However, local authorities do also have a general power of ‘wellbeing’ for their area, which could include taking a decision that a school would enhance the lives of residents. This could be used to override the best consideration requirement and permit the sale of land for a school.<sup>41</sup> In order to do so though, except in a few special cases, the Local Authority must both decide it wishes a school to be set up, and apply to the Secretary of State for Communities and Local Government for consent. So even if a local authority is convinced of the need for a new school, consent is not automatic.<sup>42</sup>

38. Statutory Instrument 1987 No. 764, The Town and Country Planning (Use Classes) Order 1987 Page 2

39. Business Link, ‘Planning permission and building regulations,’ <http://www.businesslink.gov.uk/bdotg/action/detail?type=RE-SOURCES&itemId=1074476715>

40. Local Government Act 1972 Section 123 see [http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1972/cukpga\\_19720070\\_en\\_20#pt8-pb3-l1g139](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1972/cukpga_19720070_en_20#pt8-pb3-l1g139)

41. Ibid.

42. *R (on the application of Lemon Land Ltd) v Hackney LBC* (2001) EWHC Admin 336; (2002) EG 128. Lightman J.

This case has rarely occurred with academies, when local authorities usually transfer ownership of existing, full schools through a very long term lease to the academy sponsor. With new supply however, the requirement on best consideration is an effective block to development.

A number of academies have been built on non-D1 land. However several providers told us that they tried to obtain sites in areas where there was a shortage of school places, and the land was still sold for development because ‘planning policy’ did not support a school in that location.

## Planning permission

### Traffic

Schools can, and usually do, create more traffic from staff and parents. This can mean local opposition from residents, and is also a consideration for local authorities when reviewing an application for planning permission.

Any planning application includes a requirement for information on whether vehicle access, pedestrian access, or roads will be changed or affected.<sup>33</sup> For schools the answer is generally yes, and you must then submit a ‘traffic assessment’. Part of that assessment is a traffic plan,<sup>34</sup> which all school providers must produce and which costs several thousand pounds. In the case of one independent provider we talked to, they were asked to create more than one traffic plan – the second by people appointed by the local authority at a considerably higher cost than the first.

In the traffic plan local authorities require schools to be located in such a way that they maximise accessibility by walking, cycling and public transport. All traffic plans, including those of schools, must increase sustainable transport, and reduce car usage and unnecessary travel time.<sup>45</sup>

### Section 106

Planning obligations created under section 106 of the Town and Country Planning Act 1990 are known as ‘Section 106 obligations’.<sup>46</sup> They are used by councils to secure contributions to infrastructure, services, amenities and other ‘in kind services’.<sup>47</sup> This usually occurs as a negotiation between the local authority and developer before you even submit a planning application. In the case of schools the requirements are often related to traffic: local authorities can ask for payments for pedestrian crossings, barriers and other off site works. These are extremely expensive – a pedestrian crossing can cost £300,000.<sup>48</sup>

### Local protest

Any member of the public can comment on a specific planning application – from design and layout, external appearance, access for the disabled, loss of daylight and privacy, noise, traffic and parking, and loss of use of land – either online or by letter to the council. This is taken into account by the planning officer in determining a planning application.<sup>49</sup> Planning controls to regulate development proposals can be imposed both by planning conditions and by a section 106 planning obligation.

Even after a school is opened the public can protest against ‘breaches’ of “planning control”. For example, they may challenge the fact that too many parents are dropping their children off in front of the building despite a planning agreement

43. Planning Policy Guidance 13: Transport see <http://www.communities.gov.uk/planningand-building/planning/planningpolicyguidance/planningpolicystatements/planningpolicyguidance/pg13/>

44. Department for Transport, *A safer journey to school: a guide to school travel plans*, <http://www.dft.gov.uk/pgr/sustainable/schooltravel/schools/asajourneytoschoolaguidet5758>

45. Planning Policy Guidance 13: Transport see <http://www.communities.gov.uk/planningand-building/planning/planningpolicyguidance/planningpolicystatements/planningpolicyguidance/pg13/>

46. Town and Country Planning Act 1990 see [http://www.uk-legislation.hmso.gov.uk/acts/acts1990/ukpga\\_19900008\\_en\\_8#pt3-pb14-l1g106](http://www.uk-legislation.hmso.gov.uk/acts/acts1990/ukpga_19900008_en_8#pt3-pb14-l1g106)

47. *ibid*

48. Private interview

49. Having Your Say, see <http://www.planningportal.gov.uk/england/public/planning/haveyoursay/planningapplicationsrep>

or condition stating that they cannot do that. Complaints are all recorded and investigated and if the school is found to be in breach of planning control they can be instructed by the authority to do whatever is deemed necessary to be within the original agreement.<sup>50</sup> This is usually done through a formal “notice” but could also include court proceedings.

For schools procured through BSF or the Partnerships for Schools National Framework, the planning applicant is the local authority, so sponsors have little ability to negotiate reasonable planning conditions and s106 obligations.

### School Premises Regulations

The only legislation which prescribes standards in schools is the ‘School Premises Regulations’ which specifies minimum standards for all maintained schools.<sup>51</sup>

The regulations are in four key areas: school facilities, accommodation provisions, structural requirements and playing fields.<sup>52</sup> Many of these are sensible. There should not be snow coming through the roof, and the buildings should not collapse under their own weight. With others, it is unclear why they should be required if we moved to a system where parents have real choice on the kind of school they send their child to. For instance, it seems unnecessary to stipulate in law that there must be a head’s office and a staff room.

The only area of school property which is fully protected is playing fields. The Secretary of State for Children, Schools and Families must give permission to sell or develop playing fields that have been used in the last ten years. At the same time Sport England is a ‘statutory consultee’ on all planning applications that affect sports fields. As a matter of course they will oppose any planning application which “would lead to the loss of, or would prejudice the use of, all or any part of a playing field, or land last used as a playing field.”<sup>53</sup> This includes playing surfaces such as a playground with a netball hoop – not just a typical green playing field.

### Building regulations

Schools in England are subject to ‘building bulletins’ and ‘building regulations’. Some of these – such as those on acoustics and ventilation – are statutory. Others are merely ‘guidelines’, yet sponsors are pushed hard to follow them and have to make a strong case to break away from such things as standard classroom sizes.<sup>54</sup> All add expense to those wishing to build new schools or refurbish existing buildings and make it difficult for sponsors to innovate or develop a building that matches their educational vision.

#### Building Bulletins

Building Bulletins 98 and 99 (known commonly as BB98 and BB99) set out non-statutory guidelines for buildings and grounds in secondary schools and primary schools respectively.

Suggestions include how to design a brief for a building project, the key design criteria, and the minimum building and site area requirements for each of the categories of space (there are six for buildings) in a school.<sup>55,56</sup>

While BB98 and BB99 are technically non statutory, in reality new schools must adhere to them. The BSF programme (and its primary school counterpart the Primary Capital Programme (PCP)) will not award money for new projects unless they abide by those regulations. As one sponsor explained: “We had to comply with

50. Planning Investigations & Enforcement, Brighton City Council <http://www.brighton-hove.gov.uk/index.cfm?request=b1151289>

51. Statutory Instrument 1999 No. 2 The Education (School Premises) Regulations 1999 see <http://www.opsi.gov.uk/si/si1999/19990002.htm>

52. *ibid*

53. Sport England, *A Sporting Future for the Playing Fields of England*, [www.sportengland.org/facilities\\_planning/putting\\_policy\\_into\\_practice/idoc.ashx?docid=1ed19a00-14fa-4940-8a09-19cf63ce5](http://www.sportengland.org/facilities_planning/putting_policy_into_practice/idoc.ashx?docid=1ed19a00-14fa-4940-8a09-19cf63ce5)

54. Private interviews and planning roundtable discussion

55. *Building Bulletin 98: Briefing Framework for Secondary School Projects*, Department for Education and Skills

56. *Building Bulletin 99: Briefing Framework for Primary School Projects*, Department for Education and Skills



Building Bulletin 98 and justify areas where we didn't comply. They are guidelines, but are implemented as hard and fast rules." This is expensive, particularly for those trying to use existing premises. While buildings are adaptable, being too prescriptive in what they need to be changed into makes it more difficult to keep down costs.

There are a range of other guidelines on space which schools are recommended to follow. They include BB80 and BB88 on science in schools, BB81 on Design and Technology, and BB92 on Modern Foreign Languages.<sup>57</sup> There are also publications on kitchens and dining spaces, and sports facilities.<sup>58</sup> Again, while none of these are statutory, in effect they must be complied with before funding for buildings is forthcoming.

### New build versus refurbishment

In both Sweden and America, new schools have sprung up in unconventional surroundings. Commercial space, residential space, under-used school space – all have been used by providers with limited funds, often in densely populated urban areas with minimal amounts of land.<sup>59</sup> They have been able to do that through relaxed planning laws and, in New York's case, determination by politicians to give public land to new schools.<sup>60</sup>

“ We spoke to one group who spent several years trying to set up a new school. Their architects and construction companies all came to the same conclusion. It was cheaper to build a new fit-for-purpose building than it was to refurbish something existing ”

ing laws and, in New York's case, determination by politicians to give public land to new schools.<sup>60</sup>

The case here is very different. We spoke to one group who spent several years trying to set up a new school. Their architects and construction companies all came to the same conclusion. It was cheaper to build a new fit-for-purpose building than it was to refurbish something existing. This is not because of

integral structural issues with existing premises, but because of the range of regulations and laws which make refits extremely difficult. Most of those are covered in the section above, but environmental considerations also add enormous expense.

The last five years has seen an increasing emphasis on the environmental impact of public buildings. The Building Research Establishment Environmental Assessment Method (BREEAM) – the most commonly used method for assessing that impact- is used in the Government's Building Schools for the Future programme. Schools which are not BREEAM 'excellent' rarely get permission.<sup>61</sup>

But BREEAM is relatively simplistic – it looks at the environmental impact of a building, not the increased environmental impact on an area. If you have a building already in existence which is not carbon neutral (which few buildings are) when you refurbish it BREEAM will count the footprint of the entire building – not just the impact of the refurbishment. If you build a completely new building somewhere else which has a greater impact than the refurbishment but less than the old building– even though the old building still exists- it will get a better BREEAM rating.<sup>62</sup> This is obviously a large disincentive to refurbish buildings instead of building new ones, which is wasteful of space, unnecessarily expensive and not in fact better for the environment.

### Pushing the boundaries: Innovative UK Models

Although most schools are forced down traditional routes in terms of building, for the

57. Teachernet School Design Unit Publication List, March 2009, [http://www.teachernet.gov.uk/\\_doc/12521/School\\_Design\\_Unit\\_Publication\\_List\\_Mar09.doc](http://www.teachernet.gov.uk/_doc/12521/School_Design_Unit_Publication_List_Mar09.doc)

58. *ibid*

59. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009

60. Civic Builders, *New York Charter Schools: A Real Estate Primer*, 2004 [http://www.civicbuilders.org/PDF/PDF\\_CS\\_RE\\_Primer.pdf](http://www.civicbuilders.org/PDF/PDF_CS_RE_Primer.pdf)

61. Partnerships for Schools Design FAQs [http://www.partnershipsforschools.org.uk/help/faqtopic\\_0500\\_design.jsp#q6](http://www.partnershipsforschools.org.uk/help/faqtopic_0500_design.jsp#q6)

62. Private interviews

### Case study 1: New North Community School – Islington

The New North Community School was formed through a merger of two existing primary schools in Islington: Charles Lamb and Ecclesbourne. The numbers were declining at both schools, creating significant surplus capacity, and following a consultation exercise it was decided to close the two and build one new school. The new primary school was built on half of the Charles Lamb site, with the other half of the site and the whole of the Ecclesbourne site given over to housing for the Islington and Shoreditch Housing Association.<sup>63</sup>

The development of the new school was a PPP initiative between Islington Council and the private housing developer Community Solutions for Schools Ltd (CSC). A contract was signed between the Council and the developer in 2005 with the project completed in mid-2007. Planning obstacles were reduced because this was a local authority-inspired project, and there was no significant opposition from the local community despite initial concerns over the amalgamation of the two schools.

According to Morgan Sindall (the parent company of CSC) the total cost of the redevelopment project was £36 million.<sup>64</sup> The project created 59 affordable housing flats for key workers such as teachers, whilst 62 flats were available to rent privately. The council invested £7.6 million<sup>65</sup> with most of the funding coming from the private housing development. Morgan Sindall loaned the council some of the money for the school development in advance. The council also had costs for the project such as legal fees, accommodation for the two schools before they were re-housed and Section 106 costs. Overall, the council made no net gain from the project.

The New North Community School was designed by the architectural firm Sprunt. The design maximises the space to its fullest extent. The school has its own playground for ball sports and outside break time activities but also has a rooftop garden area.<sup>66</sup> This area has 8 varieties of apple tree with each class having its own wooden planter – both science and art lessons are taught in the garden area which won a London Schools Environmental Award in 2008.<sup>67</sup> There are currently plans to develop a seaside garden space on the roof. The centrepiece of the school is a large multi-coloured cone. Near the top of the cone the children have a brand new dance studio which provides a large space for rehearsals, workshops and after school activities.<sup>68</sup>

63. Islington Borough Self-Assessment November 2006  
[http://209.85.229.132/search?q=cache:ZExaD0vlg4J:www.islington.gov.uk/DownloadableDocuments/CouncilandDemocracy/Pdf/cpa\\_assessment\\_docs/borough\\_tour\\_nov\\_06.pdf+opposition+to+new+north+community+school&cd=2&hl=en&ct=clnk&gl=uk](http://209.85.229.132/search?q=cache:ZExaD0vlg4J:www.islington.gov.uk/DownloadableDocuments/CouncilandDemocracy/Pdf/cpa_assessment_docs/borough_tour_nov_06.pdf+opposition+to+new+north+community+school&cd=2&hl=en&ct=clnk&gl=uk)

64. Morgan Sindall,  
<http://www.msinvestments.co.uk/doc/39/Islington%20New%20North%20Community%20School.html>

65. Islington Council Press Release  
<http://www.islington.gov.uk/Council/CouncilNews/PressOffice/2007/06/3032.asp>

66. New North Community School  
<http://www.newnorthcommunity.com/playground-space>

67. New North Community School  
<http://www.newnorthcommunity.com/rooftop-garden>

68. <http://www.newnorthcommunity.com/dance-studio>

69. Private interview

reasons we have discussed, there are already some innovative examples of schools linking up with commercial space in order to maximise space and cut costs. Below are three case studies: a primary school that shares its new building with commercial and affordable flats, an FE college that tried to expand into a warehouse, and an independent school with a rooftop playground built out of shipping containers.

### Sweden

Sweden, in line with its liberal approach to school providers, has very simple building requirements. There is no central approach to planning and building, unlike the BSF programme in England. Beyond general restrictions on fire and basic safety that apply to all public buildings, schools do not have to comply with any regulations.<sup>69</sup>

### Case study 2: Lewisham College

Lewisham College is a large further education college in South East London. The college currently operates from two sites, Deptford Bridge and Lewisham Way. In 2008, it announced that it had secured approval from the Learning and Skills Council to consolidate its two campuses into a new, single site at Deptford Bridge. The construction of the new site would, inevitably, involve the gradual closure and demolition of certain facilities. In particular, the college required an innovative way of maintaining its sports and construction teaching, while the relevant facilities were being demolished at Deptford.

The college's solution was to make use of abandoned commercial property elsewhere in the South East London area: their plan was to relocate sports and construction facilities, for a period of three years to an industrial site at Stockholm Road. The site at Stockholm Road comprises two warehouses, with some offices at the front. The intention was to build "pods" within the warehouses, so that they could make best use of the space without needing to change the warehouse structure itself. These pods could be used for classrooms, construction workshops and sports facilities. In addition, the existing offices at the front of the warehouses would be converted into classrooms.

The Stockholm Road site would be a self-contained college. Parking would be available on site, but there were also plans to use parking space provided by Millwall Football Club's ground, which is nearby.

There was no major opposition to the plans from residents in the area, and Lewisham College claimed that the project would contribute to the regeneration of the local area.

Part of the capital for the Stockholm Road project would come from the Learning and Skills Council grant. Funding would also be provided from Lewisham College's future developments: after the building of the new, single Deptford Bridge campus, the surplus part of the Deptford Bridge site would be sold off as residential accommodation; in addition, the site at Lewisham Way would be sold off.

However, in June 2009, it was announced that Lewisham College's plans to consolidate its two sites had been put on hold, since the funding promised by the Learning and Skills Council was far more than the money actually available. The Department for Business, Innovation and Skills has said that Lewisham College would be able to apply for the next round of funding, in 2011-12.

Many schools in Sweden rent facilities, often on a long lease. IES, one of the largest school chains in Sweden, specifies to a developer the design of the school and then pays them over a long period for meeting those specifications as part of the lease agreement. It is very rare for free schools to start in new buildings.<sup>70</sup>

Schools tend to be much smaller, and do not offer the range of vocational and other qualifications required in the UK. Because of this, they can be more flexible with facilities. Sport and music is done in other buildings, often run by other organisations outside of normal school hours.<sup>71</sup>

Interestingly in Sweden municipalities not only cannot make objections purely on planning grounds, they rarely wish to. Most free schools' experiences have been of supportive municipalities.<sup>72</sup>

70. Private interview

71. Private interview

72. Private interviews

### Case study 3: Faraday School, London Docklands

The Faraday School was founded by the New Model School Company (NMS) in 2009 after the success of their first school, Maple Walk.<sup>73</sup> The Faraday School runs on the same lines as the other New Model Schools in that there is a clear emphasis on keeping costs down. NMS is a not-for-profit private company providing independent primary education but at a reduced cost to parents with fees at £5,300 a year. The school receives no state funds but is supported by investors who buy shares in the company (at only a 5% annual return) - any remaining profit is ploughed back into the schools.<sup>74</sup> The decision by Robert Whelan, the Director of NMS, to opt out of the 'facilities arms race' has enabled the schools to keep their costs low. Instead of extensive, costly facility building they simply rent playing fields, swimming pools and sports halls as they need them.

