

Trust issues

How to bring academies and maintained schools into a unified state school system

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About the author

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Executive Summary

It would have been hard to imagine back in 2002 when the first ‘city academy’ opened that such a small, targeted scheme aimed at replacing failing schools in urban areas would end up becoming one of the most contentious educational debates in living memory. The situation we are left with almost two decades later is complicated, to say the least. Approximately one-third of primary schools and three-quarters of secondary schools now operate as ‘academies’ i.e. state schools that are outside of local authority control. In effect, England now has two sets of state schools which are run separately from one another – local authority (‘maintained’) schools and academies. Inevitably, this has produced a fragmented and incoherent education system, with little sign of improvement on either front. What’s more, neither maintained schools or academies appear to be out-performing the other, yet considerable energy is being expended by politicians and civil servants to maintain the distinction between these two systems.

This report starts from the simple premise that it is better to have one system for state schools in England rather than two, so that all stakeholders – pupils, parents, teachers, school leaders, local communities and politicians – can judge schools on a ‘level playing field’ where every school is given the same support and opportunities to succeed. This report proposes that, instead of aiming for either a fully ‘maintained’ or fully ‘academised’ system, it is best to work with the existing landscape to build a unified system in which multiple types of schools and school groupings can flourish. Consequently, the objective of this report is to outline a new model for state education that is based on the following four principles:

1. **SIMPLICITY:** the state school system in England must be easily understood by every stakeholder, which requires a single set of terms and concepts to be applied across all government-funded schools.
2. **COLLABORATION:** schools are more likely to succeed when they work together instead of working alone, which is why close and collaborative partnerships throughout the school system should be the clear expectation for all.
3. **COHERENCE:** the school system should be designed in such a way that every school starts from a similar position and should be treated fairly and equally in terms of funding and accountability.
4. **TRANSPARENCY:** taxpayers have a right to know how, where and when their money is being spent on education. Transparency regarding the use of, and decisions related to, public funds for state schools is therefore essential.

To enact these four principles, this report identifies and analyses the disparities between maintained schools and academies with the aim of reducing, and ultimately eliminating, the gap between the two state school systems.

Different structures

There are different structures in place regarding the funding, governance and management of maintained schools and academies, but these seem to offer little or no benefit to pupils and parents. For example, maintained schools and academies receive the same amount of funding from government for their pupils but academies have a ‘funding agreement’ directly with the Department for Education (DfE) whereas maintained schools receive funds via their local authority. Maintained schools must also account for how funding is spent at each individual school. In contrast, academy funding agreements, which are often not available to parents and have been repeatedly changed over the years, make it difficult – if not impossible – to understand how much individual academies within a multi-academy trust (MAT) are spending and receiving each year. This is largely because each MAT is a single legal entity, irrespective of how many schools it includes, so it only releases one set of annual accounts for the whole MAT and no further breakdowns of spending at school level are publicly available.

Several years ago, the Public Accounts Committee in Parliament warned that the way academies were financed meant it was “still not sufficiently transparent for parents to scrutinise how their child’s school is spending its money, and for communities to hold their local school to account”, particularly when less than 20% of academies were publishing their funding agreements online. The Committee concluded that “local parents, Parliament and the public cannot make a proper value-for-money comparison of individual academies and maintained schools.” These concerns remain just as relevant today.

The governance structures for maintained schools and academies are also markedly different. While maintained schools continue to be overseen by a governing body that monitors their educational outcomes and financial stability, academies are run by a combination of ‘trustees’ and ‘members’, who provide separate layers of management similar to those found in corporations. As few as three ‘members’ can exert a huge degree of control over an entire MAT, which raises doubts about the appropriateness of this governance model within an education system. The overlap between trustees and members can also generate conflicts of interest when making decisions about academies, and because academies within MATs are no longer a separate legal entity then, in some cases, there is no governing body at all left for the individual schools. The fact that academy trustees and members do not have to release any details of important decisions they make about the sustainability and viability of their schools is another unhelpful by-product of the existing arrangement.

The role of the eight 'Regional Schools Commissioners' (RSCs) - who are responsible for tackling underperformance in state schools, supporting maintained schools converting to academies, moving academies between MATs where necessary and approving bids for new schools - is another cause for concern. The Education Select Committee in Parliament highlighted numerous issues about how RSCs operate back in 2016, but little progress has been made since then. The opaqueness of their operations, including the use of 'Headteacher Boards' to guide their work, ensures that the actions of RSCs remain "clouded in elements in secrecy". This becomes even more problematic when the only route for creating new schools is through the 'Free Schools' programme (Free Schools are simply new academies). The on-going confusion about the purpose and objectives of Free Schools, plus the crucial role that RSCs play in selecting who runs the schools in their area, generates more decisions about local schools that can easily become detached from the best interests of pupils and parents. The increasingly vocal protests outside some schools that are being forced to become academies is testament to the breakdown in communication and trust between central government and RSCs on the one hand and parents and local communities on the other.

Different expectations

In addition to the different structures for academies and maintained schools, there are also different expectations of schools and their leadership teams within the two systems in terms of financial probity, transparency and pupil admissions. This means that even neighbouring schools might be treated differently, and parents can be left confused and unable to access the information they often want and need.

Numerous examples of exorbitant pay for chief executives and senior leaders in MATs have undoubtedly harmed the reputation of the academies programme. While maintained schools are bound by national pay scales for headteachers and other staff, academies are free to set their own pay levels. Academies are supposed to follow a "robust evidence-based process" for determining executive pay, but this has evidently not occurred on a number of occasions despite the DfE complaining to many academies about their pay awards. Most academies exercise a reasonable level of restraint on this matter, but when some individual academies are paying their headteachers over £250,000 a year to run a single school then the pressure from the DfE is clearly not having the desired effect in all cases.