The Faraday School is based in a Victorian gatehouse in the Docklands, but has expanded its site upwards through an innovative use of six old shipping containers. 'Container City' is a low cost construction system and its use at Faraday has yielded a rooftop playground with both sheltered and outdoor space. Excluding design, planning, foundations, lifts, services to site and VAT the average price for completed containers on site is £55-70 per square foot.<sup>75</sup> And with port holes deliberately cut into the containers at low level, the children are never without a view.<sup>76</sup>

## US

As in Sweden, the use of converted space is common in America. That is partly because states have been reluctant to give public space and funding to charter schools. They are forced therefore to be highly flexible, often with few funds. Many schools are in former churches, and there is almost total freedom over the use of space. The KIPP schools, for example, move premises regularly.<sup>77</sup> When they start off with a single year they can be in the wing of an existing school's building. As they expand they move to new rented premises.

Again like Sweden, most space is rented, not bought. This is largely because funding is very limited for charter schools. Most are given significantly less than public schools in revenue, and no facilities funding.<sup>78</sup> Those which do have their own buildings have usually received philanthropic funding.

As with everything in the US, what state or city you're in changes the environment considerably. In New York for example, Mayor Bloomberg and his Chancellor (in charge of education) Joel Klein have given over public space at \$1 a year rent to charter schools.<sup>79</sup> Many co-locate with existing schools: they may be on the third floor while the public school runs on the first two. This creates some tensions over maintenance and management of the building, particularly given the hostility of public schools to competition upstairs, but it has allowed a number of schools to exist which otherwise would never have found premises.

What marks out both the Swedish and the American systems from the English is the level of creativity in approaches to space. Supermarkets, offices, churches, fire stations, laboratories and houses are used flexibly and cheaply by private and not-for-profit providers.

73. <http://www.newmodelschool.co.uk/faraday>

74. Genevieve Fox, 'Classes Apart', Daily Telegraph Magazine, 12 November 2009

75. <http://www.zen17279.zen.co.uk/CCfaqs.htm>

76. Genevieve Fox, 'Classes Apart', Daily Telegraph Magazine, 12 November 2009

77. Private interview

78. National Alliance for Public Charter Schools, Public Charter School Dashboard <http://www.publiccharters.org/dashboard/policy/page/overview/year/2010>

79. Private interview

### Recommendations:

'Big Bang'

- **To maximise the number of new schools, you could exempt them from all local planning controls.** All applications for schools could automatically go to the Secretary of State for Children Schools and Families. This would be politically both controversial and difficult, but it would remove the difficulties described above, particularly on traffic.

Below are a number of smaller proposals, which while not having the same effect would still go some way towards liberalising supply.

- **Schools which are additional alternatives should be free from the building regulations and bulletins which currently apply to schools.** Many of the building requirements which apply to schools are an unnecessary block on innovation and should be lifted from all schools. However, there is a key difference between the expectations of schools which children have to attend and the expectations of schools where parents make an active choice. In the former case, some basic minimum standards need to be mandated because parents cannot alter what is happening in any other way. In the latter case, if parents are happy with the conditions of a building (beyond basic health and safety) then that should be sufficient. Therefore while building regulations should be relaxed in all cases, they should be removed altogether in the case of new schools.
- **Schools which replace existing supply should be free from space and design regulations, but should still meet minimum requirements on acoustics, ventilation and lighting.** Schools replacing existing schools need higher standards on buildings. However there is still a case for flexibility. Buildings under BSF have been up to ten times as expensive as equivalent schools in Sweden, partly because of the rigidity of the design.
- **BSF should be more flexible about BREEAM ratings in order to take into account the impact on the area, not just the building.** It is clearly both wasteful of space, and bad for the environment, if new buildings are built with a large carbon footprint because environmental assessments weigh against refurbishment.
- **There must be a presumption to keep D1 land.** Rather than an assumption of best consideration, there should be a presumption that D1 land is kept for school and offered to new providers - unless with the explicit consent of the Secretary of State for Children, Schools and Families.
- **Schools should not be restricted to D1 land.** If there are to be a significant number of new schools, they must be able to use more buildings. Schools should be able to use commercial, residential and even industrial property which meets minimal standards.
- **New schools should be encouraged to lease, not buy.** Current capital funding comes in one up-front payment, usually through BSF or the PCP program. If instead there was some additional funding for facilities according to the number of pupils in a school, then providers could choose whether to lease or to borrow against future income to buy. This would also have the advantage of reducing risk to the Treasury – if schools don't succeed in attracting pupils, they won't receive any capital funding – and spreading the cost of capital funding over many years.

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# 3

## Building Procurement

As we mentioned in Chapter One, the freedom for academies to innovate was curtailed once again when the building of new academies was handed over to the Building Schools for the Future (BSF) programme in March 2006.<sup>80</sup> BSF is a nationwide school building and refurbishment scheme which was launched in 2003 with the purpose of renewing Britain's dilapidated school estate.

Unfortunately, as the 2009 Policy Exchange report *Building Blocks? An Investigation into Building Schools for the Future* discussed, ministers wanted a grander vision for BSF than simply repairing and replacing unsuitable buildings.<sup>81</sup> It was instead designed to achieve 'educational transformation,' a goal so nebulous that no-one involved in the programme appeared to know what it meant. The result is a scheme characterised by complexity, delay, endless advisers and above all enormous expense, with the total cost to the taxpayer estimated at around £55 billion.<sup>82</sup>

The linking of BSF to 'transformation' served a grandstanding political purpose. With regard to the academies programme, BSF serves a political purpose of another kind. The vast sums of money attached to the scheme make it a useful carrot to persuade otherwise hostile local authorities to accept an academy in their area. While the Secretary of State can in theory authorise an academy in defiance of the local authority's wishes, in practice this has never occurred. As stated in the Government's 2007 Academy Prospectus, "most academies are, in effect, jointly commissioned by the (Department) and the relevant local authority on a partnership basis."<sup>83</sup> In order to secure agreement, the DCSF can use the money made available through BSF as an inducement. It turns out that the prospect of tens of millions of pounds' worth of capital funding can have a disarming effect upon a recalcitrant local authority.

"To secure for the long-term a strong High School in the South Wye area, the current school buildings need to be replaced at a cost of £20,000,000... Elsewhere it is unlikely that any alternative source of funding will be available. In the absence of any other funding the Government's Academy programme is a way to achieve what is required."<sup>84</sup>

Herefordshire Council decision paper on Wyebridge academy proposal

This is an extremely expensive and potentially counter-productive method of securing the co-operation of local authorities without really convincing them of the benefits an academy can bring. An authority induced to co-operate in this way might prove to be unsupportive or obstructive towards the academy in the future.

As a consequence of the provision of academy buildings through BSF, the role of sponsors in the procurement process has become increasingly marginal. When

80. See PFS website for further details of the BSF academies programme. <http://www.partnershipsfor schools.org.uk/about/aboutacademies.jsp>

81. Katherine Quarmby and Anna Fazackerley (2009), *Building Blocks? An Investigation into Building Schools for The Future*, Policy Exchange

82. *ibid*

83. DfES (2009), *Academies: Prospectus for Sponsors and Local Authorities*,

84. Herefordshire Council decision paper on Wyebridge academy proposal, <http://councillors.herefordshire.gov.uk/Published/C00000251/M00002334/A100012001/SCabinetReportonWyebridge2408.docA.ps.pdf>

the decision was made to procure academies through BSF, the DCSF stated that “academies will now be involved in local authorities estate planning which will allow more integrated implementation of their strategic vision for secondary education across the local authority,” adding that sponsors would “have a limited role during the academy construction but will be informed of progress and consulted when required.”<sup>85</sup> Former schools commissioner Sir Bruce Liddington observed that the sponsors’ role “ceased to be the management of the buildings programme and became an advisory one at the edge of the building programme.”<sup>86</sup>

Sponsors we spoke to expressed concern at this loss of influence over construction. One sponsor who has been involved with the academies programme from its inception said: “We haven’t had to use BSF (for our previous academies), but we’re very fearful of what it would be like. We’ve done well on our own and are accustomed to very high standards. The Government wants to hold your hand, but they are going to lose out on sponsors who can do more for the money.” Others complained that the buildings they were given were unsuitable to implement their educational vision. One sponsor told us: “There was consultation with the temporary leadership team [from the previous school] but they ended up with

not enough classrooms to fit the timetable they had at the time, let alone the new vision that we wanted to put in place. The principal sponsor must be involved early in the building programme.”

One of the most frustrating features of BSF procurement is its propensity for delay. Sponsors seeking to effect rapid

“ Sponsors seeking to effect rapid improvement in an area have found their ambitious plans waylaid by a slow-moving, bureaucratic process ”

improvement in an area have found their ambitious plans waylaid by a slow-moving, bureaucratic process. A single BSF programme at local authority level – particularly when that local authority is enormous (Birmingham for example) is such an enormous undertaking that the needs of individual schools and sponsors get submerged. As a sponsor told Policy Exchange, “Academies were supposed to get the kinds of schools that were in dire straits, but what’s happened is it’s got folded into BSF and it’s diluting what that fast-track can do. We’ve got to wait four years for a building, for instance, because that’s when it gets delivered.”<sup>87</sup> There have also been problems with overruns in the construction work itself. One sponsor told us that building work continued right up to the start of their new academy’s first term, although it should have been completed by the summer. This prevented the sponsor and staff from entering the new building in advance to bed in and prepare classrooms.

Given the precarious state of the public finances, it seems more than likely that the BSF programme will in future be subject to significant cuts in funding. One way to bring down the costs of academy procurement would be to encourage innovative solutions such as mixed residential and educational development of sites, the creation of smaller schools, and the use of converted buildings such as office blocks, as is common in Sweden and the US (see planning section). These measures would require the abandonment of academy procurement via the centralised BSF system. We have previously recommended that BSF be abandoned and replaced by a simple

85. Department for Children, Schools and Families, *Guidance to Academy Sponsors on PFS*

86. Katherine Quarmby and Anna Fazackerley (2009), *Building Blocks? An Investigation into Building Schools for The Future*, Policy Exchange

87. *ibid*

educational estate procurement fund, unencumbered by notions of 'educational transformation'. Sponsors with a track record of successful procurement should be able to continue procuring buildings themselves, while cost-effective support should be made available for less experienced sponsors. All sponsors should have a role at the heart of the design and construction process.

**Recommendations:**

- **The BSF programme should be radically simplified.** It should become a well-funded Building Estates Fund, decoupled from so-called 'educational transformation'. This could assist with procurement of all education estates renewal, including academies.
- **Experienced sponsors should be allowed to undertake procurement themselves.** In particular, multi-academy sponsors who have demonstrated that they can deliver buildings cost effectively and in good time should not have their hands held by the Government.
- **Small and new sponsors should be provided with cost-effective procurement support.** This could be delivered through the simplified Building Estates Fund.
- **The Government must ensure that the sponsor's vision is at the heart of the procurement process.** It does not make sense for academy procurement to be rolled into a long-term vision for the schools within a whole local authority. This is at odds with the academy mission to innovate.



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# 4

## Economies of Scale

One of the arguments against schools outside local authority control is that they will also be outside local authority support. Critics fear they will not be able to take advantage of cheaper procurement, of support and collaboration with other schools, or of a number of centralised legal, financial and other services. These are really arguments about economies of scale. Yet local authorities are not the only route to those economies. School chains or federations- where ‘back office’ functions are shared by a number of schools to cut down costs, standardise practice, and free up schools to teach- can have the advantages of a local authority without removing the benefits of competition and innovation.

The academy movement has seen an increasing number of ‘multi-academy sponsors’ – central institutions which take on administrative functions and leave their individual schools to educate. Like local authorities these have the advantages of scale, but without being a geographical monopoly. Other school providers can compete, and costs are lowered.

But academy sponsors which wish to run more than one school face a number of difficulties. As we discussed in Chapter One they must normally find a large failing secondary to take over: they cannot simply set up where there is parental demand. This slows the process down, and also guarantees that each individual project is very challenging. As we will discuss in part two of this report, large full secondary schools with inherited staff are more difficult to change than new institutions.

Meanwhile lack of transparency and continuity between local authorities makes bidding expensive and time-consuming. For federations setting up schools in different parts of the country a new negotiation with a new public body is needed in each case.

Funding is also an issue. Chains operating in more than one area are frequently frustrated that funding varies according to the local authority. For instance, one academy provider we spoke to had set up two schools in deprived areas sixty miles apart. The difference in funding between the two areas was £1,000 per pupil, leaving one school more than £1 million poorer than the other.<sup>88</sup> This provider added: “The funding formula also needs clarity. When you ask about it, nobody seems to know exactly what it is.” In addition, multi-academy sponsors have been blocked in the past from moving funding from one school to another. If one school is struggling while another is performing well, then being able to move funds within an organisation is important to overall success. As one Swedish multi-school provider explained to us: “There is a progressive argument for [transferring funding] as the schools losing money tend to be the weakest and

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88. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.33

profitable schools the strongest. It is about concentrating on outcomes not on process.” These issues would be relatively straightforward to resolve if funding was allocated through a national funding formula such as the pupil premium which has been endorsed by the Conservatives and the Liberal Democrats.<sup>89</sup>

At present academy sponsors are barred from making a profit, and a significant number of potential multi-academy sponsors, including the Swedish chain Kunskapsskolan,<sup>90</sup> have made it clear that they see this as a real barrier to expansion in the UK. There is no legislative reason why profit should not be allowed (these schools are simply classified as independent schools). When Tony Blair introduced academies, officials and the most radical ministers (including Lord Adonis and John Hutton) knew that allowing profit would provide a significant boost to the market, but the politics were considered unworkable.<sup>91</sup> There is no doubt that the politics are not easy. However, if we seek a large number of chains to drive expansion in the schools sector then this is one nettle that will need to be grasped. Barring profit reduces the pool of organisations which want to set up several schools, and means those that do exist do not have a direct incentive to expand.

Finally the recent accreditation system (see Chapter 1) launched by the DCSF splits providers into those who can run one or two schools and those who can run three or more. While some quality assurance is necessary before expansion, moving from one group to another is likely to be bureaucratic and slow. Chains will not grow as fast as a result.

Other sectors in the UK have already found flexible, working models. The Girls’ Day Schools Trust, for example, has 29 independent schools across the country. Each runs its own curriculum, although some practice is shared between them,<sup>92</sup> but the central trust provides many HR, legal, and financial services to its members. ULT is an academy operator which has built its back office operations on the model already established by its sponsor, the independent school operator United Church Schools Trust.

## Sweden

Sweden has highly favourable conditions for expansion and scale. It has one universal application system, with one set of criteria for acceptance. There are no limits on the number of schools a particular provider can run, and they can transfer funds between schools. Crucially organisations can hold ‘permissions’ for schools for some time while they find a site for school premises.

Swedish schools are also allowed to make a profit. This makes it considerably easier for groups to access private capital for school buildings. It also gives them a direct incentive to expand in two directions. First for a given school – as long as parents are happy with the size of the school then for-profit providers will want to accept more pupils. Second for setting up new schools – a new market is very desirable to a private company.

Since Sweden allowed new ‘free schools’ in 1992 the market has moved from single schools, often set up by religious groups, ethnic minorities, and those with alternative curricula such as Montessori and Steiner, to a large number of mainstream schools many of which are run by private providers in chains. There are clear advantages to this. School chains in Sweden such as Kunskapsskolan, which has recently come to the UK to sponsor academies, have found ways of converting buildings in cheaper and

89. See Freedman S, *School Funding and Social Justice*, for Policy Exchange’s model for the pupil premium.

90. Kunskapsskolan is opening two academies in Richmond as a ‘shop window’ for their educational model, but they have made no secret of the fact that they would open more if they were allowed to make a profit. See Telegraph, *Tories Look to Sweden for a Lesson on Schools*, 23 October 2009, for an example, <http://www.telegraph.co.uk/news/worldnews/europe/sweden/6407077/Tories-look-to-Sweden-for-an-education-on-schools.html>

91. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009, pp. 16-17

92. Girls’ Day School Trust, <http://www.gdst.net/aboutus/Pages/default.aspx>

more flexible ways and using teacher time more efficiently. Those innovations took years to develop, but expanding groups of schools can immediately transfer what they have learnt in one school to the next. Partly as a result, costs for free schools are significantly lower than for municipality schools. The only area which free schools spend significantly more on per pupil is teaching equipment.

**Breakdown of per-pupil spending in Swedish municipal and free schools, 2008<sup>93</sup> (Swedish Krona)**

School type	Total costs per pupil	Teaching	Capital	School meals	Teaching equipment	Health and social care	Other
Municipality schools	77,000	40,100	15,100	4,600	2,900	1,920	12,400
Free schools	73,600	39,000	14,800	5,400	4,100	1,240	9,100

At the time of writing there are approximately 11 krona to the pound.

The efficiency and innovation of school chains have also made it easier for Swedish free schools to be significantly smaller than their public school counterparts, which were already smaller than English schools. The majority of Swedish free schools have fewer than 200 pupils, and over half have fewer than 100 pupils.<sup>94</sup>

**US**

The Charter School movement has had very few large chains of schools. Instead charter schools are predominately a cottage industry made up of small schools which are not affiliated with each other.<sup>95</sup>

This has happened for three reasons. First, many states prohibit not only explicitly for profit providers but also the use of management contracts between trusts operating charter schools and companies. An arrangement like that of the Girls’ Day Schools Trust, where schools elect to become members on a case by case basis, is impossible in that situation. There are just 95 for-profit charter school bodies (known as Education Management Organisations or EMOs) in the entire country. They manage fewer than 15% of charter schools. In nine states with charter schools they manage none.<sup>96</sup>

Second, it is very unusual to have one charter for more than one school. This means that organisations have to go through a lengthy and often expensive process for every school they wish to set up – delaying expansion. Even when there are several schools under one umbrella organisation a board of governors for each school is usually required. This limits the extent to which the central charter body can replicate and ensure that their brand is maintained across their schools. Academies also face this problem.

Third, political restrictions on charter schools limit growth. Charters receive considerably less funding than public schools, particularly for facilities. Only ten states give charter schools any annual facilities funding at all, and only three give more than \$1,000 per student.<sup>97</sup> 26 states and Washington DC also cap the number of charter schools,<sup>98</sup> while charters often rely on public schools (which see them as a threat) to authorise their existence. This discourages the growth of charters to significant scale.

93. Swedish National Agency for Education, Report 316 National Costs 2008

94. Swedish Statistics Office, 2009

95. Chubb J, ‘Should Charter Schools be a Cottage Industry?’ in Hill P. ed, *Charter Schools Against the Odds*, Hoover Institution Press, December 2006

96. Miron et al, 2009; Center for Education Reform 2009

97. Balboni, Rainer et. al, “2007 Charter School Facility Finance Landscape”, April 2007

98. Data from National Alliance for Public Charter Schools

## Charter School Caps<sup>99</sup>

<b>Alaska</b>	Maximum 60 charters
<b>Arkansas</b>	Maximum 24 start-up charters. No cap on conversions
<b>California</b>	Maximum 1250 charters or 100 new each year
<b>Connecticut (3 caps)</b>	250 students per state Board of Education (BoE)-approved charter or 25% of district enrolment 300 students per K8 <sup>100</sup> BoE-approved charter or 25% of district enrolment 85 students per grade can be added by charters demonstrating track record
<b>District of Columbia</b>	Maximum 20 new charters per year
<b>Hawaii</b>	Maximum 25 conversion charters Maximum 23 start-up charters , plus 1 for each existing charter with a 3-year accreditation
<b>Idaho</b>	6 new start-up charters per school year; 1 per district
<b>Illinois</b>	Maximum 120 charters, 75 in Chicago and 45 elsewhere
<b>Indiana</b>	Mayor of Indianapolis may approve maximum 5 per year 200 students may enrol in virtual charters in 2009/10 and 500 in 2010/11
<b>Iowa</b>	Maximum 20 conversion charters, 1 per district
<b>Massachusetts (3 caps)</b>	Maximum 120 charters; 48 Horace Mann charters and 72 Common wealth charters Commonwealth charters can serve maximum 4% of school age population A district's payments to charters cannot exceed 9% of its school spending
<b>Michigan</b>	State universities may approve 150 charters, of which none can ap prove over 50%. When cap is reached, universities can approve 15 charters in Detroit School District.
<b>Missouri</b>	Charters allowed only in Kansas and St Louis districts. No cap on start ups; only 5% of public schools in each district can convert
<b>New Hampshire (2 caps)</b>	State BoE can grant up to 20 charters by June 30, 2013. Moratorium on approvals until June 30, 2011
<b>New Mexico (2 caps)</b>	Maximum 15 start-ups & 5 conversions p/a; 75 start-ups & 25 conversions over 5 years A charter in a district with 1,300 or fewer students may enrol at most 10% of the students
<b>New York</b>	Maximum 200 start-ups- 100 by the State University & 100 by the State Board of Regents.
<b>North Carolina</b>	Maximum 100 charters & 5 per district per annum
<b>Ohio</b>	Maximum 60 start-ups above the number open in May 2005. Operators with track record are exempt
<b>Oklahoma (2 caps)</b>	Maximum 6 charter schools per year, 3 in Oklahoma County, 3 in Tulsa County Charters can open in 10 districts in these counties (there are 537 districts in the state)
<b>Oregon</b>	Moratorium on new/expanding virtual charters that don't have 50%+ students from district where school is locate
<b>Rhode Island (2 caps)</b>	Maximum 20 charters Charters may serve maximum 4% of school age population
<b>Tennessee</b>	Maximum 90 start-ups: 35 must be in Memphis, 4 in Shelby County, 20 in Davidson County 3 charters exclusively for high-school drop-outs. Do not count towards cap. Charters may only take disadvantaged <sup>101</sup> or former charter students
<b>Texas</b>	State BoE can approve 215 charters
<b>Utah</b>	Number of charter students may grow by 1.4% of no. of Utah public school students per annum
<b>Wisconsin</b>	Number of students attending virtual charters must not exceed 5,250.

99. National Alliance for Public Charter Schools, 'Charter School Caps,' August 2009

100. 'A K-8 School is a school with a continuous grade span that begins with kindergarten and ends after the 8th grade.' Salt Lake City School District, 'K-8 Schools: Exploring choices for the future,' <http://www.slc.k12.ut.us/schools/k8/what.html>

101. Refers to students who a) were previously enrolled in a school failing to make adequate yearly progress, giving priority to at-risk students; b) failed to test proficient in the subjects of language arts/reading or maths in grades 3-8 on the Tennessee comprehensive assessment program examinations; c) in the previous school year, failed to test proficient on the gateway examinations in language arts/reading or mathematics; d) are eligible for free and reduced-price lunch and who are enrolled in LEAs that have an average daily membership of 14,000 or more and three or more schools which have missed the same benchmark for adequate yearly progress for two or more consecutive years resulting in such schools being designated as high priority schools, while allowing any LEA to choose by a two-thirds vote of the local school board to allow students eligible for free or reduced-price lunch to be eligible to attend charters; e) are under the jurisdiction of a juvenile court and who in the court's judgment would benefit from a work experience and career exploration program. National Alliance for Public Charter Schools, 'Charter School Caps,' August 2009

Despite these impediments, successful federations do exist. Some of the best schools in the US are part of not-for-profit school chains, known as Charter Management Organizations (CMOs). The first CMOs were founded in the late 1990s, and by 2008 there were 33 CMOs operating 189 schools in the US.<sup>102</sup> The KIPP programme, which started as two teachers in a single classroom, is the largest charter management organisation in the US. Its results are extremely positive: in highly deprived urban areas over 85% of students are going to college. Most students start KIPP in the fifth grade between one and two grade levels behind in English and Maths, but by the end of the eighth grade every single KIPP class in the country outperforms their district.<sup>103</sup>

There are others. The CMO 'Uncommon Schools' runs 16 schools across New York, Newark and New Jersey. Despite students with backgrounds of poverty, 99% of whom are Black or Latino, the schools outperformed the state of New York. An impressive 98% of 14 year olds achieved good results in the New York State standardised exams in maths and 89% in English and the arts.<sup>104</sup>

Models differ. KIPP works as a franchise, in which individual schools have significant autonomy, but have to comply with certain methods and achieve certain successes to maintain the KIPP 'brand'. Other management organisations are more centralised, operating like the school districts they compete with in terms of control.

However there is a danger of too much, too fast. While KIPP is a very successful chain of schools, it initially expanded very quickly. In 2003 they opened new schools in 11 new locations. Now they open only one per year, because they found that expanding fast eroded quality and the KIPP brand had to be withdrawn from many of the new schools as a result.<sup>105</sup>

### Advantages to federation

There are three key advantages to federation. First, a number of standardised functions can be centralised. Most chains we spoke to do the same things centrally: human resources, legal advice, financial assistance, some staff training and communications, and educational research. Meanwhile individual schools remain in control of teaching and are free to focus on the important business of educating children.

Second, good practice is swiftly replicated and expanded. There is an incentive for a chain of schools to find out what works and make sure all of their schools are doing it.

Finally, federations can easily intervene when things are going wrong. A central body which oversees performance, and has resources it can move between institutions and from the centre to an individual school, allows fast and detailed management.

### Disadvantages to federation

Federation also carries disadvantages. First, there is potential for expansion to come at the expense of quality. If the authoriser is not good at assuring quality then there is a risk of pushing to establish too many schools too fast. In the UK some sponsors have been pushed to do exactly this in order to meet the Government's target on academies.

Second, there needs to be some thought about where federations set up. Geographical clusters make coordination easier, allowing a chain to move leaders

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102. University of Washington, 2009

103. KIPP Annual Report Card, 2010

104. Uncommon School Aggregation of results, 2009

105. Steve Mancini and David Levin, Knowledge is Power Programme

around and share services much more effectively than if schools are at opposite ends of the country. Yet there is a risk of a chain becoming like the local authority it replaced if it dominates one area. The benefits of new providers come from the choice they give parents and the incentives that creates. If there is only one provider to choose from – whether that is the local authority or not – those incentives disappear.

There is also some risk that individual schools will have less freedom to innovate and experiment if they are in a tightly controlled chain. So while federations will replicate good practice more quickly, they may limit the number of models that emerge. A possible model suggested to us by an academy sponsor could be to allow individual schools in a chain to ‘buy’ increased autonomy with strong performance results.

### Recommendations:

- **Multiple sponsors should be given financial flexibility over operations.** Sponsors have gone through the application process and are audited regularly. Restrictions on how they arrange finances within their organisation prevent them from targeting resources where needed.
- **A national per-pupil funding formula, weighted to account for variations in employment costs, should be introduced.** This would eliminate the large variations in per-pupil funding across local authorities. The formula could include a ‘pupil premium’ to attract sponsors to disadvantaged areas.
- **There should be uniformity between local authorities, and chains should be allowed to apply for several schools in one application.** The need to go through an entirely new application and implementation process with each new project slows expansion and puts a large administrative burden on the provider. Funding agreements should be signed for several schools simultaneously.
- **There should be a limit on the geographical presence of a particular federation.** In the private sector, there are strict rules on monopoly provision. Legislation defines a classic monopoly as one which controls 25% or more of the market. A similar system should be in operation with authorisation. This is clearly impossible in highly sparse rural communities, but in other areas should be a consideration.
- **There must be quality control.** School chains should be asked to demonstrate quality before being allowed to significantly expand, and present a plan for new schools which takes into account the capacity of their organisation before approval.
- **Given the two conditions above, school federations should be encouraged to expand.** Chains have clear advantages over single schools on cost, on quality replication, and on management of performance. The Government should consider ‘incubators’ – funding for organisations which help successful schools become chains.

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# Part Two

## Barriers to true independence

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# 5

## Curriculum and Learning

The ability to decide what you are going to teach and how you are going to teach it is of course vital to any notion of real independence in the schools sector. The first wave of academies had total freedom over curriculum. However, over time this freedom, like many others, has been quietly eroded. In his inaugural speech to the House of Commons as Education Secretary, Ed Balls expressed a determination to reduce prescription and “let our professionals get on with the job in the classroom”.<sup>106</sup> Yet he also announced that all new academies would have to follow the National Curriculum in English, maths, science and ICT. This did not in fact mark a major shift for most academies, who do this anyway, but it suggested a gradual redrawing of the lines. It provided a more direct challenge, however, to schools such as Steiner, which have a radically different pedagogy. Steiner opened an academy in the first wave, but fear that the new rules could prove a significant impediment to opening another.

The Independent Academies Association (IAA) defined the importance of freedom over curriculum in its recent 2010 manifesto. It said: “Academies currently have the freedom...to develop the curriculum in response to local circumstances and to tailor it to the needs of their students. This approach allows a stronger vocational approach in some cases, or more time to address basic literacy and numeracy in others.” It is important to remember that independence over curriculum has been a key driver of innovation in both Sweden and the US. All schools in Sweden (both state and free schools) have considerably more pedagogical freedom than schools do in this country, following a very slim 17-page national curriculum that focuses on outcomes but not on content or pedagogy.<sup>107</sup> In the US there is no national curriculum to follow, although curricula are prescribed to some extent by the content and nature of state standardised tests.<sup>108</sup>

One subject that causes particular concern for academies is Personal Social Health and Economic education (known as PSHE). The Children, Schools and Families Bill, which is currently making its way through Parliament, makes the teaching of PSHE compulsory in academies at Key stages 3 and 4 (in other words all through secondary school until age 16).<sup>109</sup> Academies will now be under the same obligations as maintained schools, and must follow content prescribed by the Government. PSHE is a vivid illustration of the Government’s desire to use schools to fix all of society’s broader problems and represents another encroachment upon the notion of independence in academies. The bill specifies that PSHE will provide education on issues including alcohol and drugs, sex and relationships, nutrition and physical activity, personal finance and individual safety.

106. Speech by Ed Balls to the House of Commons, 10 July 2007. See <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070710/debtext/70710-0004.htm>

107. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009, p32

108. *ibid*, p50

109. Children, Schools and Families Bill <http://www.publications.parliament.uk/pa/cm200910/cm-bills/008/10008.8-14.html>



Academies do not object to the notion of PSHE – they are all committed to the idea of full education for a child – but this level of prescription is simply not necessary and represents an impediment to diversity of provision. This new measure should be revoked and academies should be free to design their own personal and social education for children.

While it may seem harmless enough, the current requirement for all academies to teach a “broad and balanced” curriculum is seen as a problem by some sponsors. This includes offering a broad vocational range as well as academic – which is particularly expensive. One chain told us that this stipulation meant that all academies had to be “full-specification” from the outset, with a large cohort of teachers to cover an extensive range of subjects, and it was therefore impossible to start small. It is notable that several successful charter school federations in the US, including KIPP, Achievement First and Uncommon Schools, all started small, growing one year at a time in order to find their feet, develop a culture, and concentrate on quality while being cautious about investment. The Government should consider redefining this requirement for a broad and balanced curriculum, making clear that this applies to full-scale secondary schools, and is something that smaller start-ups must work towards. We would expect that in a system with more choice this would be less of an issue anyway, as parents would be able to make a decision about the kind of qualifications they wanted to see.

In addition, exams are a major issue when it comes to freedom of curriculum. At present, many academies wish to offer the International GCSE (IGCSE) exams offered by the Oxford, Cambridge and RSA exam boards, to counter the growing scepticism about the rigour of standard GCSEs after years of constantly rising grades. In 2009 two-thirds of private schools surveyed by the Headmasters’ Conference entered some pupils for IGCSEs and they expect the number to rise.<sup>110</sup> However, the Government currently prevents state schools, including academies, from offering the IGCSE in core subjects. In November 2009 it rejected an application to approve IGCSE courses in English, English literature, maths, biology, chemistry, physics and IT, saying the qualifications “fail to meet the requirements of the curriculum” in these key subjects.<sup>111</sup> Instead it restricted approval to nine IGCSEs that do not cover the core curriculum.<sup>112</sup> This decision is frustrating for all schools, and for academies in particular, who are most likely to want to offer IGCSEs in the core subjects. It appears to be motivated more by politics and an unwillingness to accept an implicit criticism of existing GCSE exams, than by logic. Far from being suspect, low quality examinations, IGCSEs have been accredited by Ofqual, the Government’s qualifications and exams regulator.<sup>113</sup>

A similar situation exists with the International Baccalaureate (IB). Independent schools are entirely free to offer IB and are often keen to do so because many leading universities perceive it to be more challenging than A-Level. Under the UCAS tariff, a common IB score of 30 gives a candidate 419 UCAS tariff points, compared with just 360 for three As at A-level. A top score IB is equivalent to more than six As at A-level.<sup>114</sup> However, although the Government offered funding to cover the start-up costs of one school introducing the IB in every local authority outside London, other state schools receive no financial assistance for doing so, making it a difficult step to take. If the Government believes in the merit of the IB, there must surely be a case for any state school that wants to teach it

110. Rachel Williams, “Private schools shun GCSEs and A-Levels,” *Guardian Education*, 15 January 2010

<http://www.guardian.co.uk/education/2010/jan/15/private-schools-reject-gcse-a-level>

111. Rachel Williams, “Academies demand to teach ‘banned’ elite courses,” *Guardian Education* February 2010

<http://www.guardian.co.uk/education/2010/feb/04/academies-demand-elite-courses>

112. TES Connect, “State schools teach IGCSEs in secret,” 4 December 2009 <http://www.tes.co.uk/article.aspx?storycode=6029098>

113. Letter to the Guardian by Bene’t Steinberg, 8 February 2010 <http://www.guardian.co.uk/education/2010/feb/08/school-academies-ofqual-qualifications>

114. The Independent, “International Baccalaureate: Why the broad IB beats A-levels”, October 2007 <http://www.independent.co.uk/news/education/schools/international-baccalaureate-why-the-broad-ib-beats-a-levels-395262.html>

doing so with full Government support. Moreover, academies are arguably even more constrained than traditional state schools. If an academy wants to offer the IB it has to prove it would raise standards, seek permission from the Secretary of State and change its contractual arrangements with the Government. The DCSF said it was not aware of any Academy having made a request as yet, but the IAA has made representations on the issue.<sup>115</sup> In its manifesto, the organisation said all schools should be “free and funded” to offer both the IGCSE and the International Baccalaureate “where there is student demand or need”.<sup>116</sup> We fully endorse this.

Often problems over curriculum are linked more to the method of teaching than to the subjects taught or the exams used. Kunskapsskolan, which operates 30 free schools in Sweden and is poised to take over two academies in Richmond, use a personalised learning model in which students work at their own pace with one daily fixed lesson, occasional lectures and a short session with a personal tutor once a week to agree goals. This model has proven results, but clearly flies in the face of the traditional school classroom. Hence, when the chain came over to the UK the DCSF was anxious to establish that all students would be supervised by adults at all times. This underlines the Department’s desire to control things from the centre, and stick to a familiar pedagogic model, despite all its rhetoric about independence for academies. Such a desire may be natural for politicians but must be resisted. If academies are to bring real choice to parents, and truly open up the provision of education, then the Government must be prepared to loosen its grip on the status quo and welcome innovative teaching models, even if they find them uncomfortably liberal.