In many respects, it is entirely predictable to see senior academy executives getting paid more on average than headteachers of maintained schools when the former can be directly responsible for a large group of schools while the latter are typically responsible for just one. Furthermore, academies must list the number of staff earning above £60,000 a year (broken down into £10,000 'bands') whereas maintained schools do not have to publish this

information. Again, such inconsistencies between the two state school systems make it harder for stakeholders to understand how and where taxpayers' money is being used.

Another source of controversy has been 'related party transactions', as some senior leaders and governors within the academy sector have given contracts and jobs (sometimes worth hundreds of thousands of pounds) to family members, colleagues or even their own personal companies. Such transactions are legal under company and charity law, so long as open and transparent procurement procedures have been followed and any potential conflicts of interest are appropriately managed. Despite numerous rules and regulations being introduced to curb the inappropriate actions of some individuals, problems continue to this day. That said, there is also evidence to suggest that related party transactions may have led to improper behaviour in the maintained schools sector as well, and the ability to track related party transactions in academy trusts is only possible because they are listed in their annual accounts – something that is not demanded of maintained schools.

The admissions system drives another wedge between maintained schools and academies. The 'Schools Admissions Code' applies to all state schools, but academies operate as their own 'admissions authority' – meaning that they are effectively in charge of their own admissions practices, unlike most maintained schools. Studies have shown that Free Schools admit fewer disadvantaged pupils than similar schools nearby, while some academies appear to be (knowingly or unknowingly) circumventing the Schools Admissions Code. The most recent report from the Office of the Schools Adjudicator, which monitors whether state schools are fulfilling their legal obligations, found that of the 129 new cases brought against schools' admissions policies last year, almost three-quarters were related to academies and Free Schools. This included academies refusing to adhere to 'Fair Access Protocols' that are supposed to ensure the most vulnerable pupils are placed in a suitable school as soon as possible, with the Schools Adjudicator reporting that "the proportion of schools not agreeing protocols remains noticeably greater among academy schools".

The increasing number of academies poses a more general problem in terms of the growing complexity of the admissions system. The Schools Adjudicator recently noted that "the admission arrangements determined by local authorities ...are almost always clear and uncomplicated so it is easy for parents and others to understand how places will be allocated". However, for schools that are their own admissions authority (including academies) "frequently they are less clear and more, or even very, complicated". This presents significant challenges for pupils and parents as they try to navigate the admissions system. It is not the case that academies are the only type of school that fails to comply with the Schools Admissions Code, but it does appear that they are the most likely to find themselves on the wrong side of the rules.

Recommendations

The pursuit of creating more academies over many years and successive governments has spawned countless conversations around school structures, yet the standard of education being provided within these structures has too often been ignored. Decisions around the structures for, and expectations of, state schools should always be based on improving the quality of education rather than ideological or political considerations. Consequently, the following recommendations focus on bringing the two separate state school systems together into a single coherent landscape. This will, in turn, provide a set of mechanisms and processes that can be used to monitor and improve standards across the state school sector in a fair and equitable manner. Some of the more significant proposals are best packaged within a new piece of legislation – titled *'The State School System Act 2020'*.

PRINCIPLE 1 - SIMPLICITY

- **RECOMMENDATION 1:** The Department for Education should no longer refer to 'academies' or 'free schools' in *The State School System Act 2020* or any related documentation. Instead, the standard term for referring to all government-funded schools should simply be 'state schools'.
- **RECOMMENDATION 2:** *The State School System Act 2020* should be used to establish every state school as a separate legal entity. This is currently the case for maintained schools and stand-alone academies but not academies within multi-academy trusts. Following this, all schools should be required to have a governing body that delivers a set of core functions and responsibilities.
- **RECOMMENDATION 3:** *The State School System Act 2020* should stipulate that state schools will be funded directly by the Department for Education without passing through any intermediary organisation. Schools will then be free to share or pool their resources with other schools. This will be delivered through a standardised funding agreement for all state schools.

PRINCIPLE 2 - COLLABORATION

- **RECOMMENDATION 4:** Headteachers will be given the autonomy to operate as an 'independent state school' or join any of the existing types of collaboration between schools – such as trusts, federations and partnerships – as these will now be available to every state school irrespective of their prior status as a maintained school or academy.

- **RECOMMENDATION 5:** *The State School System Act 2020* will make all stand-alone academies ‘independent state schools’. If they so wish, these schools can choose to set up a new partnership, federation or trust or join an existing group. Multi-academy trusts will also be renamed ‘national school trusts’.
- **RECOMMENDATION 6:** Within *The State School System Act 2020*, the default option for existing maintained schools should be that they join a new form of school grouping called a ‘local schools trust’ (based on the current model for multi-academy trusts) that will be created to allow local authorities to run state schools in their area. Alternatively, a maintained school can choose to become an ‘independent state school’, after which they can join a different partnership, federation or national schools trust.

PRINCIPLE 3 - COHERENCE

- **RECOMMENDATION 7:** *The State School System Act 2020* should replace the system of eight ‘Regional Schools Commissioners’ with 35 ‘Local Schools Commissioners’ (LSCs) across the country. The new LSCs will be responsible for managing the performance of all state schools operating in their area, holding the funding agreements with schools, commissioning new school places and deciding on the most suitable operators of schools in their locality.
- **RECOMMENDATION 8:** Alongside their role in monitoring the performance of each state school, LSCs can formally intervene by changing the operator or management of any underperforming school (e.g. moving an independent state school into a school trust) if improvements are not recorded within a reasonable timeframe.
- **RECOMMENDATION 9:** Should the need for a new school arise, the LSC will be responsible for identifying the most appropriate operator of the school through a fair, open and rigorous procurement process – with the highest priority being given to existing operators of successful state schools.
- **RECOMMENDATION 10:** In this new state school system, the core role of local authorities will be to act as a ‘champion’ for all children and young people in their area. Rather than providing education services directly, they should focus on commissioning services from others and supporting education in their area as well as taking control of admissions for state schools.

PRINCIPLE 4 - TRANSPARENCY

- **RECOMMENDATION 11:** All state schools should publish annual accounts on their website, including income, expenditure and balances. These accounts will also include any financial contribution made by the school to their chosen collaborative arrangement (e.g. a trust) as well as details of contracts currently held by the school worth £10,000 or more. Every state school can also be issued with a 'Financial Notice to Improve' should their financial position deteriorate.
- **RECOMMENDATION 12:** Alongside their annual accounts, all state schools should publish the names and total remuneration for any individual(s) earning over £60,000 including base salaries, bonuses and pension payments.
- **RECOMMENDATION 13:** Related party transactions in the state school system should be banned, irrespective of the type of school or collaboration that seeks to use them.
- **RECOMMENDATION 14:** A full separation of duties between employees, trustees and members along with a higher minimum number of members should be formal requirements for all school trusts as part of the implementation of *The State School System Act 2020*.
- **RECOMMENDATION 15:** The new LSCs should operate in an open and transparent manner. This includes publishing full details of the decisions they make in relation to school interventions, holding public consultations and meetings on major issues (e.g. setting up a new school) and scrapping the concept of 'headteacher boards'.

Conclusion

Considerable political oxygen has been (and continues to be) consumed by fraught debates over the impact of 'academies' at a local, regional and national level. It has evidently reached the point where the seemingly endless disputes over whether one set of structures is better than another makes it difficult to hold sensible discussions about how to improve school standards. It is regrettable that some people now appear more interested in debating the label attached to a given school rather than the substance of what is happening in the classrooms within those same schools.

As noted in the title of this report ('Trust issues'), the conversations around how to organise and deliver state education are frequently conducted in an atmosphere of mistrust and suspicion – particularly in relation to academies and the trusts that typically run them.

This report takes the view that the best way to move beyond these polarised opinions is for the government to set the explicit goal of bringing all state schools together over the next few years into a single, unified system. In effect, the proposals in this report aim to take the best of what the academies programme has promoted – more autonomy for headteachers, greater innovation and the use of collaboration between schools to drive up standards – and combine this with the foundations of the maintained school system – a commitment to fairness, openness and a local approach to schooling. In doing so, supporters of both maintained schools and academies will hopefully recognise the benefits of building a simpler, more coherent and more transparent school system that enshrines the values and principles that they each cherish. After all, despite their differences, these two groups of supporters want to achieve the same thing: a better education for children and young people in this country.

1. Introduction

In the 1990s, the desire to reform school structures gained momentum on both sides of the Atlantic. The 'charter school' was introduced to America in 1988 by Albert Shanker, then head of the American Federation of Teachers. Shanker's vision was of groups of teachers being given a 'charter' to run a state school for up to five years, which would enable them to try out new and innovative ideas. This led to the first charter schools being created in Minnesota in 1991.¹ Meanwhile, the Conservative government under John Major announced the introduction of 'City Technology Colleges' (CTCs) in 1986. Spearheaded by Education Secretary Kenneth Baker, these new schools would be completely outside of local education authority control and were intended to be a 'half-way house' between the state and independent sectors.² The original plan was for 100 CTCs to be set up across the country, each one funded - 'sponsored' - by a business, but only a handful were ever established.³

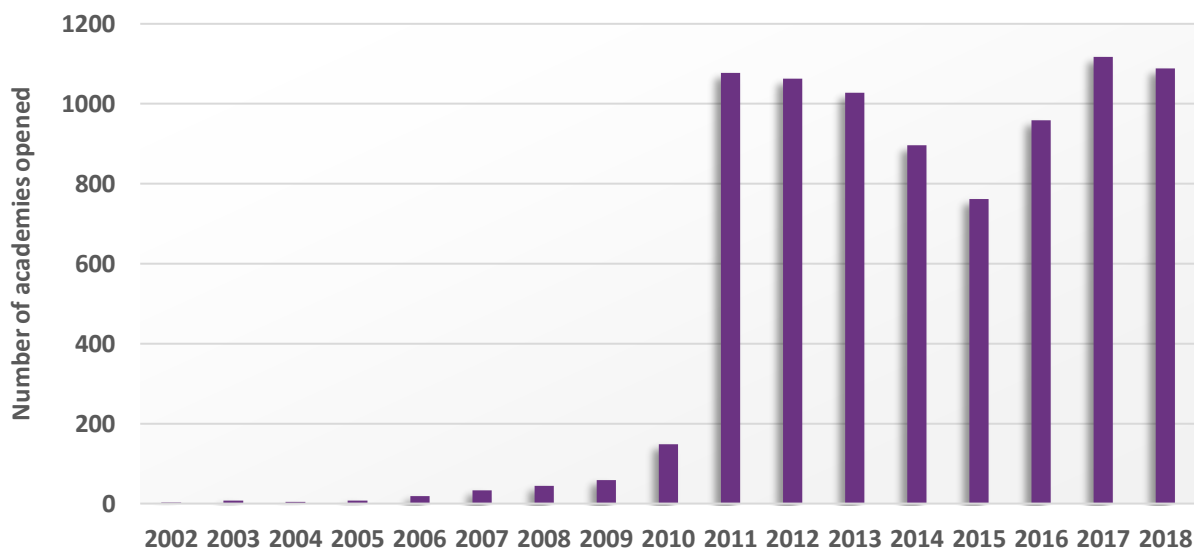
Although charter schools and CTCs had their differences, their role as independent government-funded schools helped lay the foundations for what was to come. In March 2000, Education Secretary David Blunkett announced that the Labour Government intended to create a network of 'city academies' in England. The brainchild of Tony Blair's education advisor Andrew Adonis, these 'academies' would be built and managed by businesses, churches and voluntary groups and they would operate outside the control of local authorities. In return for a £2 million donation towards the capital costs, sponsors would be allowed to rename the school, control the board of governors, influence the curriculum and select up to 10 per cent of pupils.⁴