“ If academies are to bring real choice to parents, and truly open up the provision of education, then the Government must be prepared to loosen its grip on the status quo and welcome innovative teaching models, even if they find them uncomfortably liberal ”

Similarly, different pedagogies often require significant changes to the structure of the school timetable. One sponsor told us that they had experienced considerable resistance from the local authority when trying to introduce new term-times and holidays to increase the amount of time that children would be in school and learning. Such shifts may be unwelcome locally because they conflict with other schools, with the authority potentially worrying that parents with children at different schools will be disadvantaged. As the head of an organisation hoping to take over a new academy said: “As a sponsor you may have the freedom to change the school day, but there is a real difficulty with translating that practically.” Once an academy has been approved, it should certainly discuss its plans with the local authority, but the authority must not attempt to veto these plans. Given that the local authority does not have any real power here, the critical issue is advice for the sponsor. The Government must make sure that there is an organisation designed to help academies over these hurdles, and to share the experience of other schools.

Yet it is worth noting that a real change in freedom over curriculum may only be achieved gradually. Some sponsors mentioned that teachers are so accustomed to being told exactly how and what to teach by Whitehall that they don’t know

115. Hannah Richardson, “Academies want to teach IGCSEs,” 5 February 2010 <http://news.bbc.co.uk/1/hi/education/8500348.stm>

116. Independent Academies Association [http://www.iaa.uk.net/index.php?option=com\\_content&ask=view&id=37&Itemid=56](http://www.iaa.uk.net/index.php?option=com_content&ask=view&id=37&Itemid=56)

how to react to independence. One academy sponsor said: “When you ask teaching staff for suggestions they almost automatically refer back to DCSF plans like Every Child Matters. This isn’t a legislative problem – it’s a cultural one.” Another concurred: “The problem is getting staff to realise that they actually have independence. Teachers have lost so much control over the last few years that they’re simply not used to it.” Good leadership is obviously the key to resolving this, as well as a much less equivocal message from Government that academies are truly independent state schools where teachers are trusted to teach. Yet this is a reminder that after years of political intervention and box ticking, true independence may not materialise overnight, even if the legislative and political framework allows it.

### Recommendations

- **The Government should return to a situation in which academies have total freedom over the curriculum.** The vast majority will follow the National Curriculum in English, maths, science and ICT (as currently mandated by law) but this will allow for new providers with a radically different pedagogy, such as Steiner, to establish new schools. At the same time, as we will discuss, schools must be held accountable for educating children properly.
- **The Government should redefine the requirement for a broad and balanced curriculum, making clear that this applies to full-scale secondary schools, and is something that smaller start-ups must work towards.** This stipulation is seen as implying that all academies must be “full-specification” from the outset, with a large cohort of teachers to cover an extensive range of subjects. It should also take into account that small schools, which are often preferred by parents, can never offer this range – but can still educate children well.
- **Academies, and indeed all schools, should be free to offer both the IGCSE and the International Baccalaureate.** These are well-respected and rigorous qualifications, and academies should be free to offer them if desired.
- **The Government must be prepared to loosen its grip on the status quo and welcome innovative teaching models.** The intention behind the academies programme is to create genuine diversity of provision, and the Government should not to restrict the choices on offer to pupils and parents.
- **A support and advisory organisation should be established to help academies translate their vision into reality.** Currently sponsors face bureaucratic hurdles which impede their capacity to innovate. They should be helped to overcome these difficulties.

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# 6

## Staff Employment Issues

Nothing is more important to a child's educational experience than the quality of teaching in a school, so staffing issues are of course crucial for academies. In theory academies have considerably more independence than maintained schools, with the ability to set their own pay and conditions. In practice, however, sponsors who are taking over failing schools have their hands tied to a large extent on employment, because they have to take on staff from the old school under the provisions of the Transfer of Undertaking Protection of Employment Regulations 2006 (known widely as TUPE).<sup>117</sup>

Most sponsors cite TUPE as a considerable obstacle to independence. If a school is failing there is a high chance that one of the key problems will be the quality of teaching. Of course, this may be an issue that can be easily resolved with different leadership, better training and support, and a new culture that re-energises staff who had lost interest. However, in some cases TUPE will mean that the sponsor will be forced to take on teachers (or cleaning or catering staff) who are simply not up to scratch and unlikely to improve. Removing them will often be highly difficult.

### Lack of information and access

The first hurdle for any sponsor taking over an existing school is trying to understand the nature of the workforce they are inheriting. As part of their planning it is essential for a sponsor to find out who is employed and under what terms and conditions (pay, notice period, pension, job description etc) as well as additional information such as details of disciplinary procedures or length of service. This is often considerably more difficult than it should be. Under TUPE the local authority is obliged to provide a certain amount of information about transferring staff, but unhelpfully the required information is limited in scope and only needs to be provided 14 days before the school opens and the staff transfer is official. This gives ample scope for an obstructive local authority to impede vital planning if it is not keen on the academy going ahead. However, even if a local authority wants to help (as most will) the full information may not always be there. Two of the sponsors we interviewed told us that their local authority did not have complete records of the teaching staff they employed. In one school the same individual was found to be on the payroll in two different jobs, drawing a full salary for both.

In the majority of cases a deeper understanding of the teaching workforce, and how a school functions more generally, is dependent upon the new head teacher successfully negotiating access to the existing school. As one multi-academy spon-

117. Department for Business Innovation and Skills, Guide to the 2006 TUPE regulations, June 2009. <http://www.berr.gov.uk/files/file20761.pdf>

sor explained, early access enables the principal to start to assess the skills and attitude of the teachers, to begin to offer training, and to explain the new academy's vision to teachers in order to enthuse them and bring them on board as well as alleviating any concerns. Often this access is achieved with relative ease. Yet such negotiations are not always successful. For instance, another multi-academy sponsor explained that in one of their academies the head of the existing school applied for the position of principal at the new school; when he was rejected he retaliated by blocking all advance access to the school. Neither the DCSF nor the LA overrode this decision. In such a situation the sponsor is powerless to intervene.

To an extent this is a cultural problem- as one sponsor put it, 'open schools' are definitely not the norm. For instance, as we will discuss later, it is telling that the unions tend to see classroom observation as a threatening activity that should be limited as much as possible.<sup>118</sup> However, the DCSF should be given the power to intervene and encourage an outgoing head to cooperate with an incoming academy team. At the moment employment regulations focus, quite understandably, upon protecting the rights of the employee. Yet we must remember that, in the case of a failing school, pupils have already been let down. It must therefore be a priority to protect their rights by doing everything possible to ensure the new school can launch as successfully as possible as quickly as possible. To this end the Government should establish a clear principle of reasonable open access for sponsors once they have been approved. This would mean that the existing school would have a duty to give access to all staff files, and to allow discussion of individual teacher strengths and weaknesses and development needs with the management team, as well as permitting the new academy head to come in and meet teachers.

### Inflexibility

In other sectors, employers who inherit staff through TUPE are not obliged to replicate the employees' old pension scheme or to continue to allow employees to be members of that scheme. However, academies do not enjoy this same freedom. Staff at the old school who are members of (or eligible to join) either the Local Government Pension Scheme (LGPS) or the Teachers Pension Scheme (TPS) will remain members of that scheme (or eligible to join) following the transfer of their employment to the academy.<sup>119</sup> These schemes involve heavy liabilities for the school. They also restrict the school's ability to significantly alter the salary structure- for instance by paying a higher salary to younger staff in return for a reduced pension contribution.

The staff who are transferred from an existing school under TUPE take their terms and conditions of employment (under the national pay agreement) with them to the new academy school. While turnover is usually fairly high, in the first few years senior management time is focused on dealing with staff matters and flexibility on pay is very low. One fact that is crucial when one considers the unions' opposition to academies is that there is no example of an academy that has taken over an existing school and lowered teachers' pay. However, sometimes they will negotiate more of a 'deal' with teachers, requiring longer hours or more days in the year (often for more money).

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118. See [http://www.teachers.org.uk/files/Observation4798\\_0.pdf](http://www.teachers.org.uk/files/Observation4798_0.pdf) A Classroom Observation Protocol for NUT's guidelines to its school representatives on this issue.

119. Information from private briefing provided on the legal process of establishing an academy by the law firm Lewis Silkin.

It is worth noting that such contract negotiations are standard practice for free schools in Sweden. All Swedish schools have more or less complete freedom over pay, as it is one of the few developed countries not to have centralised pay bargaining for teachers. Strikingly, considering our current economic position, the changes were pushed through with support from the teaching unions in the mid-1990s when Sweden was recovering from a severe recession triggered by a collapse in the banking system. The shift happened because local government would only discuss increasing pay in the context of moving to an individualised pay scheme.<sup>120</sup> Chains such as Kunskapsskolan have used this freedom to negotiate on terms. As Odd Eiken, Executive Vice President of Kunskapsskolan told us: “We made an agreement with the unions to have a 40-hour week. That was not difficult, because the core of our pedagogy is minimising non-teaching requirements of teachers. We have centralised administration, which leaves them more time for teaching, and teachers like that. They chose to work with us because they liked our system.”

“The one area in which UK academies are really exercising their independence is on the pay of headteachers”

The freedom to set pay and conditions is patchier in the US, depending like many things on where the charter school is located. In total, 10% of charter schools are in states which require charter teachers to be included in collective bargaining with local school district teachers, while 54% operate in states with no requirements, and the rest operate in states that require teachers to opt-in to bargaining (32%) or opt-out (4%).<sup>121</sup> As one might expect, charters that are not taking over failing schools and those in states that do not require collective bargaining are most likely to set their own pay schemes and/or pay by merit.<sup>122</sup>

The one area in which UK academies are really exercising their independence is on the pay of headteachers. The vast majority of sponsors believe that appointing the right head is the single most important thing in turning a school around and driving up attainment. They generally agree that there is a shortage of truly groundbreaking leaders in the system, and they are therefore willing to pay higher salaries to tempt the best. In a survey of 200 academy head positions, nearly 60 were advertised at a salary over £100,000 per annum.<sup>123</sup> It is common for sponsors to start looking for a new head even before they have signed their funding agreement, because they will often be required to take a lead in planning the new school. This early recruitment process is sometimes set back, however, by the time-consuming bureaucracy involved in approving the sponsor. As one London academy sponsor told us: “The timing of appointing a principal is awkward. He had to give a term’s notice, so couldn’t start until the April before term started in September. That wasn’t really enough time to bed in. But we appointed as early as we possibly could – in fact consultation was still going on.” The DCSF or authoriser must bear this in mind when approving sponsors. The approval process must be rigorous, but avoiding delays will significantly help in establishing firm leadership and planning arrangements in the new school.

Many struggling teachers will blossom in a new culture with better support and leadership and more freedom to get on with the business of teaching. However, dismissing those whose performance remains poor is never easy. Again TUPE makes things particularly complicated when dealing with transferred staff

120. Lim and Davies, p86; Strath A, *Teacher Policy Reforms in Sweden: The Case of Individualised pay*, UNESCO, 2004

121. DeArmond M, Gross B and Goldhaber D, *Look Familiar? Charters and Teachers*, in Lake R ed., 2007, p45. Quoted in Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.50.

122. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.51, based on analysis of the 1999-2000 School and Staffing Survey.

123. Private information

from an old school. Employees who choose not to join the new academy school cannot claim any damages for notice, but if the academy attempts to significantly change the terms and conditions or working conditions of an employee, they may be able to claim constructive or ‘quasi-constructive’ dismissal under TUPE.<sup>124</sup> This means that academies seeking to change the job descriptions of staff (a common way of dealing with teaching quality problems) will have to tread carefully – although many academies do manage to do this with the support of the unions. Typically, there are two options for a head wishing to dismiss a member of staff: the use of capability procedures or redundancy.

## Performance management

The DCSF publish a best practice guide for the performance management of teachers, which underlines how extensive and time-consuming this path is.<sup>125</sup> Academies have responsibility for their own employment practices, but will still have to follow a similar model of assessment, verbal and written warnings, and ample opportunity for the employee to show improvement, to avoid legal action. This is of course standard practice even in the private sector now, but maintained schools report that it can take two years to dismiss an underperforming teacher<sup>126</sup> – an unacceptable delay for a head keen to turn around the teaching in a previously failing school, and, again, detrimental for children who have already been let down by the system. Fortunately, academies report that, although they find the legal system frustrating, they are generally able to move faster than a local authority in dismissing staff using capability procedures.

One academy governor complained that staff could delay performance management procedures by taking extended sick leave: “When they go off sick you can’t discipline them or make them redundant...Meanwhile we are spending money on supply teachers who are sometimes poor quality, and the students hate it.” While academies can set their own terms for sick leave, staff who have been transferred from an existing school through TUPE are entitled to extremely generous support under the national agreement.<sup>127</sup> Teachers who have been employed for four years or longer are entitled to 100 days on full pay and 100 days on half pay. In other words, they are entitled to sick pay for a full school year.

While we cannot easily extract schools from the grip of TUPE, its long-term future should be examined. More flexible staff transfer arrangements could be made much more conducive to innovation and would greatly reduce a new school’s liabilities. Meanwhile, there are some problems that have been created by the UK Government. In particular, the academy management team is hampered in its ability to determine whether teaching is up to scratch by strict national controls on lesson observation. The Education School Teacher Performance Management (England) Regulations of 2006 state that the total period of classroom observation arranged for any teacher should not exceed three hours per performance management cycle.<sup>128</sup> This must be reduced on a pro rata basis if the teacher works part-time. This is another example of regulation endeavouring to protect the rights of an employee (albeit in a somewhat paranoid manner) but in doing so putting the needs of teachers before the needs of children. Given that the quality of teaching is so important to a child’s attainment, a culture which mistrusts any attempt to watch that teaching is

124. Lewis Silkin briefing

125. DCSF “Best Practice in Undertaking Teacher Capability Procedures” <http://www.dcsf.gov.uk/rsgateway/DB/RRP/u012908/index.shtml>

126. Nick Morrison “Unfit for Purpose”, TES Magazine 8 January 2010 <http://www.tes.co.uk/article.aspx?storycode=6032828>

127. See guide to Teachers’ Sick Pay and Sick Leave Entitlements at <http://www.teachers.org.uk/node/1584>

128. See P4 [http://www.teachers.org.uk/files/Observation4798\\_0.pdf](http://www.teachers.org.uk/files/Observation4798_0.pdf) A Classroom Observation Protocol for NUT’s guidelines to its school representatives on this issue.

deeply unhelpful. There is a growing consensus that classroom observation is an important way of achieving accountability and driving up standards, and we feel strongly that this should be reflected in the way in which heads are able to run their schools, as well as within the external Ofsted inspection framework. While we think it is right to have performance management guidelines for schools, the ruling on a maximum of three hours' assessment should be removed for academy schools as a minimum, but ideally it should be removed across all schools.

Often academies go down the redundancy route in order to remove teachers who do not want to be part of the new team. This is predictably costly. A survey of redundancy packages carried out by the Times Education Supplement in 2009 revealed that many academies were paying out hundreds of thousands of pounds in severance packages.<sup>129</sup> For instance, Westminster City Council had spent more than £1 million on redundancy payments for teachers who did not transfer to Westminster and Paddington academies from the replaced North Westminster Community School. North Liverpool Academy offered redundancy payments totalling just under £770,000 to 39 staff who took voluntary severance.

There is some confusion amongst sponsors over who will foot the bill for these redundancies. The Department is understandably reluctant to publish clear guidance on how much it will pay out in these circumstances. This is probably sensible, as it avoids a culture of excessively high claims. However, the Department must be supportive and clear behind the scenes. Although the Government may not wish to disclose the size of redundancy payments it is willing to support, the criteria for making these judgements should be transparent. Sponsors have a right to know that these payments will be made in a uniform way, and not on the basis of how difficult a local authority is being, for example. Crucially, there needs to be much greater clarity about the local authority's liability. In some cases the authority appears to be shouldering much of the cost of redundancy, and in others it is the DCSF that bears the burden. As one multi-academy sponsor explained to us: "The DCSF offered to cover some of the redundancy packages. The Local Authority were supposed to contribute half, but refused. The DCSF paid it all, but they won't tell you the rules governing how much they will pay out. We got what we wanted – but we didn't ask for much." In short, the aim should be to make the redundancy process as predictable and easy to understand as possible for sponsors.

Of course, the difficulty of dismissing weak staff is not a uniquely British problem. In Sweden free schools are in an easier position to start with because they do not take over a failing school, and therefore do not inherit an existing – and potentially failing – workforce. However, it remains problematic to dismiss poor teachers, and recruiting carefully becomes particularly important.

In theory US schools are in a much stronger position because they do not have to adhere to TUPE. However, in practice traditional US schools struggle just as much, if not more, than UK schools to remove underperforming staff because of the power of the teaching unions. This is where charter schools have a clear advantage over their public US counterparts and over UK academies, because the vast majority are not unionised (potentially as few as 2%). Most charter schools consider their freedom to hire and fire people to be one of their most important differentiating factors.<sup>130</sup>

129. TES "Academy Pay-Offs Total Millions", 30 January 2009, <http://www.tes.co.uk/article.aspx?storycode=6007891>

130. See Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.51



### Recommendations

- **The Government should establish a principle of reasonable open access to a predecessor school for approved sponsors.** It must be a priority to ensure the new school can launch as successfully as possible as quickly as possible, for the sake of its pupils.
- **The Department should avoid delays in sponsor approval.** This will allow the sponsor as much time as possible to establish firm leadership and planning arrangements in the new school.
- **The maximum of three hours' classroom observation of teachers per performance management cycle should be removed for academy schools as a minimum, and ideally should be removed across all schools.** Classroom observation is an important way of achieving accountability and driving up standards, and a culture of openness in schools should be encouraged.
- **The redundancy process should be made as predictable and easy to understand as possible for sponsors.** Sponsors need to know that redundancy payments will be made in a predictable and uniform way.