In his speech launching the 'city academies' programme, David Blunkett declared that "they will offer a real challenge and improvements in pupil performance, for example through innovative approaches to management, governance, teaching and the curriculum". In addition, "the aim will be to raise standards by breaking the cycle of underperformance and low expectations" because "they will take over or replace schools which are either in special measures or clearly underachieving".⁵ The first three academies opened in September 2002, followed by nine more in 2003 and a further five in 2004.⁶ However, it quickly became apparent that the financial contribution required from sponsors was discouraging them from getting involved. In response, the government reduced the financial contribution and there was also a greater focus on attracting sponsorship from universities and charities as opposed to individual business people and philanthropists.⁷ The slow progress of setting up the first academies was jettisoned in 2004 as the government set a target of having 200 academies by 2010, which was itself superseded in 2006 by a new target of 400 academies.⁸ Even so, by the end of 2009, there were still only 176 open academies. A decade after the advent of

'academies', it would have been hard to imagine that what began as a small, targeted scheme aimed at replacing failing schools in urban areas would soon become a central feature of education in England.

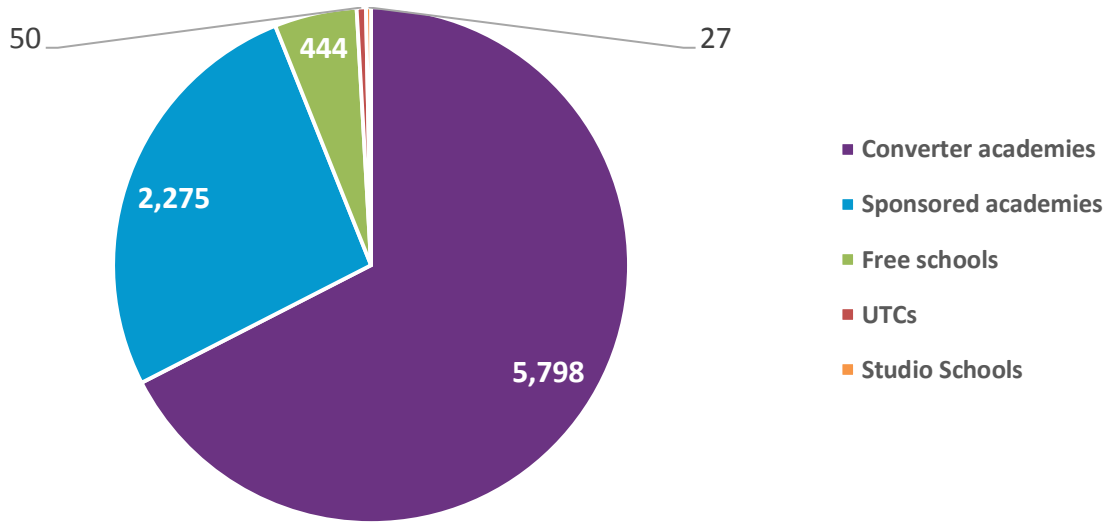
Shortly after the 2010 General Election, the Coalition Government published a White Paper called 'The Importance of Teaching', which proclaimed "it is our ambition that Academy status should be the norm for all state schools, with schools enjoying direct funding and full independence from central and local bureaucracy."⁹ Subsequently, the number of academies rose sharply as schools were now allowed to 'convert' from being local authority schools into academies rather than waiting to attract a 'sponsor' (Figure 1).¹⁰ Initially, only schools rated 'Outstanding' by Ofsted could convert, encouraged by considerable financial incentives, but from 2011 any school 'performing well' was allowed to do so.¹¹ Furthermore, 'The Importance of Teaching' stated that "where there has been long-term underperformance, little sign of improvement and serious Ofsted concern, we will convert schools into Academies, partnering them with a strong sponsor or outstanding school."¹² This innovation of 'converter academies' in addition to the existing 'sponsored academies' transformed the fortunes of the overall programme, with around 800-1000 schools every year opting out of local authority control.

Figure 1: the number of academies opened in each calendar year



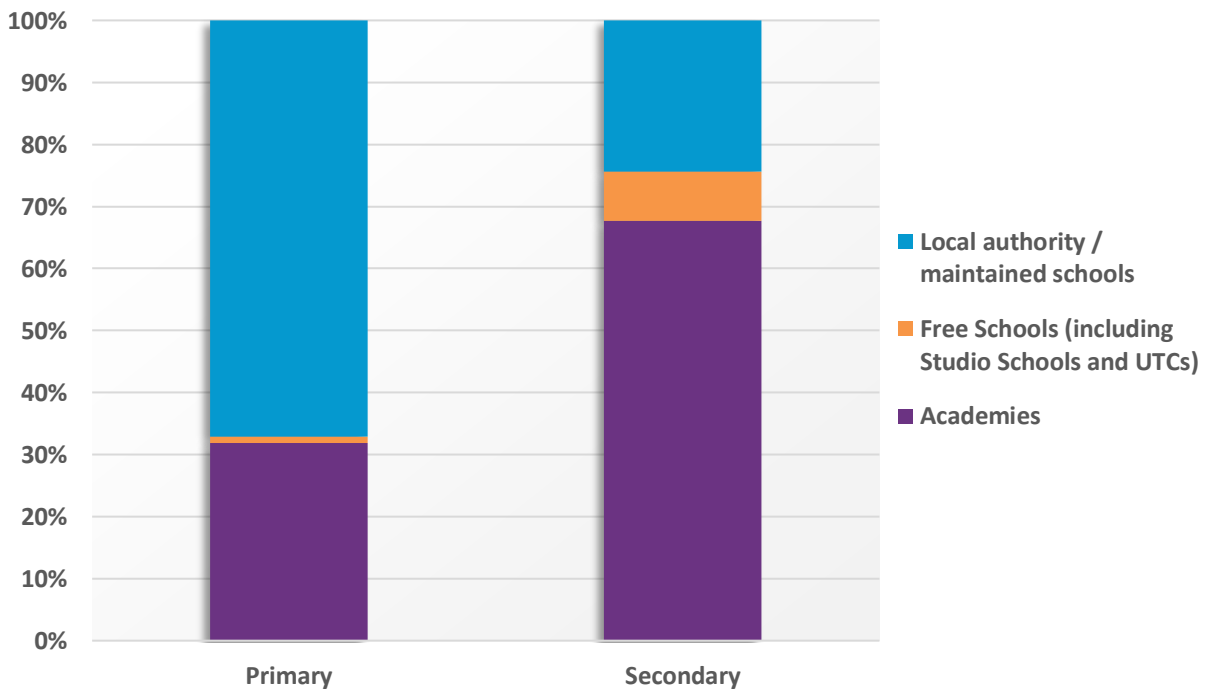
Moreover, the Coalition Government proceeded to launch three new types of academies during their time in office: 'Free Schools' (brand new academies), 'University Technical Colleges' (UTCs; academies for 14 to 19-year-olds that deliver technical education as well as core curriculum subjects) and 'Studio Schools' (academies offering pupils practical skills in workplace environments as well as traditional academic and vocational courses). As shown in Figure 2, converter academies remain by far the most common type of academy.¹³

Figure 2: the number of each type of academy



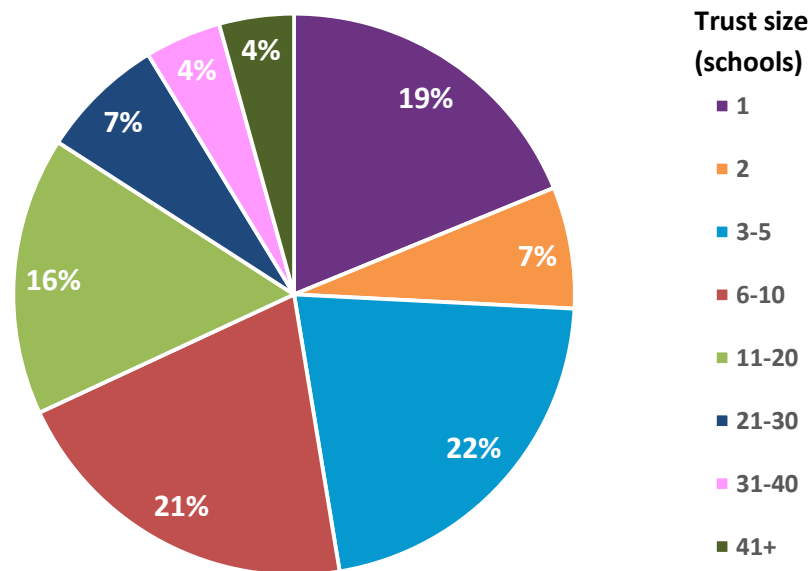
Approximately 40 per cent of state-funded schools in England are now academies, but the pattern of ‘academisation’ differs markedly between primary and secondary level (Figure 3). While 75 per cent of secondary schools are academies (including Free Schools), less than a third of primary schools have become academies.¹⁴ Even by the 2010 General Election there were still no primary academies as the programme had only featured secondary schools up to that point.¹⁵ Since then, the proportion of primary schools operating as academies has grown every year, while Free Schools are more common at secondary level.

Figure 3: the proportion of local authority schools and academies as a percentage of all state-funded schools



Not only is there a disparity between the prevalence of academies across primary and secondary schools, the way that academies interact with each other produces yet more variation. Many academies are grouped together in what are known as ‘multi-academy trusts’ (MATs). As shown in Figure 4, almost 20 per cent of academies operate as a stand-alone institution, while two thirds of academies are in MATs with between 2 and 20 schools.¹⁶ The Coalition Government’s initial push to rapidly increase the number of academies meant that many MATs were actively encouraged to expand, but some trusts were subsequently prevented from further expansion while others had academies removed from their control after failing to deliver improvements. More recently, there has been a substantial increase in the number of MATs with three or more schools because stand-alone academies have been quietly discouraged.¹⁷