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# 7

## Accountability for performance

A fair and rigorous framework for monitoring educational standards and holding schools to account for their performance is an essential component of a successful education system. If we are to give parents real choice about their children's education, then they need to have robust information upon which to base that choice. Yet accountability mechanisms must not be so prescriptive that innovation is replaced by bland conformity; nor should box-ticking compliance divert teachers from the business of teaching. It is a difficult balance to strike, but one which is vital for the future of independent, state-funded schools.

### Sweden

Discussions of the effects of school choice reforms in both Sweden and the US often fail to take into account the issue of unsatisfactory accountability standards in both countries. In Sweden, the free schools movement has introduced an impressive level of choice for parents, but for many years they have not had sufficient information about free or state schools for this new market to be properly accountable.<sup>131</sup> Successful free school federations such as Kunskapsskolan have led the way on accountability, establishing their own systems of self-monitoring and evaluation, which they use for pedagogic development and marketing as well as quality assurance.<sup>132</sup> However, the primary mechanism for enabling parents and students to make decisions about schools has been recruitment fairs – meaning that a low quality school with a big marketing budget could attract business without offering a valuable service.

Despite the fact that non-state providers have been able to run state-funded schools since 1992, a body dedicated entirely to performance monitoring has existed only since 2008,<sup>133</sup> following reforms enacted by the centre-right majority government that took power in 2006. Before 2008, schools were monitored by the National Agency for Education, which also had responsibility for providing guidance on issues including the national curricula and grading criteria.<sup>134</sup> The new Swedish Schools Inspectorate was set up with the explicit aim of separating these two functions, as well as providing “more forceful and rigorous inspection, carried out more frequently.”<sup>135</sup> It has responsibility both for approving new entrants to the free schools market, and for ensuring that high standards are maintained in all schools.

These reforms should begin to address a long-standing accountability deficit in the Swedish education system. There was no programme of national school inspections until 2003,<sup>136</sup> and the Swedish Schools Inspectorate is only due to

131. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.31

132. Interview with Odd Eiken (Vice-President of Kunskapsskolan), January 2010.

133. Swedish Schools Inspectorate <http://www.skolinspektionen.se/PageFiles/1854/SwedishSchoolsInspectorate2009.pdf?epslanguage=sv>

134. *ibid*

135. *ibid*

136. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.31

finish inspecting all Swedish schools for the first time this year.<sup>137</sup> Once this undertaking is completed, the Inspectorate will begin a programme of regular inspections of two types: ‘thematic quality evaluations’, which will focus on the standards of teaching and learning, and ‘regular supervision’ which will focus chiefly on compliance with the (limited) national curriculum.

## US

Like Swedish free schools, US charter schools are held to account by the body that approved their initial establishment. Unlike free schools, charter schools are approved not by a central agency but by one of many different authorising bodies across the country. This leads to considerable variation in standards of accountability across different states and different authorisers. The best authorisers have a consistent and rigorous performance monitoring framework in place. The worst, however, fail in their duty to hold the schools they have approved to account – a failure which can lead to prolonged poor performance and, on occasion, disastrous multiple school closures.

When determining which bodies may authorise charter school provision, charter laws vary hugely between states. In the most restrictive, the right to authorise charters is granted only to local public school districts. In the most liberal, this right is granted to other agencies including universities, state-wide charter boards, the city council or mayor’s office or, rarely, educational charities.<sup>138</sup> In the case of Ohio, over 60 different organisations are permitted to authorise.<sup>139</sup> Such a system risks diluting quality, as providers seek out the authoriser with the least stringent performance requirements – a concern to which Ohio responded by removing the State Board of Education’s right to authorise, and instead giving it the responsibility of overseeing the authorisers themselves. It has since drafted the first application processes and performance requirements for authorising bodies.<sup>140</sup>

In most states, however, authorising remains the preserve of local school districts, which make up 89% of charter authorisers.<sup>141</sup> Of the 41 states with charter laws, only 20 allow direct applications to alternative authorisers.<sup>142</sup> School districts do not always make good authorising bodies; it was while operating under the aegis of local school districts that the Californian Charter Academy, a for-profit Education Management Organisation, collapsed in 2004 leading to the abrupt closure of 60 schools with over 10,000 students.<sup>143</sup> A National Charter Research Project report found that the districts should be seen as accomplices, rather than victims: accountability mechanisms were ineffective, while districts failed to hire sufficient staff to carry out their oversight functions effectively.<sup>144</sup> Half of school districts have granted only one charter, while over two-thirds have granted only two.<sup>145</sup> They may therefore make inexperienced and ineffective monitors of performance.

## Maintained schools and Academies

By contrast, school accountability in the UK is a centralised system, characterised by what the Children, Schools and Families Select Committee described as “multiple lines of accountability to different bodies for different purposes”.<sup>146</sup> In many ways the UK is better positioned to provide independent, state-funded schools

137. Swedish Schools Inspectorate <http://www.skolinspektionen.se/PageFiles/1854/SwedishSchoolsInspectorate2009.pdf?epslanguage=sv>

138. John Hoven, *Anticompetitive Restraints on Public Charter Schools*, Economic Analysis Group, September 2007 <http://www.justice.gov/atr/public/eag/227383.htm>

139. Interview – private information

140. Robin Lake, “Holding charter authorizers accountable: why it is important and how it might be done,” National Charter School Research Project, 2006 p.4

141. National Alliance for Public Charter Schools Dashboard <http://www.publiccharters.org/dashboard/policy/page/overview/year/2009>

142. John Hoven, *Anticompetitive Restraints on Public Charter Schools*, Economic Analysis Group, September 2007 <http://www.justice.gov/atr/public/eag/227383.htm>

143. Andrew Rotherham in Robin Lake ed. *Charter Schools: Hopes, Fears and Reality 2005* p.43

144. *Ibid* p.45

145. *Ibid*

146. Children, Schools and Families Select Committee First Report into School Accountability, January 2010

with a sufficiently rigorous accountability system than either the US or Sweden. It has ample performance data provided by numerous standardised national assessments, a relatively venerable educational inspectorate, and highly regarded school inspectors. Such is the British reputation in this area that KIPP, one of the largest US charter chains, has hired Britain's Cambridge Education Associates to undertake internal inspections of its schools.<sup>147</sup> However, if Britain's schools are to achieve genuine independence, enabling widespread innovation and meaningful diversity of provision, then they must not be constrained by prescriptive and restrictive accountability mechanisms, nor bemused by constantly changing policy priorities or overlapping accountability pathways. It is here that the complex and compliance-based school accountability system in the UK presents a threat to achieving real freedom in schools.

The first problem with the UK's accountability system is one of sheer complexity. Academy sponsors told us that there are far too many audiences to be accountable to. Academies are held to account not only by parents, pupils, the sponsor, and the governing body, but also by Ofsted, School Improvement Partners, National Challenge advisers, local Children's Trusts, local authority inspectors, and the Department for Children, Schools and Families.<sup>148</sup> As the National Union of Teachers (NUT) told the Children, Schools and Families Select Committee: "Schools experience overlapping forms of high stakes evaluation systems... which are often in contradiction with each other."<sup>149</sup>

## YPLA

To complicate things further, academies were recently made accountable to yet another organisation through the Apprenticeships, Learning and Skills Act, which received Royal Assent in November 2009.<sup>150</sup> The Act provides for the Education Secretary's oversight functions for academies to be transferred from the DCSF to the new Young People's Learning Agency (YPLA). Guidance from the DCSF states that the key roles transferred to the YPLA will be:

- Supporting and challenging academies to raise standards for young people.
- Advice to academies and to the Secretary of State:
  - i. The YPLA will advise academies on Departmental policy such as admissions and exclusions.
  - ii. The YPLA will report on how policies are working within academies and how things could work better in order to inform policy development.
- Funding academies- calculating grants and making payments for 11-16 provision; for 16-19 provision within the national commissioning framework; and, for 3-11 provision in all-age academies.
- Financial monitoring of open academies.<sup>151</sup>

Concerns have been raised that the transfer of oversight of academies to a new quango represents a threat to the ability of academies to function independently. Sponsors we spoke to were concerned that the YPLA would seek to justify its own existence by intervening in academies unnecessarily. Sponsors of multiple academies in particular were worried that they would no longer be able to bring their concerns directly to the Secretary of State or the Minister for Schools.<sup>152</sup> The point

147. KIPP Academy Lynn Charter School Application to the Massachusetts Department of Education <http://www.doe.mass.edu/charter/approved/0429.pdf>

148. DCSF The Standards Site <http://www.standards.dfes.gov.uk/academies/news/?version=1>

149. *ibid*

150. DCSF Summary of the Apprenticeships, Skills, Children and Learning Act <http://www.dcsf.gov.uk/apprenticeshipskillschildrenandlearningact/>

151. *Draft Guidance from the Secretary of State for the YPLA on fulfilling its functions on academies*

152. Private interview

was raised in the House of Lords that the YPLA lacks the expertise to deal with academies, given its chief role in supporting the commissioning of 16-19 education. Baroness Verma said: “The YPLA is being set up to lead local authorities in their education functions in relation to those aged between 16 and 19. It therefore seems entirely inappropriate that it should also have functions relating to academies, most of which have pupils between the ages of 11 and 18.”<sup>153</sup>

As the YPLA’s chief purpose is to support local authorities in discharging their planning and commissioning duties for 16-19 education, its closeness to local authorities is also a cause for concern. Its board will have “significant local authority representation”,<sup>154</sup> and DCSF guidance states that “because of the important support and enabling role of the YPLA, local authorities will have a significant role in its governance and strategic direction.”<sup>155</sup> The chairman of the Independent Academies Association, Mike Butler, wrote to the Schools Minister complaining of “further erosion of the independent status of academies” and noting that “elements of your Apprenticeships, Skills, Children and Learning Bill are deeply disturbing in this regard,” including the “role of the YPLA in performance assessments (thus creating yet another regulatory framework).”<sup>156</sup>

The DCSF has attempted to allay these concerns by assuring sponsors that the YPLA will, in its dealings with academies, have regard to the importance the Secretary of State places on the autonomy of academies; work closely with all relevant stakeholders, including academy sponsors, principals, and groups of academies, and take full account of their views; and maintain a Lead Contact for each academy.<sup>157</sup> These are surely no more than minimum requirements for a body charged with overseeing all academy schools. The IAA is justified in believing that a large quango with close strategic links to local authorities is not the right organisation to oversee schools that were specifically intended to be able to operate free of restriction by local and central bureaucracy. The YPLA’s oversight function should be repealed.

## New initiatives

The accountability system for academies is made still more complex by the flow of new initiatives from the DCSF for schools to follow. Many of these have been delivered through the Government’s so-called National Strategies, including the National Challenge programme, which threatened secondary schools with closure if 30% of their Key Stage 4 pupils did not achieve 5 A\*-C grade GCSEs by 2011.<sup>158</sup> It is perfectly reasonable to expect all schools to achieve what is, in fact, a very low floor target. But if some schools – and many academies are in this category – are improving extremely quickly and are clearly on course to reach and pass 30%, it seems ludicrous to condemn them as failing.

At the same time, absolute performance targets have a tendency to create perverse incentives. National Challenge benchmarks incentivise schools both to ‘teach to the test’ and to focus excessively on borderline C/D candidates. There are two things that could be done very quickly to remove some of those incentives. First, provide real choice to parents – which will in turn both force and allow schools to look ‘down, not up’. Rather than only having accountability to Government, which is national and therefore blunt in its measures, schools should be accountable to parents who can look at a much wider range of meas-

153. Lauren Higgs, “Lords clash over academy quango”, *Children & Young People Now* 22 October 2009 <http://www.cypnow.co.uk/news/ByDiscipline/Education/946823/Lords-clash-academy-quango/>

154. DCSF “Summary of the new system” [http://www.dcsf.gov.uk/14-19/documents/summary\\_new\\_system.pdf](http://www.dcsf.gov.uk/14-19/documents/summary_new_system.pdf)

155. DCSF YPLA Blueprint, [www.dcsf.gov.uk/14-19/documents/YPLA%20Blueprint.pdf](http://www.dcsf.gov.uk/14-19/documents/YPLA%20Blueprint.pdf)

156. Open letter from Mike Butler to Jim Knight, reprinted at [http://www.spectator.co.uk/coffeehouse/archive/2009/February/page\\_5/](http://www.spectator.co.uk/coffeehouse/archive/2009/February/page_5/)

157. *Draft Guidance from the Secretary of State for the YPLA on fulfilling its functions on academies*, [www.standards.dcsf.gov.uk/academiesprojectmanagement/downloads/ypladraftguidance.doc](http://www.standards.dcsf.gov.uk/academiesprojectmanagement/downloads/ypladraftguidance.doc)

158. DCSF National Challenge <http://www.dcsf.gov.uk/nationalchallenge/>

ures and achievements. Second, as well as the A\*-C measure there should be an emphasis on average point score, particularly in core subjects, and the achievement of those who are not achieving Ds, but could be – or indeed those who are only achieving As instead of A\*s despite their ability.

As the Select Committee report concludes, schools find the need to respond to frequent new targets or policy priorities both distracting and confusing.<sup>159</sup> Teachers and school leaders are better placed to judge a school's needs than any Whitehall mandarin, and they must be free to exercise their professional judgement when determining their school's priorities.

## Ofsted

As we have discussed, Ofsted has the potential to provide a very solid core to our school accountability system. However, the inspection system as it stands is seriously flawed. First, it is process-driven and bureaucratic. Ofsted requires schools to prepare a vast number of time-consuming policy documents, as well as a Self-Evaluation Form (SEF), before an inspection takes place. Schools are theoretically permitted to decide for themselves the most suitable form in which to submit their self-evaluation, but in practice Ofsted imposes a top-down standard with which schools feel forced to comply. The 2009 Ofsted Framework for School Inspection states that "Schools are strongly encouraged to record the outcomes of their self-evaluation in Ofsted's online self-evaluation form (SEF) for schools, whose structure matches that of the evaluation schedule of judgements for school inspections."<sup>160</sup> The Chief Inspector informed the Select Committee that 95% of schools use the standard SEF and added that "it would be a brave decision not to fill it in."<sup>161</sup> Self-evaluation is thus transformed from a constructive and flexible pathway to school improvement, based on a school's own judgement of its needs and priorities, to a "tick-box exercise, top-down, rigid and laborious."<sup>162</sup> Furthermore, the process takes up a considerable amount of time that might otherwise be used for getting on with the business of teaching. One academy sponsor estimated that hundreds of hours per year are spent on completing the Ofsted SEF alone. Continuous self-evaluation is undoubtedly a key mechanism for school improvement, and one that most academy sponsors see as crucial to their success, but it needs to be an ongoing internal process and not one that is rigidly controlled from the centre.

Notably, Ofsted evaluations under Section 5 of the Education Act 2005 place considerable weight on non-academic outcomes such as community cohesion, and the wellbeing of children as defined by the Every Child Matters outcomes. The revised school inspection framework also sets out a range of judgements to which inspectors must give 'particular priority'. Worryingly, these include several non-educational criteria: promoting equality of opportunity, safeguarding children and responding to parents' views.

The importance placed by Ofsted on non-academic, social outcomes reflects the Government's use of schools as instruments of social policy. This is problematic in itself: while these aims are certainly desirable for any fair society, they distract from the main mission of schools, which is to educate children. Furthermore, there are clear problems with attempting to quantify or grade a school's contribution to an aim as intangible as improved community cohesion. The duty to promote community cohesion was placed on schools by the

159. *ibid*

160. *The Framework for School Inspection*, Ofsted, July 2009

161. Children, Schools and Families Select Committee First Report into School Accountability, January 2010

162. *ibid*

**Under Section 5 of the Education Act 2005, Ofsted reports on the following for each school inspected:<sup>163</sup>**

**Pupils' outcomes** - 7 main judgements (the five Every Child Matters outcomes, plus pupils' behaviour and their spiritual, moral, social and cultural development):

1. Pupils' achievement and the extent to which they enjoy their learning
2. The extent to which pupils feel safe
3. Pupils' behaviour
4. The extent to which pupils adopt healthy lifestyles
5. The extent to which pupils contribute to the school and the wider community
6. The extent to which pupils develop workplace and other skills that will contribute to their future economic well-being
7. The extent of pupils' spiritual, moral, social and cultural development

**The effectiveness of provision** - 3 main judgments:

1. The quality of teaching
2. The extent to which the curriculum meets pupils' needs, including, where relevant, through partnerships
3. The effectiveness of care, guidance and support

**Leadership and management** - 8 main judgements:

1. The effectiveness of leadership and management in embedding ambition and driving improvement
2. The effectiveness of the governing body in challenging and supporting the school so that weaknesses are tackled decisively and statutory responsibilities met
3. The effectiveness of the school's engagement with parents
4. The effectiveness of partnerships in promoting learning and well-being
5. The effectiveness with which the school promotes equal opportunity and tackles discrimination
6. The effectiveness of safeguarding procedures
7. The effectiveness with which the school promotes community cohesion
8. The effectiveness with which the school deploys resources to achieve value for money

**Inspectors give particular priority to the following judgements under the 2009 Framework for School Inspection:**

- Promoting improvement: inspectors make specific recommendations based on their diagnosis of the school's strengths and weaknesses
- Evaluating the achievement and wider wellbeing of pupils as a whole and of different groups of pupils, and assessing the extent to which schools ensure that all pupils, including those most at risk, succeed
- Evaluating learning and teaching
- Assessing how well schools promote equality of opportunity, and how effectively they tackle discrimination
- Checking schools' procedures for safeguarding – keeping children and young people from harm
- Fostering the engagement of headteachers, schools' staff and governors in the process of inspection so that they understand the judgements made
- Gathering, analysing and taking into account the views of parents and pupils
- Assessing how effectively schools work in partnership with other providers in order to promote better outcomes for pupils.