Figure 4: the proportion of academies operating in MATs of different sizes

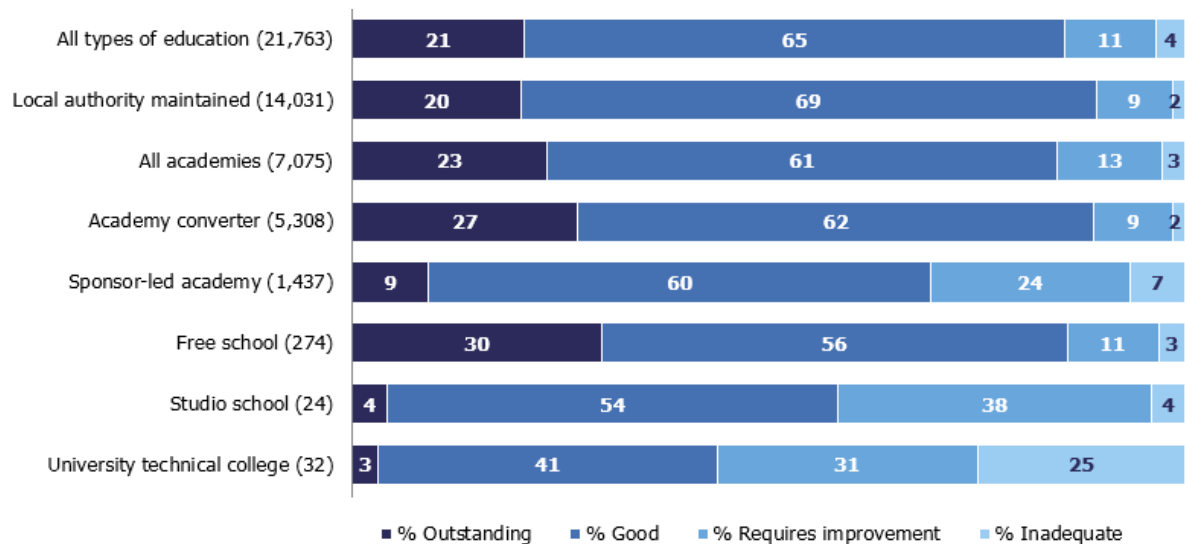


Comparing the performance of local authority schools and academies is far from straightforward, not least because of the changing nature of the academies programme over time as well as the significant changes to examinations and curricula over the past 20 years. Researchers have found it hard to detect any substantive and consistent differences in national examination performance between the two broad categories of state schools that now exist. Last year, the Education Policy Institute (EPI) reviewed the performance of local authority schools and academies and found a “wide range of outcomes” being achieved in different MATs and local authorities.¹⁸ For example, their analysis showed that MATs are “disproportionately found amongst the top 20 of secondary school groups”, yet at the same time their analysis also highlighted “a number of cases of sustained underperformance”

among MATs.¹⁹ Similarly, some local authorities appeared to be performing well but there were also cases of sustained underperformance. The EPI understandably concluded that “what matters most is being in a high performing school group, not being in an academy rather than a local authority maintained school or vice-versa.”²⁰ This echoed previous work by the EPI which showed that “the variation within MATs and local authorities was far greater than the variation between the two groups.”²¹

Ofsted ratings do not shed much light on the matter either. As shown in Figure 5,²² local authority schools receive marginally better Ofsted grades than academies, but this masks considerable differences between the different types of academies. For example, converter academies are awarded far more top grades by Ofsted than sponsored academies, but this may simply reflect the nature of the original sponsored academies that were, almost by definition, among the lowest-performing schools in the country. Free Schools appear to be performing slightly better than other types of schools, although UTCs and Studio Schools have fared less well. Crucially, Ofsted grades do not control for any differences in pupil characteristics between the types of schools, which makes it even harder to identify the best schools. Yet again, one cannot conclude with any certainty that either local authority schools or academies out-perform the other.

Figure 5: the Ofsted grades for ‘overall effectiveness’ awarded to different types of schools



The situation we are left with, almost two decades after the academies programme began, is complicated to say the least. In effect, England now has two state school systems that are run separately from one another. This is problematic for several reasons:

- Neither category of schools appears to be performing any better than the other, yet considerable energy is having to be expended by politicians and civil servants to maintain the distinction between these two systems;
- There are now **different structures** in place regarding how these two school systems are funded, governed and managed, which creates numerous disparities with little or no obvious benefit to pupils and parents (Chapter 2);
- There are also **different expectations** of schools and leadership teams within the two different systems in terms of financial probity, transparency and pupil admissions, which means that even neighbouring schools might be treated differently, and parents can be left confused and unable to access the information they often want and need (Chapter 3).

While many of these discrepancies are the inadvertent product of isolated policy decisions spread over many years, the end result is that our school system is now fragmented and incoherent, with little sign of improvement on either front.

This report starts from the simple premise that it is better to have one system for state schools in England rather than two, so that all stakeholders – pupils, parents, teachers, school leaders, civil servants and politicians – can judge schools on a ‘level playing field’ in which every school is given a fair chance to succeed. Although it may be intuitively appealing to achieve this by moving back to an entirely local authority-run system, such a solution would be fraught with logistical, political and financial challenges to the point where it would be an undesirable (and possibly unworkable) goal. On the other hand, a fully ‘academised’ system where every school is essentially forced to become an academy under the current regulations was put forward by the Conservative government in 2016, only for ministers to be forced to back down in the face of vocal opposition not just from their political opponents and local government representatives but also from within their own party.²³ This suggests that any attempt, either now or in future, to force through ‘full academisation’ is unlikely to succeed. This report proposes that, rather than aiming for either extreme, it is better to work with the existing landscape in order to build a unitary system in which multiple types of schools and school groupings can flourish.

The objective of this report is therefore to outline a new state school system that is based on the following four principles:

1. **SIMPLICITY:** the state school system in England must be easily understood by every stakeholder, which requires a single set of terms and concepts to be applied across all government-funded schools.
2. **COLLABORATION:** schools are more likely to succeed when they work together instead of working alone, which is why close and collaborative partnerships throughout the school system should be the clear expectation for all.
3. **COHERENCE:** the school system should be designed in such a way that every school starts from a similar position and should be treated fairly and equally in terms of funding and accountability.
4. **TRANSPARENCY:** taxpayers have a right to know how, where and when their money is being spent on education. Transparency regarding the use of, and decisions related to, public funds for state schools is therefore essential.

To achieve this, the report will begin by outlining the different structures that have been created to underpin the two separate state school systems. Following this, it will set out the different expectations that are now associated with local authority schools and academies. Finally, a set of recommendations will be put forward that aims to bring these two categories of schools together into a single system. It is hoped that the analysis and recommendations in this report make a valuable contribution to deliberations over the future of state schools in this country.

2. Different structures

Seeing as academies were borne out of a novel initiative intended to allow schools to operate outside of local authority control, it is perhaps unsurprising that there are significant differences in the structures and processes for overseeing academies compared to local authority schools. This chapter will describe some of the key distinctions between academies and local authority (maintained) schools in terms of how they are structured.