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163. Ofsted, *The framework for school inspection*, September 2009

Education Act 2006, and although the requirement applies to maintained schools only,<sup>164</sup> Ofsted judges academies on it as well.<sup>165</sup> In practice, this forces academies as well as maintained schools to spend considerable time gathering evidence of the ways in which community cohesion is promoted through the curriculum, through children's interaction with other groups and communities, and through work to eliminate variations in outcomes for different groups.<sup>166</sup> Fostering good relations with the wider community is a goal pursued by all good schools. However, teachers' time is wasted if it is spent attempting to satisfy Ofsted's bureaucratic requirements around such outcomes, particularly in light of "the difficulty of developing a robust methodology for measuring against these indicators,"<sup>167</sup> as noted by the Select Committee.

Despite the near impossibility of quantifying a school's contribution to non-academic outcomes, Ofsted classifies two of them as 'limiting judgements':

*"Where a school is judged to be inadequate in relation to the quality of the school's procedures for safeguarding and/or the extent to which the school promotes equality and tackles discrimination, inspectors treat these as 'limiting' judgements and the school's overall effectiveness is also likely to be judged inadequate."<sup>168</sup>*

This means that a school may provide an excellent education to its students, yet be labelled 'inadequate' overall if Ofsted inspectors find fault with its procedures for promoting equality, or for safeguarding its pupils. Naturally, all schools have a clear duty to protect their children from harm, and the academies programme has always been aimed at improving equality of opportunity by transforming struggling schools in deprived areas. But to condemn a school in its entirety based solely on perceived failings in these areas is unjust, particularly when Ofsted's bureaucratic processes lead to perverse judgements such as those described to the Select Committee. In one case a school was reported to have been classified as inadequate overall because inspectors had not been asked for identification on arrival, while in another a school was judged inadequate because a fence surrounding the playground had been deemed to be too low.<sup>169</sup> These ludicrous anomalies are an inevitable result of attempting to grade a school's progress towards intangible outcomes based on bureaucratic, tick-box procedures. To then limit a school's overall rating based on these grades is unfair to schools and misleading for parents.

The basis of a school's Ofsted rating should undoubtedly be its academic performance rather than any non-educational criteria. However, care must be taken to ensure that schools which make use of innovative or unusual pedagogies are not disadvantaged. An example is the Steiner Academy in Herefordshire, which is permitted to teach the Steiner Curriculum. This is an essential part of its identity, and indeed the identity of all Steiner Schools. Yet the school is subject to an Ofsted inspection framework under Section 5 which is designed to assess traditional pedagogy based on the National Curriculum. Steiner's two hour lessons, unique curriculum and focus on teacher-led rather than pupil-led interaction place it at a disadvantage when the inspectors come calling. If the goal of diversity of provision is to be realised, Ofsted must ensure that it is capable of effectively monitoring those academies which make use of their independence to offer genuinely unusual provision. As Steiner told us: "The next stage for choice and diversity is to create a more flexible [accountability] framework."

164. *Education and Inspections Act 2006*, which inserted a new section 21(5) to the *Education Act 2002* requiring maintained school governing bodies to promote community cohesion

165. Private sponsor interviews

166. Ofsted, *Guidance on the duty to promote community cohesion*, July 2007

167. Children, Schools and Families Select Committee First Report into School Accountability, January 2010

168. *The Framework for School Inspection*, Ofsted, July 2009

169. Children, Schools and Families Select Committee First Report into School Accountability, January 2010



### Independent Schools

Independent schools are inspected under Section 162A of the Education Act 2005 in order to ensure that they comply with The Education (Independent School Standards) Regulations 2003.<sup>170</sup>

Around half of England's independent schools (numbering approximately 2,400) are inspected by Ofsted. Ofsted does not inspect the educational provision in independent schools whose head teachers are members of one of the Independent Schools Council (ISC) associations, nor in schools owned by the Focus Learning Trust or affiliated to either the Christian Schools Trust or the Association of Muslim Schools UK (where agreed by the DCSF). The educational provision in these schools is inspected by the Independent Schools Inspectorate (ISI), the School Inspection Services (SIS) and the Bridge Schools Inspectorate respectively.<sup>171</sup> The work of these other inspectorates is monitored by Ofsted.

The following aspects of educational provision in independent schools are inspected:

- 1 The quality of education provided;
- 2 The spiritual, moral, social and cultural development of pupils;
- 3 The welfare, health and safety of pupils;
- 4 The suitability of staff and premises;
- 5 The provision of information;
- 6 The handling of complaints.<sup>172</sup>

These standards are far less bureaucratic and compliance-based than those applied to maintained schools. For example, the regulations around the "spiritual, moral, social and cultural development of pupils" are not prescriptive. An independent school is simply required to "plan and provide effectively" to develop pupils' spiritual, moral, social and cultural awareness, either through courses such as PSHE and RE or through the wider curriculum.<sup>173</sup>

Ofsted's revised September 2009 inspection framework introduced proportional frequency of inspection. Outstanding schools will be inspected only once every five years, while schools that are judged inadequate or satisfactory will be inspected on a more frequent basis.<sup>174</sup> This is a welcome development which will help to reduce the burden placed by Ofsted on high-performing schools. The logical next step is to remove the requirement for Ofsted to inspect outstanding schools altogether, unless performance data indicates a drop in standards. The 2008 Policy Exchange report *Helping Schools Succeed: A Framework for English Education* recommended that Ofsted should only carry out inspections on schools which perform poorly in annual report cards centred around academic outcomes, or in response to a high volume of parental complaints.<sup>175</sup> This would encourage further innovation in the best schools and allow the best teachers to devote as much time as possible to their students. Ending the regular cycle of inspection for good schools would produce cost savings, freeing up funds for more in-depth inspections of underperforming schools, focused strongly on classroom teaching.<sup>176</sup>

### School improvement

If Ofsted's role is to provide external scrutiny of schools, School Improvement Partners (SIPs) are intended to work with schools to provide support and challenge.<sup>177</sup>

170. Ofsted, "Independent Schools" <http://www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Education-and-skills/Independent-schools>

171. *ibid*

172. *ibid*

173. DCSF Registration of Independent Schools Information Pack <http://www.dcsf.gov.uk/reg-independent-schools/downloads/in-fopack-jan2010.doc>.

174. Ofsted, "New inspection system to improve outcomes for pupils", 12 June 2009

175. Davies C, Freedman S and Lim C (2008), *Helping Schools Succeed: A Framework for English Education*, Policy Exchange, p.67

176. *ibid*

177. *ibid* p.66

SIPs were introduced in 2004 as part of the Government's New Relationship with Schools,<sup>178</sup> and operate in academies as well as in maintained schools. Academy SIPs are contracted to the DCSF and their remit is to "provide professional challenge and support to the school, helping its leadership to evaluate its performance, identify priorities for improvement, and plan effective change."<sup>179</sup> Every secondary school is allocated a SIP who devotes five days to each school per year.<sup>180</sup> While some academy sponsors were broadly supportive of the SIP's role, finding them particularly useful for preparing for Ofsted inspections, others found them to be intrusive and unhelpful. Federations were most likely to resent the intrusion on an individual school level, feeling that their cumulative experience made SIPs unnecessary. As one told us: "It's a government to school mechanism that misses out the sponsor. It doesn't fit well with a chain. We are trying to implement our strategy, but the SIPs bypass us and give the head all sorts of instructions." Some sponsors raised concerns that SIPs fail to work with governing bodies. This was backed up by the National Governors' Association, which informed the Select Committee of "highly variable practices by both SIPs and local authorities in relation to the degree to which governing bodies are involved in decisions."<sup>181</sup>

SIPs may have a role to play in school improvement, but they should not impinge upon the ability of sponsors and governors to set an academy's direction and determine its priorities. In the Government's 21st Century Schools White Paper, to be given legislative effect by the Children, Schools and Families Bill (passing through the Lords at the time of writing), it was proposed that SIPs take on an enhanced role, helping schools select support services from a range of providers, brokered by the YPLA in the case of academies.<sup>182</sup> These new powers represent yet more intrusion for those academy operators who do not find SIPs helpful. The idea of a prescribed list of preferred suppliers for support services is another layer of unwelcome central control. We therefore recommend that the use of SIPs should be optional for academies-with an assumption that chains in particular may choose to opt out of this service- and that academies are not forced to accept advice on support services from any preferred supplier list.

The Children, Schools and Families Bill also proposed the introduction of a School Report Card from 2011, which will report on "outcomes across the breadth of school performance:

- pupil attainment, progress, and wellbeing;
- a school's success in reducing the impact of disadvantage;
- parents' and pupils' views of the school and the support they are receiving."<sup>183</sup>

Policy Exchange recommended the introduction of a report card, following the examples of Alberta, Ontario and New York, in early 2008.<sup>184</sup> However, we felt strongly that the outcomes that should be measured were largely to do with the quality of teaching and performance, such as: average student progress between key stages, school performance in baseline literacy and numeracy assessments, teacher turnover rates, annual drop-out rates at 16, and parental satisfaction surveys on the quality and range of

“ The idea of a prescribed list of preferred suppliers for support services is another layer of unwelcome central control ”

178. DCSF "A New Relationship with Schools: The School Improvement Partner's Brief" [http://www.teachernet.gov.uk/\\_doc/8508/SIP%20Brief%20edition%203%20final.pdf](http://www.teachernet.gov.uk/_doc/8508/SIP%20Brief%20edition%203%20final.pdf)

179. *ibid*

180. *ibid*

181. Children, Schools and Families Select Committee First Report into School Accountability, January 2010

182. Children, Schools and Families Select Committee First Report into School Accountability, January 2010

183. Teachernet Report Card Prospectus [http://publications.teachernet.gov.uk/eOrdering-Download/Report-Card\\_Prospectus.pdf](http://publications.teachernet.gov.uk/eOrdering-Download/Report-Card_Prospectus.pdf)

184. Davies C, Freedman S and Lim C (2008), *Helping Schools Succeed: A Framework for English Education*, Policy Exchange, p.64

education. Instead, despite the inclusion of attainment and progress, once again the Government's report card has a clear focus on non-academic criteria.

In the June 2009 *21st Century Schools White Paper* the Government proposed a more 'tailored' approach to accountability, moving away from centralised interventions such as the National Strategies.<sup>185</sup> As well as beefing up the SIPs' role, as we have discussed, they called for the strengthening of local Children's Trusts, which are local multi-agency partnerships aimed at improving children's services with which all schools, including academies, will have a statutory duty to cooperate. These measures will continue the trend of shifting schools' focus towards non-academic outcomes, and restrict the freedom of academies to act independently of local authority control. Concerns have been expressed that, although academies will have 'a seat at the table' on Children's Trust boards, there is no guarantee that they will be able to influence decisions or meaningfully engage in the commissioning of student support.<sup>186</sup> Although the National Strategies will not be widely mourned, there are fears that the latest proposals will lead to an even more complex accountability system for schools to navigate. It is hard to see how increasing the number of programmes and providers with which schools will have to engage is a step towards a simplified system.

If academies are to achieve genuine independence, wide-ranging reforms to the accountability system will be necessary. The goal must be a simpler system, free of wasteful overlap, which is both rigorous enough to ensure high standards yet sufficiently flexible to encourage genuine diversity of education provision. It must be made clear that the primary purpose of any school is to provide its pupils with a top-class academic education. Ofsted must concentrate on assessing teaching standards and monitoring educational outcomes, and abandon its bureaucratic focus on time-consuming compliance procedures. SIPs may have a useful role to play in school improvement, but they must ensure that their activities do not marginalise the role played by school operators (such as academy operators) and governors in setting a school's direction. School leaders must be free to assess their own needs and determine their own priorities without having top-down, one-size-fits-all initiatives regularly imposed upon them by central government. Additionally, we are not convinced that the YPLA is an appropriate body to oversee academy performance. For now, oversight functions should be retained by the DCSF, which now has several years' experience in this area. The Government should consider authorising external bodies to approve and monitor academies in future, subject to rigorous performance criteria.

### Recommendations

- **The accountability system must reflect the achievement of all pupils.** Solely focusing on 5A\*-C creates an obsession with those on the C/D borderline. Other measures such as average point score which reflects core subjects should be used.
- **Increasing supply of school places allows parents to hold schools accountable as well as politicians.** Without choice, schools will only be able to reflect the desires of bureaucrats and politicians – who because they are dealing with large numbers of schools will be simplistic in their measurements. Parents are able to be much more complex in their evaluations.

185. DCSF "Summary of the 21st Century School White Paper" [http://publications.dcsf.gov.uk/eOnderingDown-load/21st\\_Century\\_Schools\\_Summary.pdf](http://publications.dcsf.gov.uk/eOnderingDown-load/21st_Century_Schools_Summary.pdf)

186. Open letter from Mike Butler to Jim Knight, reprinted at [http://www.spectator.co.uk/coffeehouse/archive/2009/February/page\\_5/](http://www.spectator.co.uk/coffeehouse/archive/2009/February/page_5/)

- **The YPLA's oversight functions for academies should be abolished.** The YPLA will be a remote quango, too closely linked to local authorities. It is not suitable to carry out the Secretary of State's monitoring role for academies.
- **Self-evaluation must be an ongoing internal process and not one that is rigidly controlled from the centre.** Self-evaluation is an important part of school improvement, but in its current form is a bureaucratic, time-consuming and compliance-based procedure.
- **Ofsted should not attempt to grade schools based on unquantifiable outcomes.** Ofsted's evaluation criteria should focus on measurable academic outcomes. It should be accepted that criteria such as the promotion of community cohesion are fundamentally unquantifiable, and should be regarded as a broad requirement.
- **Ofsted should abandon its use of limiting judgements.** The use of limiting criteria, particularly around non-educational outcomes, leads to assessment outcomes that are unfair to schools and misleading to students.
- **Ofsted should be required to inspect academies in relation to their legal and particular contractual (funding agreement) obligations, not its maintained school framework.** Its failure to acknowledge the differences is leading to Ofsted effectively rewriting the rules for academies.
- **Ofsted must ensure that its assessment framework is capable of effectively monitoring those academies which offer genuinely unusual provision.** If genuine diversity of provision is to be encouraged, Ofsted's framework must be sufficiently flexible to accommodate academies offering innovative pedagogies and curricula.
- **High-performing schools should be freed from inspection by Ofsted, unless performance data indicates a drop in standards.** The burden of inspection should be removed from outstanding schools, encouraging innovation and allowing teachers to spend more time in the classroom.
- **The use of SIPs should be optional for academies.** Sponsors and principals should be able to decide for themselves whether they require the services of SIPs. Where SIPs are used, they must ensure that sponsors, group operators and governors are fully involved in the school improvement process.
- **Academy cooperation with local Children's Trusts should be optional.** Collaboration should be based on choice and mutual benefit, and not forced upon academies by statute.

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# 8

## Discipline

Discipline is an area in which academies have lately found their freedom reduced, in line with the general direction of travel for academy independence in recent years. Since September 2007, academies have been expected (but not forced) to participate in local school behaviour and attendance partnerships along with maintained schools, City Technology Colleges (CTCs), Pupil Referral Units (PRUs) and special schools.<sup>187</sup> They were intended to improve behaviour and address persistent absence across the local area. A letter from then Schools Minister Jacqui Smith explained that the partnerships (which were announced in 2005 and in place by 2007) would be expected to share information, agree admissions procedures for hard-to-place pupils, and work together to identify at-risk children earlier.<sup>188</sup> The aim was that they should cut the number of permanent and fixed term exclusions as well as reducing the levels of behavioural problems and truancy.

The 2009 Apprenticeships, Learning and Skills Act made these partnerships statutory: all secondary schools, including academies, have to take part.<sup>189</sup> This is an unnecessary restriction of academies' independence. Most academies work closely with local authorities on a voluntary basis, but forced collaboration creates a culture of blame-shifting, and reduces academies' ability and incentive to produce innovative strategies to deal with bad behaviour. This point was made in a letter from Mike Butler, the chairman of the Independent Academies' Association, to the then Schools Minister Jim Knight which noted that "forced collaboration, or partnership, is rarely successful".<sup>190</sup> He added: "The governance and leadership of an academy are not founded on a culture of being 'allowed' or 'permitted' to change and to innovate but on a culture where initiative and creativity are the expected norms."<sup>191</sup> Several academies and academy chains already make use of creative and inventive practices for dealing with challenging children (see below). Academies should not be made subject to formal requirements which may restrict their ability or incentive to innovate further in this area.

These innovative practices have the potential to drive up the quality of education provision for children with behavioural problems. Local authority-run PRUs can be effective, but their performance is variable. A 2007 Ofsted report concluded that 14% of PRUs, catering for around 700 pupils, were inadequate. It noted that "they lack a clear vision for their pupils and offer an uninspiring curriculum. As a result, they fail to improve the pupils' attendance or reduce days lost through exclusion."<sup>192</sup> Independent academies can and do perform better in their response to difficult and disruptive behaviour.