Before continuing, it is worth noting that various terms are used to describe the way that academies arrange themselves. Although stand-alone academies and MATs are widely-used concepts, the notion of an academy ‘chain’ is less clear because it has no formal legal meaning and describes a number of different arrangements such as:

- stand-alone academies grouped under an ‘umbrella trust’, in which a separate trust is used to help them work together to, for example, procure services, but it may also be used to describe the idea of a trust sitting above several academy trusts²⁴
- stand-alone academies that have set up collaborative partnerships with each other
- academies run by MATs²⁵

As the Department for Education (DfE) does not have a direct relationship with umbrella trusts, this chapter and the remainder of this report will focus on stand-alone academies (i.e. single academy trusts) and MATs rather than looking at less formal academy groupings.

How are they funded?

Maintained schools are funded by their local authority (LA). The DfE disburses funds to each LA, in line with the number of pupils in their locality, and the LA is then allowed to decide exactly how those funds are distributed among their schools. Once a school has been allocated its funds by an LA, it is free to choose how they are spent, although LAs typically keep hold of a proportion of the funding they receive from the DfE – around 8 to 12 per cent²⁶ – to pay for ‘central services’ (e.g. running the school admissions system).

Financial reports for maintained schools are collated through the Consistent Financial Reporting (CFR) framework, which provides a standard template to collect information about their income and expenditure. This information is used to support benchmarking and enables comparative reports to be produced for governors and LAs.²⁷ The CFR framework is set out in accordance with the *Consistent Financial Reporting (England) Regulations 2012*. Governing

bodies are responsible for providing their LA with financial statements using the CFR framework that include:

- all allocations and other income (e.g. funding from their LA, pupil premium funding, income from facilities and/or catering) received in a financial year including any balances brought forward from the previous financial year;
- all expenditure within that financial year (e.g. teacher salaries, administration, buildings and maintenance, examination fees, insurance costs, capital expenditure);
- a summary of the school's financial position at the end of that financial year.²⁸

The income and expenditure of every maintained school is thus documented in a consistent manner, making it easy to assess their financial health in absolute and relative terms.

Academies receive their revenue from the DfE through a 'funding agreement' – a legal contract between the academy / MAT and the Education Secretary. Because the academies programme has been through numerous iterations over the past 20 years, there is considerable variation in the funding agreements that are in place today. Although the DfE has often utilised 'model agreements' that act as a template for new academies being created at a particular moment in time, new versions of these agreements (each with its own set of political and financial expectations) have continued to appear with each new wave of academies. For example, the *Academies Act 2010* included a requirement for funding agreements to include Special Educational Needs (SEN) obligations, but this obligation only applied to new academies created after the *Academies Act* was passed and not to those academies already in existence.²⁹ Current funding contracts can only be changed by agreement between the academy / MAT and the Education Secretary, or if overridden by statute e.g. new provisions relating to SEN (*Children and Families Act 2014*).³⁰ It is difficult for the DfE to terminate an agreement signed before December 2012, even in cases of underperformance, without giving seven years' notice unless a mutual agreement can be reached with an academy or MAT.³¹ The funding agreements are essentially rolling contracts with long notice periods for no-fault termination, plus additional provisions for fault-based terminations as well.

Academies receive their funding based on a formula designed by the DfE, which calculates the funding that an academy would have received had it been a maintained school.³² However, if an academy is part of a MAT (which most are), the funding is given to the trust rather than the individual schools via a 'master funding agreement' between the MAT and the DfE. The MAT is then able to decide how the funds are allocated to their schools and, as with LAs, they hold back a proportion of the money from DfE – on average, about 3 to 5 per cent³³ – to pay for the services they provide to the schools as well as their central administration costs for operating the MAT.

As charitable trusts that must abide by company law, academies are required to produce audited accounts that are filed with Companies House so that members of the public can access them (like any other company). However, MATs operate as a single legal entity, which means that they are only required to submit one set of accounts for the whole trust – not for each school within the trust. This explains why it is extremely difficult for observers outside a MAT structure to get details of how much funding a specific school within a MAT has received and how its funding has been used. The ‘Academies Financial Handbook’ produced by the DfE insists that academies and MATs “must take full responsibility for its financial affairs and use resources efficiently to maximise outcomes for pupils”,³⁴ but it is for the academy or MAT trustees to decide how this should be approached in the absence of a formal financial reporting framework such as that used for maintained schools.

In their report on how well the DfE managed the post-2010 expansion of the academies programme, the Public Accounts Committee in Parliament found that the way academies were funded meant it was “still not sufficiently transparent for parents to scrutinise how their child’s school is spending its money, and for communities to hold their local school to account.”³⁵ This was highlighted by the National Audit Office (NAO) finding that less than 20% of academies publish their funding agreements and governing body minutes on their websites.³⁶ The fact that the published annual accounts for MATs containing more than one academy are not broken down to individual school level led the Committee to conclude that “local parents, Parliament and the public cannot make a proper value-for-money comparison of individual academies and maintained schools.”³⁷

In a separate report earlier this year, the Public Accounts Committee noted that the DfE “acknowledged that parents should have the information they need to understand how academy trusts spend money, including the extent to which trusts aggregate resources to provide services across their schools”.³⁸ Nonetheless, the evidence they received from witnesses told a different story. Whitehaven Academy has been one of the most high-profile cases of alleged improper behaviour in recent years, with accusations that the Bright Tribe Academy Trust (which no longer runs the school) claimed hundreds of thousands of pounds in government funding for building work, lighting upgrades and fire safety improvements that were either not finished or never done.³⁹ The Committee heard from a witness who was previously a teacher and governor at Whitehaven Academy. They described how, before the school became an academy, she would receive detailed information on all the money spent in the school. In contrast, under Bright Tribe, the finance report was just “half a sheet of A4”.⁴⁰

The Committee also heard concerns from various witnesses from Whitehaven about the state of their school buildings and the lack of maintenance, including windows that did not shut or were bolted shut because they were not safe as well as flooded playing fields. They said that the headteacher had not been able to provide answers and parents had needed to use Freedom

Of Information (FOI) Act requests to the trust to find out what was happening. The interim Chief Executive Officer at Bright Tribe Trust said that, before her arrival, headteachers of the schools within the MAT had been “cut out of the loop” in making important decisions, and the trust had not provided them with any information.⁴¹ Although the headteachers had since been given control over their money, buildings and facilities, this example shows how little information is sometimes available about the finances of schools within MATs.