187. Teachernet "Behaviour Partnerships" <http://www.teachernet.gov.uk/wholeschool/behaviour/collaboration/>

188. Letter from Jacqui Smith to Directors of Children's Services, 4 July 2005 [http://www.teachernet.gov.uk/\\_doc/14173/Jacqui%20Smith%20letter,%20July%202005.pdf](http://www.teachernet.gov.uk/_doc/14173/Jacqui%20Smith%20letter,%20July%202005.pdf)

189. DCSF Summary of the Apprenticeships, Skills, Children and Learning Act <http://www.dcsf.gov.uk/apprenticeshipsskillschildrenandlearningact/>

190. Open letter from Mike Butler to Jim Knight, reprinted at [http://www.spectator.co.uk/coffeehouse/archive/2009/February/page\\_5/](http://www.spectator.co.uk/coffeehouse/archive/2009/February/page_5/)

191. *ibid*

192. Anthea Lipsett, "Ministers to scrap pupil referral units," *Guardian Education* 20 May 2008 <http://www.guardian.co.uk/education/2008/may/20/schools.uk3>

### Tackling persistent bad behaviour

- The Ormiston Academies Trust has begun to create in-house support units in which difficult pupils are taught a reduced curriculum and offered personalised support such as counselling, mentoring and coaching. Ormiston told us that this approach enables them to prevent bad behaviour disrupting classes, whilst still containing the issue within the school and without giving up on challenging students. Pupils can transfer back to regular classes when their behaviour improves.<sup>193</sup>
- United Learning Trust's Nottingham Academy has created an exclusion centre in partnership with a neighbouring school. The centre was up and running within three months of it being proposed- a speed achievable only by a determined and independent governing body. Students work to a reduced curriculum and a shorter day, and can transfer back to the academy or to another school when they make progress.<sup>194</sup>
- The academy chain Absolute Return for Kids (ARK) has developed a slightly different approach. Currently in its first year of operation, ARK Plus is a pre-emptive unit for children arriving with a primary school history that strongly suggests that they may have behavioural problems in secondary school.<sup>195</sup> The transition from primary to secondary school can be very difficult for certain children, and risk indicators of these problems are identifiable from an early stage. ARK Plus is entirely voluntary and very highly staffed. The children are identified in the first few weeks after their arrival at secondary school; they are then offered a place in ARK Plus, where they receive intensive tutorials in class sizes of 5-7 with specialist teachers. The curriculum is based on improving achievement in core subjects, as well as supporting development of behaviours conducive to learning, using methods such as personal targets, role modelling and mentoring.<sup>196</sup> The pupils are then reintegrated into the school year after six months. ARK Plus currently serves up to 20 children from across ARK's London academies.<sup>197</sup>

Officially, academies have the freedom to manage exclusions as they see fit. However, our discussions with sponsors have revealed that in some cases the DCSF has attempted to override this and include targets for exclusion numbers in funding agreements- although the academies have resisted.<sup>198</sup> This is a heavy-handed and restrictive approach to reducing exclusions which should not be pursued. Academies need to be free to judge whether or not exclusion is the right solution to bad behaviour based on the details of individual cases, and without regard to centrally-imposed targets. The best approach to reducing exclusion numbers is to ensure that academies retain the freedom to develop innovative solutions to challenging behaviour such as those described above.

Recently the right of children to appeal against an exclusion decision to the Independent Exclusion Appeals Panels has become a point of contention and debate. These panels were established in their current form under the School Standards and Framework Act 1998 Section 67 and Schedule 18, later replaced by provisions in Section 52 of the Education Act 2002.<sup>199</sup> Local authorities are obliged to establish panels consisting of three or five members,<sup>200</sup> which hear appeals against exclusions from academies as well as maintained schools. Academy governors and sponsors have expressed concerns that, without ultimate authority over exclusion, they lack the power to deal effectively with disruptive behaviour and to deter pupils from behaving badly.<sup>201</sup> In 2008, the Conservative

193. Private information

194. Private information

195. Private information

196. ARK Plus, [www.arkschools.org/pages/ark-schools/ark-plus.php](http://www.arkschools.org/pages/ark-schools/ark-plus.php)

197. ARK Plus, [www.arkschools.org/pages/ark-schools/ark-plus.php](http://www.arkschools.org/pages/ark-schools/ark-plus.php)

198. Private information

199. Education Act 2002 [http://www.opsi.gov.uk/ACTS/act\\_s2002/ukpga\\_20020032\\_en\\_6#pt3-ch3-pb2-11g52](http://www.opsi.gov.uk/ACTS/act_s2002/ukpga_20020032_en_6#pt3-ch3-pb2-11g52)

200. Council on Tribunals, *School Admission and Exclusion Appeal Panels*, May 2003 [http://www.council-on-tribunals.gov.uk/docs/sr\\_school.pdf](http://www.council-on-tribunals.gov.uk/docs/sr_school.pdf)

201. Richard Tice, *Academies: A model education?*, Reform, February 2008

Party announced that it intended to abolish the right of independent appeal against exclusion, with party leader David Cameron promising to “make it easier to expel disruptive kids.”<sup>202</sup> This is an issue that Policy Exchange plans to look at in more depth in the near future.

It is certainly unnecessary, however, for a duplicate appeals mechanism to be created by academy governing bodies whose decision may later be overturned by independent appeal. Currently, governing bodies are required through funding agreements to review all permanent exclusions and fixed-term exclusions of more than 15 days. The parent and pupil may attend the hearing and make representations, after which the governing body decide whether to uphold the exclusion or order reinstatement.<sup>203</sup> This requirement is superfluous as parents and pupil subsequently have the right to take their appeal to an independent panel, which may overturn the governing body’s decision. Furthermore, the additional appeals mechanism only extends the period of uncertainty over a pupil’s future. Some academies have successfully applied for a derogation from the duty to establish a governing body appeals board<sup>204</sup> in frustration at the unnecessary duplication of procedure. We recommend that this be extended to all academy funding agreements. There should be only one, fully independent appeals mechanism.

Since April 2009, academies have been required to cooperate in reciprocal funding arrangements with local authorities for excluded children. Academies must “enter into an agreement with the local authority to pay the appropriate sum for a pupil who has been permanently excluded. The local authority must also pay the Academy the appropriate sum if they offer a place at the Academy to a pupil who has been permanently excluded from another school.”<sup>205</sup> This arrangement is inequitable due to the discrepancy in per-capita funding between maintained school and academy pupils. Compensation paid to academies for admitting excluded maintained school pupils is lower than that paid to local authorities for admitting excluded academy pupils. In effect this arrangement penalises academies which use their powers of exclusion and should be scrapped in the absence of an equitable funding solution.

#### Recommendations:

- **Academy collaboration with local behaviour partnerships should be optional and non-statutory.** Partnership works best when it is entered into voluntarily. The freedom of academies to develop innovative strategies to deal with challenging behaviour should not be restricted.
- **The requirement for academy governing bodies to hear exclusion appeals should be scrapped.** There should be a single, independent appeals mechanism in which parents and pupils can have confidence.
- **Academy funding agreements should not include targets for exclusion numbers.** The decision whether or not to exclude a child should be made on a case-by-case basis.
- **The requirement for academies to pay local authorities for taking excluded children, and vice versa, should made equitable or be scrapped.** These arrangements are inequitable as maintained school children receive lower per-capita funding due to the local authority top-slice.

202. Anthea Lipsett, “Tories to scrap independent school appeals”, *Guardian Education* 7 April 2008 <http://www.guardian.co.uk/education/2008/apr/07/schools.uk2>

203. DCSF *Academy Principals’ Handbook* Section 7 [www.standards.dfes.gov.uk/academies/software/Section\\_7.doc?version=1](http://www.standards.dfes.gov.uk/academies/software/Section_7.doc?version=1)

204. Private information

205. DCSF *Academy Principals’ Handbook* Section 7 [www.standards.dfes.gov.uk/academies/software/Section\\_7.doc?version=1](http://www.standards.dfes.gov.uk/academies/software/Section_7.doc?version=1)

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# 9

## Admissions

Those who attempt to claim that academies are monopolised by the middle classes ignore the fundamental point that academies cannot and do not select pupils on the basis of ability. The academies programme is aimed not at reinstating selection by ability, but at introducing selection by parents and pupils themselves. In this sense they have considerably less freedom than fee-paying independent schools and grammar schools, which are free to use selective admissions procedures such as interviews and academic tests. However, we regard this as a very important principle. We wish to see academies at the forefront of the creation of genuine diversity of provision, as well as sufficient surplus of supply to give parents a real and meaningful choice of schools.

All academies must cater for children of all abilities, and are required through their funding agreements to abide by the mandatory provisions of the School Admissions Code (which prohibits academic selection) and admissions law as it applies to the admissions authorities of maintained schools.<sup>206</sup> Furthermore, all academy admissions arrangements must be approved by the Secretary of State as a condition of their funding agreements, and any later changes also require the Secretary of State's approval.<sup>207</sup> Critically, none of the sponsors we spoke to expressed a desire to practise academic selection. The academies programme was initially designed to benefit disadvantaged and low-achieving children in struggling schools, and sponsors remain committed to this goal. Indeed, PriceWaterhouseCooper's 2008 review of academies found that:

- The average level of prior achievement of pupils entering Academies (measured by Average Point Scores at Key Stage 2) was below the England average (26 compared to 27.4).
- Just under a third of academy pupils came from socially deprived backgrounds- a higher proportion on average than their catchment area.
- The average percentage of pupils in academies for whom English was an additional language was 24%, compared to 11% for England as a whole.
- The overall percentage of pupils with special educational needs was 33%, compared to 18% for England as a whole.<sup>208</sup>

As specialist schools, academies are permitted to select up to 10% of their pupils on the basis of their aptitude for the academy's specialism.<sup>209</sup> Aptitude should be distinguished from ability- it refers to a child's innate potential to achieve a level of ability in the future. For example, an academy which specialises in sport may select up to 10% of its children based not on their ability to play any sport, but

206. DCS DCSF Academy Principals' Handbook Section 8  
[www.standards.dfes.gov.uk/academies/software/Section\\_8.doc](http://www.standards.dfes.gov.uk/academies/software/Section_8.doc)

207. DCSF Standards Site  
<http://www.standards.dfes.gov.uk/academies/faq/?version=1#582277>

208. Academies Evaluation Fifth Annual Report, PriceWaterhouseCoopers, 2008

209. Teachernet School Categories and Definitions  
[http://www.teachernet.gov.uk/\\_doc/12910/School%20categories%20and%20definitions.doc](http://www.teachernet.gov.uk/_doc/12910/School%20categories%20and%20definitions.doc)



on measures of natural attributes such as agility, balance, co-ordination and speed.<sup>210</sup>

Many academies are oversubscribed due to their reputation for achieving excellent results: PWC's 2008 report found that there are on average three applications for each academy place.<sup>211</sup> Academies are their own admissions authority, meaning that they have the right to choose their own admissions criteria in cases of oversubscription. By contrast, admissions criteria for maintained schools are set by the local authority. While many academies choose to follow local authority criteria, others value their ability to choose their admissions criteria independently. When oversubscription does occur, academies can allocate places how they wish, using criteria such as random selection by lottery, proximity to school, preference for siblings of existing children, religious affiliation (for faith academies), or the use of 'fair banding' criteria to ensure a representative spread of academic ability within the intake.<sup>212</sup> In this sense academies enjoy greater freedom over admissions than Swedish free schools, which allocate places on a first-come-first-served basis,<sup>213</sup> or US charter schools, where most state legislation requires charters to use admissions lotteries.<sup>214</sup>

Although they are their own admissions authorities, academies do not operate their admissions procedures in a vacuum. They are required through their funding agreements to take part in local Admission Forums, which are intended to ensure that local admissions arrangements are fair and lawful.<sup>215</sup> Academies must also participate in locally coordinated admission arrangements operated by the local authority, and take part in local fair access protocols, designed to quickly secure access to education for children without a school place, and ensure that challenging children are distributed equitably across local schools.<sup>216</sup> There are also several mechanisms in place to ensure that children have the right of appeal, and that looked-after children or those with special educational needs (SEN) are not disadvantaged. Academies are required to establish independent appeals panels, while parents of SEN children may appeal to SEN and Disability Tribunals.<sup>217</sup> Where local authorities name academies in SEN statements, the academy must admit the child, unless "admission of the pupil concerned would be incompatible with the efficient education of other children and no reasonable steps may be made to ensure compatibility."<sup>218</sup> Local authorities may also require academies to accept looked-after children, even where the academy is full. Disagreements on these issues are referred to the Secretary of State to resolve.<sup>219</sup>

However, it should not be assumed that local authorities always distribute challenging children across schools in an equitable manner. Where an academy has replaced an unpopular and undersubscribed failing school, sponsors sometimes find that the predecessor school was used as a 'dumping-ground' for children with special educational needs by local authorities taking advantage of its excess capacity. This offers a partial explanation for the disproportionately high percentage of SEN children in academies (although social deprivation is another key factor). One sponsor of a recently-converted academy informed us that their local authority had been sending hard-to-place children to the predecessor school at the rate of five per week, a practice which destabilises classes and disrupts the learning of existing pupils. The sponsor was able to secure a funding agreement provision allowing pupil numbers to be held at their existing low level for the new academy's first two years of operation, allowing the school population to

210. See City Academy Bristol site [http://www.cityacademybristol.org/?\\_id=575](http://www.cityacademybristol.org/?_id=575)

211. *Academies Evaluation Fifth Annual Report*, PriceWaterhouse-Coopers, 2008

212. NUT Academies Guidance November 2009 <https://www.nut.org.uk/files/NUT-view-Acad-LC-Nov09.doc>

213. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009

214. Jonathan R. Dolle & Anne Newman, "Luck of the Draw? On the Fairness of Charter School Admissions Policies"

215. DCSF Academy Principals' Handbook Section 8 [www.standards.dfes.gov.uk/academies/software/Section\\_8.doc](http://www.standards.dfes.gov.uk/academies/software/Section_8.doc)

216. *ibid*

217. DCSF Academy Principals' Handbook Section 8 [www.standards.dfes.gov.uk/academies/software/Section\\_8.doc](http://www.standards.dfes.gov.uk/academies/software/Section_8.doc)

218. *ibid*

stabilise so that teachers could plan their lessons knowing who they would be teaching.<sup>220</sup> Despite this arrangement, a small number of pupils who applied to the academy via the local authority were awarded a place on appeal. Rather than initiate a time-consuming challenge, the academy chose to accept these further additions to the roll.<sup>221</sup> In principle, local authorities should not be permitted to override approved funding agreements in this way.

There have been calls for local authorities to be given the role of admissions authority for academies and maintained schools.<sup>222</sup> This would be an unnecessary restriction of the independence of academies, who already serve a higher proportion of challenging students than do maintained schools. The National Union of Teachers has expressed concerns that academies ‘destabilise’ surrounding schools by attracting students due to their “new buildings and glossy image”.<sup>223</sup> The greater truth is that the lasting attraction of academies is created by a history of strong results and dramatic school improvement. It shows a striking contempt for parents’ judgement to assume that they make decisions about their children’s future based solely on glossy packaging, rather than on their assessment of what is best for the child concerned. If academies attract parents and pupils due to their success, the answer is not to close them down, but for surrounding maintained schools to improve their own standards in response.

## Recommendations

- **Local authorities should not be able to override admissions limits agreed with the Secretary of State.** These agreements fall outside the purview of local authorities and are intended to bring stability into academy classrooms.
- **Academies should remain their own admissions authorities.** To remove this freedom would be an unnecessary restriction of the independence of academies, who already serve a higher proportion of challenging students than do maintained schools.

219. *ibid*

220. Private sponsor interview

221. *ibid*

222. Institute for Public Policy Research, “Academies risk increasing social segregation” 1 June 2007 <http://www.ippr.org.uk/pressreleases/?id=2728>

223. NUT Academies Guidance November 2009 <https://www.nut.org.uk/files/NUT-view-Acad-LC-Nov09.doc>

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# 10

## Governance

Academy sponsors have only partial control over the appointment of the school's governing body. The DCSF prescribes certain representatives who must be chosen as governors. Each governing body must include the principal (ex-officio), a local authority representative, at least one parent representative, and usually at least one teacher representative. Occasionally a representative of non-teaching staff is required as well. The majority of sponsors agree with the need to have a parent and teacher on the board, but the local authority representative is more controversial. Given that academies are supposed to be operating independently of the authority, and that if they have replaced a failing school the responsibility for that failure rests with that authority, this seems like an unhelpful political fudge. In many cases the local authority will be supportive of the new academy, but when they are not, having a representative on the board could be extremely problematic and distract from the important business of reviewing the school fairly and holding the head to account. Instead of compelling academies to appoint a member of the local authority to the board, the DCSF should make this optional. Often the academy will do it anyway, to maintain good local relations, but they should have the freedom to choose not to follow this route if they think it will be obstructive.

Experienced academy sponsors, particularly those with a business background, argue that they ideally need strong governors with expertise in management, finance and the law as well as in education. In addition, the DCSF guidance states that “most academies also have a teacher governor (either elected or appointed), a staff governor (either elected or appointed) and many include community representatives. Where an academy is an extended school, they may consider having representatives from the various joined up services on the governing body.”<sup>224</sup> These are only guidelines, and should not, in theory, encroach upon a school's independence. However, sponsors report varying degrees of pressure from the Department on the make-up of their board.

While the DCSF does not set the number of people who should sit on the governing body, many academies find that meeting the Government's guidelines, and appointing enough of their own people to secure a majority, means that they could easily end up with uncomfortably large boards of around 20 people, when something closer to 10 would be more powerful and efficient.

One academy sponsor told us: “To me [the size of the board] is crucial. The school had more than 20 governors before. Now we have less than half that. The unions fought for representation and we said no. You need a dynamic governing body which can make decisions.” In contrast, the governor of another academy

224. DCSF Standards Site, Organisation and Governance  
[http://www.standards.dfes.gov.uk/academies/what\\_are\\_academies/organisation/?version=1](http://www.standards.dfes.gov.uk/academies/what_are_academies/organisation/?version=1)

which did not fight for a lean board, said: “We have too many governors – about 20 including a parent representative, a representative from the local council, and the chair of governors of both the predecessor schools. Our board is definitely too big.”

There is a growing concern across the state education sector that governing bodies are becoming worryingly impotent, with well-meaning amateurs unable to hold the head to account, and parent representatives fearful of criticism lest it backfire upon their children in the school. A Government review on the topic, which has so far taken nearly two years, has yet to report.<sup>225</sup> However, a recent report by academics at the University of Warwick and Institute of Education painted a worrying picture of a weak and “beleaguered” governance system.<sup>226</sup> Given this, it is essential that those setting up academy schools for the first time are offered sensible independent advice on appointing a strong governing body.

### Recommendations

- **The requirement for academy governing bodies to include a local authority representative should be removed.** Sponsors should be able to judge for themselves whether a local authority representative would be useful or not.
- **Sponsors should be able to select governors according to their requirements.** The DCSF should not pressure sponsors to include certain types of people, or representatives of certain bodies.
- **New sponsors should be offered sensible advice on appointing a strong governing body.** It is vital that governors are capable of challenging their principal and holding him or her to account. Sponsors should, however, be free to make the final decision on the constitution of the governing body.

225. “School Governors are Becoming Powerless Pawns”, Guardian Education, 10 November 2009, <http://www.guardian.co.uk/education/2009/nov/10/school-governors-powerless-academies-trust>

226. Stewart Ranson and Colin Crouch, “Towards a New Governance of Schools in the Remaking of Civil Society”, [http://www.cfbt.com/evidence-foreducation/pdf/NewGovernance\(Report\)v6.pdf](http://www.cfbt.com/evidence-foreducation/pdf/NewGovernance(Report)v6.pdf).

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# Part 3

## Addressing Failure in the System

Failing schools are always going to be a particularly hot political potato. Yet the question of how to deal with failure is absolutely crucial to a reformed education system in which we empower parents and protect pupils. A national evaluation of performance at charter schools across 16 US states published by Stanford University last year showed real variability and a worrying proportion of underperforming charter schools.<sup>227</sup> This reminds us that a fully deregulated approach simply does not work. For a start there must be proper oversight of who is allowed to open a new academy school, and robust but properly focused accountability for performance within all schools, as we have discussed. But in addition, there must be a fundamental principle that poorly performing schools should not be allowed to stay open, whether under the control of the local authority or an independent sponsor.

### Sweden and US

The central Swedish Schools Inspectorate has the ability to rescind a free school's approval or its entitlement to funding,<sup>228</sup> although until now very few free schools have been shut down for poor performance.<sup>229</sup> It is intended that, following the separation of the Inspectorate from the National Agency of Education (see accountability section), evaluation and control in Sweden will be made 'stronger and more rigorous'<sup>230</sup>, so that inadequate providers can be weeded out of the system should their performance fail to improve. However, the Inspectorate does not have the power to close municipal schools, although it can demand that measures be taken to address any shortcomings. It would be fairer and more consistent with Sweden's new focus on accountability if underperforming municipal schools faced the same sanctions as free schools.

It is the responsibility of US charter school authorisers to close down schools due to inadequate performance, financial unviability or failure to abide by their charter contract. Unfortunately, too many fail to do so – a situation which took proponents of charter schools by surprise. As Robin Lake of the National Charter School Research Project explained: “Few advocates [of charter schools] contemplated the possibility that the agencies empowered to authorise and oversee charter schools would not actually fulfil their responsibilities to screen out unqualified applicants or shut down low-performing schools. Unfortunately, this has too often proven to be the case.”<sup>231</sup>

Where authorisers do practise strong oversight, recent studies suggest that they deliver superior school performance results. One example is New York State, where

227. Stanford CREDO Report Summary <http://credo.stanford.edu/reports/CREDO%20NYC%20report%20Press%20Release%20-%20FINAL.pdf>

228. Swedish Schools Inspectorate <http://www.skolinspektionen.se/PageFiles/1854/SwedishSchoolsInspectorate2009.pdf?epslanguage=sv>

229. Evans N and Meyland D, *A Guide to School Choice Reforms*, Policy Exchange 2009 p.31

230. Swedish Schools Inspectorate <http://www.skolinspektionen.se/PageFiles/1854/SwedishSchoolsInspectorate2009.pdf?epslanguage=sv>

231. Robin Lake, “Holding charter authorizers accountable: why it is important and how it might be done,” National Charter School Research Project, 2006 p.1

authorising agencies include the State University of New York (SUNY). A strong state charter law ensures a high degree of charter oversight, while charters are granted for five years only and renewed subject to performance. Authorisers can close a school down in response to academic, fiscal or legal failure.<sup>232</sup> As a result, as SUNY states, accountability in New York “is more than a goal for charter schools, it is a non-negotiable requirement”.<sup>233</sup> It is no coincidence that New York charter schools are amongst the highest-performing in the country. A report by professor Caroline Hoxby of Stanford University assessing all New York charters found they reduced the rich-poor gap by 86% in Maths and 66% in English and the Arts.<sup>234</sup>

Unfortunately, too many states fail to emulate New York’s strong charter accountability standards. Where authorisers fail to respond to charter school failure, the credibility of the system as a whole is threatened. As Robin Lake explains: “Irresponsible authorising may prove to be the Achilles heel of the charter school movement...If the charter school movement fails to prove itself as a viable source of higher quality public schools, bad authorising and oversight will probably be a major reason.”<sup>235</sup> This should serve as a warning to advocates of independent, state-funded schools in the UK. Inadequate accountability standards and failure to act when a school is failing could allow poorly-performing schools to undermine confidence in the concept of school independence.

“Inadequate accountability standards and failure to act when a school is failing could allow poorly-performing schools to undermine confidence in the concept of school independence”

## Independent Schools

When independent schools are judged to be failing to satisfy the Independent Schools Standards Regulations 2003 following an inspection, they are required to produce an improvement plan. If an independent school fails to make the improvements required, it may be deleted from the register of independent schools by the registering authority, and forced to close.<sup>236</sup> This is not a frequent occurrence; the Independent Schools Council, which represents 1,280 independent schools containing the majority of UK independent school pupils, informed us that none of its schools had been closed due to non-compliance in the last ten years.

## Maintained Schools

Local authorities have certain powers to intervene if a school is struggling or failing, which are defined in the Education and Inspections Act 2006. They have the authority to:

- appoint new governors;
- create interim executive boards;
- require a badly performing school to link up with a good-performing one;
- remove the delegation of the school’s budget;

232. “New York State Charter Schools at a glance”, SUNY Charter Schools Institute, [www.newyorkcharters.org/documents/NYSCharterSchoolsAt-A-Glance.pdf](http://www.newyorkcharters.org/documents/NYSCharterSchoolsAt-A-Glance.pdf)

233. *ibid*

234. Hoxby et al, *How New York City’s Charter Schools Affect Achievement*, The New York City Charter School Evaluation Project, 2009, p.45

235. Robin Lake, “Holding charter authorizers accountable: why it is important and how it might be done,” National Charter School Research Project, 2006 p.1

236. Ofsted “Independent Schools” <http://www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Education-and-skills/Independent-schools>

- close, merge or otherwise re-organise the school;
- request an Ofsted inspection of the school.<sup>237</sup>

There are various points at which the local authority may step in and exercise any of these powers.

- **When the school has not complied with a valid warning notice from the local authority**

A warning notice may be given in any of the following circumstances:

- a) When the standards of performance of pupils at the school are unacceptably low, in comparison to the standards they should be expected to achieve, the standards achieved previously, or the standards of comparable schools.
- b) When there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, standards of performance.
- c) When the safety of pupils or staff of the school is threatened.<sup>238</sup>
- d) Following the Apprenticeships, Skills and Learning Act 2009, a warning notice can also be issued if a school governing body has failed to comply with teachers' pay and conditions.<sup>239</sup>

- **When the school requires Significant Improvement**

Ofsted classifies a school as requiring significant improvement if it is either failing to provide an acceptable standard of education, but demonstrating the capacity to improve, or not failing to provide an acceptable standard of education, but performing significantly less well than it might reasonably be expected to.

- **When the school is in Special Measures**

Ofsted classifies a school as requiring Special Measures if it is failing to provide an acceptable standard of education and the school leaders do not demonstrate the capacity to secure improvement.<sup>240</sup> Since 1997, almost 300 schools in Special Measures have been closed. On 57 occasions a new school opened on the site.<sup>241</sup>

The Education and Inspections Act 2006 stated that the Secretary of State could intervene where a school is labelled as needing significant improvement or special measures by: appointing new governors, appointing an interim executive board or directing the closure of a school (in special measures only).<sup>242</sup> The Apprenticeships, Skills and Learning Act 2009 extended these powers, allowing the Secretary of State to step in where a school has been issued with a warning notice, rather than just when a school is in need of significant improvement or special measures. Additionally, it gave the Secretary of State the power to direct local authorities to consider issuing warning notices to underperforming schools.<sup>243</sup> These new powers arose in response to concerns that existing legislation is not used effectively, and particularly that warning notices are not issued frequently enough, preventing the local authority and the Secretary of State from taking action.<sup>244</sup> A November 2009 letter from the Department to Directors of Children's Services in England states that it is intended that the Secretary of State will also be able to direct local authorities to close a school

237. Mark Blois, "LA powers to intervene in schools causing concern," Teaching Expertise February 2009 <http://www.teachingexpertise.com/e-bulletins/lea-powers-intervene-schools-causing-concern-4830>

238. Education and Inspections Act 2006

239. Letter from the DCSF to Directors of Children's Services in England, November 2009

240. DCSF Statutory Guidance on Schools Causing Concern, September 2008

241. DCSF Standards Site <http://www.standards.dcsf.gov.uk/sie/si/SCC/>

242. DCSF Statutory Guidance on Schools Causing Concern, September 2008

243. Letter from the DCSF to Directors of Children's Services in England, November 2009

244. See Teaching Expertise website <http://www.teachingexpertise.com/e-bulletins/lea-powers-intervene-schools-causing-concern-4830>

when it is failing to meet the terms of a warning notice or requires significant improvement, and not just when it is in special measures.<sup>245</sup>

Yet there remains a need for greater clarity about what will happen to schools in special measures. Once Ofsted has given a school the special measures label, it automatically receives another inspection visit in four to six months. It seems reasonable that if the school is not demonstrating real capacity for improvement during that visit, that it should be opened up to competition as a new academy. Delaying action for two years, as is currently the case, is unacceptable as it means a further two years of failure for the children attending that school. If Ofsted has classified a school as failing to provide an acceptable standard of education and critically has also judged that the school leaders do not demonstrate the capacity to secure improvement, the Government should have the courage of its convictions and act swiftly to close the school and turn this failure around.

## National Challenge

As discussed in the accountability chapter in Part Two, the National Challenge is a floor target that there should be no school in which fewer than 30% of young people achieve at least five GCSEs at grades A\*-C, including English and mathematics, by the end of Key Stage 4. The Government has allocated £400million provide centrally-appointed advisers to help all schools reach this target by 2011.<sup>246</sup> Schools which fail to reach this target are expected to be subjected to 'structural interventions' including federation with a better-performing school under a single governing body; involving external partners in a school's governance in the form of a trust; the replacement of the governing body with an interim executive board; closure of the existing school and its reopening as part of a National Challenge Trust school, in partnership with a good local school and an external partner; conversion to an academy; amalgamation with a stronger school; or simply closure. As of February 2009 there were 583 schools receiving National Challenge funding, totalling just over £50 million. 38 of these schools were academies.<sup>247</sup>

## Academies

Legislation relating to local authorities' powers of intervention in maintained schools are not valid for academies. However, academy proprietors are expected to take action in response to an Ofsted report stating that the academy requires special measures or significant improvement. If improvement is not secured, an academy's articles of association and funding agreement provide for the Secretary of State to appoint additional governors, stop funding the Academy or close the school completely.<sup>248</sup>

Funding agreements contain provisions allowing the Secretary of State to terminate the agreement under the following conditions:

- If the academy no longer fulfils the requirements set out in the 'characteristics of an academy' section that it:
  - a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the Agreement, and
  - b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

245. *ibid*

246. DCSF *National Challenge: A Toolkit for Schools and Local Authorities* <http://www.dcsf.gov.uk/nationalchallenge/downloads/7715-National%20ChallengeWEB.pdf>

247. The Guardian, *National Challenge schools funding table*, 16 February 2009 <http://www.guardian.co.uk/education/table/2009/feb/16/schools>

248. DCSF *Statutory Guidance on Schools Causing Concern*, September 2008



- Or if the academy no longer fulfils the conditions of its grant, e.g. that the school will be at the heart of its community, sharing facilities with other schools and the wider community
- Or if the company is otherwise in material breach of the provisions of the funding agreement.<sup>249</sup>

When terminating an agreement for the above reasons, the Secretary of State must provide notice of his intention to terminate, and state the measures required to remedy the situation and the timeframe in which they must be taken. If a response is received in time, the Secretary of State must inform the sponsor whether he is happy with the measures taken, whether further measures are needed, or whether he still intends to terminate the agreement. If the latter, there must be a final meeting with sponsor representatives within 30 days; and if the Secretary of State is still not satisfied he can give the company 12 months notice to terminate the agreement.<sup>250</sup> The funding agreement can also be terminated in response to financial failure – for instance if the sponsoring organisation is unable to pay its debts under the Insolvency Act, has a receiver or administrator appointed to it, or an order is made for the winding up or administration of the sponsor.<sup>251</sup>

Additionally, either the Secretary of State or the sponsor can give seven years' notice to terminate the funding agreement without giving a reason.<sup>252</sup> This clause was presumably inserted to give the Government political leeway following a change of policy direction on academies, yet it creates long term uncertainty which is unhelpful in securing investment and commitment from sponsors. It should be removed. The required seven years' notice makes the provision impractical as a tool for the Secretary of State to respond to inadequate sponsor performance, which in any case is covered by the clauses listed above. A sponsoring organisation could conceivably use the clause to abandon its responsibilities, but this too is unsatisfactory, as the academy would continue to operate for seven years with a potentially disinterested and disengaged sponsor. The length of the termination period should be reduced.

In cases where an academy's relationship with its sponsor is to be terminated, the Department should be prepared to transfer control to another sponsor as quickly as possible. There may be cases where an academy has taken over a failing school, but has itself failed to secure significant improvement. In such cases it is vital, if the academy remains open, that its pupils not be subjected to a third successive failed regime. We therefore recommend that the Department seek to transfer sponsorship of failed academies to established chains with a proven record of success. These chains should be approached in advance, allowing the Department to draw up a list of possible 'emergency' sponsors for each region in order to secure as rapid and smooth a transition as possible.

### Recommendations

- **If a school placed in special measures by Ofsted has not shown signs of improvement by the time of the follow-up inspection, four to six months later, it should be opened up to competition as a new academy.** If Ofsted has classified a school as failing to provide an acceptable standard of education and critically has also judged that the school leaders do not demonstrate the capacity to secure improvement, the Government should

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249. ARK Academies Master Funding Agreement 2006 [http://www.dcsf.gov.uk/foi-scheme/\\_documents/DFES\\_Fol\\_279.pdf](http://www.dcsf.gov.uk/foi-scheme/_documents/DFES_Fol_279.pdf)

250. *ibid*

251. *ibid*

252. *ibid*

have the courage of its convictions and act swiftly to close the school and turn this failure around

- **The clause allowing funding agreements to be terminated without a reason after a seven year notice period should be removed.** The clause creates long term uncertainty which is unhelpful in securing investment and commitment. The long notice period makes it unsuitable as a mechanism to respond to inadequate sponsor performance, while sponsor-led termination should be negotiated with the Secretary of State.
- **A clause which allows termination in the case of poor performance – with relatively short notice periods – should be inserted into funding agreements.** In addition the Department should have a list of emergency sponsors to take over schools when termination must take place.
- **The Department should approach established chains with a proven record of success with a view to taking over any failed academies in the future.** The Department should have a list of possible ‘emergency’ sponsors for each region in order to secure rapid and effective intervention in failed academies.

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## Conclusion

The current system for setting up new schools is bureaucratic, confusing and expensive. It blocks many of the providers which have made the greatest difference in other countries, including teachers and parents. At the same time, while we talk about academies having independence, in practice that freedom is compromised in many different and harmful ways. If we are to bring new providers into the system, they will want to know that they, not Whitehall, will be running their schools

Whatever the rhetoric of the three political parties, unless they deal with the practical barriers to setting up schools - and the limits on what those schools can do - a thriving system of independent, state-funded schools will never come into existence.

Such a system would allow a variety of school operators to offer real diversity of provision. Parents across the country could choose from schools offering genuinely different pedagogies, ranging from traditional educational methods to innovative models such as those provided by groups like Steiner or Kunskapsskolan. Competition would drive up standards in the long-term, and would allow popular and effective teaching models to grow and spread.

By adopting the recommendations in this report a Government could ensure not only that new providers set up schools where they were needed, but also that those providers were of high quality. Evidence from Sweden and America has made it clear that is essential. Without those two elements – flexibility and accountability - children will continue to be denied the schools they need and deserve.



The exceptional success of schools such as the Mossbourne Academy in Hackney has demonstrated that strong, independent school leadership can have an extraordinary impact on endemic educational underachievement. The expansion of the academies programme could offer parents across the country the prospect of a real choice of high-quality education providers for their children. Unfortunately, the process by which new providers can enter the academies programme has grown increasingly restrictive and ever more dependent on the approval of local authorities. Simultaneously, the ability of academies to act unencumbered by central and local government has been steadily eroded.

This three-part report examines the changes required to make an expanded programme of genuinely independent academies a reality. The first part examines the barriers which prevent new providers entering the system, including a ponderous approval process, overly restrictive planning procedures, and a centralised and inflexible system of building procurement. The second part looks at restrictions on academy independence which curb invention and innovation, including bureaucratic accountability mechanisms and interference by central and local government in curriculum, discipline, admissions, and staffing. The third part examines existing mechanisms for intervention in cases of school failure and recommends measures to ensure that under-performance in schools is acted upon swiftly and in the best interests of pupils. In each case we compare the situation of academies with that of maintained schools and fee-paying schools in the UK, as well as US charter schools and Swedish free schools.

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