With LAs deciding for themselves how to distribute money to maintained schools while academies continue running endless variations of historical funding agreements, there is little consistency in the way that funding makes its way from DfE to any given school. In addition, the lack of transparency over the income and expenditure of academies within MATs is an unwelcome side-effect of the funding model. Such diverse arrangements lack any kind of coherence and will hinder any attempt to create a simple and transparent school system.

How are they governed?

The governing body of a maintained school is required by law to provide strategic leadership and accountability, including overseeing a school’s financial performance, holding the headteacher to account for the educational performance of the school and ensuring that the school has a clear vision and direction.⁴² Elections are held for those who wish to become a governor, with the statutory guidance stating that “governing bodies and local authorities should make every effort to conduct informed parent and staff governor elections in which the expectations and credentials of prospective candidates are made clear.”⁴³ The governing body of a maintained school must have at least seven members, and must include: at least two parent governors; the headteacher; one staff governor; and one local authority governor.⁴⁴ Any decisions made by governors must be recorded, and the agenda and minutes of the meetings of governing bodies are considered to be public documents.

Maintained schools can also operate in a more formal collaborative relationship known as a ‘federation’. This creates a single board to govern more than one school, although the schools operate as individual entities within this structure.⁴⁵ The board of the federation receives separate budgets for each of the schools and can pool these budgets to use across the schools in the federation. Staff may also be employed at the federation level to enable flexible deployment between schools.⁴⁶ *The School Governance (Federations) Regulations 2012* requires the board of all federations to have at least seven members, including: only two parent governors; the headteacher of each federated school; only one elected staff governor; and only one LA governor who is nominated by the LA and appointed by the board.⁴⁷ Government figures show that there are 574 federations in operation across England.⁴⁸ Maintained schools

can also opt for a 'soft' federation in which schools retain separate governing bodies but might share common goals and delegate powers to joint committees that span the different schools.

The DfE specify that each academy or MAT must be a charitable trust run as a non-profit organisation, and they have 'trustees' (sometimes called 'directors') who act as both charity trustees and company directors. Like governors of maintained schools, trustees should focus on ensuring clarity of vision and strategic direction, holding executive leaders to account for the educational performance of the organisation and overseeing and ensuring effective financial performance.⁴⁹ Given their charitable status, a stand-alone academy or MAT must comply with both charity and company law as well as their funding agreement with the DfE.

The 'Academies Financial Handbook' published by the DfE states that the duties of trustees are described in the *Companies Act 2006*, as they must: "act within their powers; promote the success of the company; exercise independent judgement; exercise reasonable care, skill and diligence; avoid conflicts of interest; not to accept benefits from third parties; and declare interest in proposed transactions or arrangements".⁵⁰ The DfE can place some loose requirements on the constitution of the board of trustees. For example, it must include at least two elected parents, no more than one third of the board can be employees of the trust and no more than 19.9 per cent of the board can be associated with the LA (e.g. employees).⁵¹

Although maintained schools are overseen by each LA, each school is a separate legal entity and has its own governing body. In contrast, academies run by a MAT have no separate identity, as the MAT itself is the sole legal entity. An academy run by a MAT is, in effect, just a local institution through which the MAT delivers the provisions set out in their funding agreement with the DfE. This arrangement has profound implications for the governance of academies within MATs. As the 'Governance Handbook' from the DfE explains, "it is the decision of the trustees about which, if any, governance functions they delegate to [local governing bodies; LGBs] or other committees" at each of the schools in a MAT. As a result, you can end up with LGBs "with no delegated governance functions [that] are wholly advisory."⁵² Irrespective of the precise arrangements used for a MAT, they are required to publish a 'governance statement' with their annual accounts, which includes details of what the board has delegated to committees and LGBs. The MAT must also publish on its website up-to-date details of its governance arrangements in a readily accessible format.⁵³

The Governance Handbook adds that "it is reasonable for MATs to conclude that most parents' interest is in their child's school and therefore that meaningful engagement with the parent body will be most effective at the school level",⁵⁴ although this is unlikely to allay fears about the level of control being lost by individual academies. To illustrate the impact that this arrangement can have, the Public Accounts Committee heard earlier this year that the Bright Tribe Academy Trust had removed local governance and created a single centralised

governing body for all of its schools in the north of England.⁵⁵ Similarly, in 2016 the E-Act academy group announced plans to scrap local governing bodies in favour of “academy ambassadorial advisory bodies”, leaving one central governing body covering all 23 schools.⁵⁶

It would be wrong to conclude that academies and MATs do not wish to keep an open dialogue with local stakeholders. A recent report by the National Governance Association (NGA) noted that “although a few MATs have started to suggest that a local tier may not be necessary, by and large it appears MATs remain highly committed to maintaining a form of local tier within their governance structure”.⁵⁷ The report added that MATs are increasingly taking “an innovative approach to establishing a meaningful role for those volunteering at the local level”. For example, some MATs have created ‘councils’ that “act as the ‘eyes and the ears’ of the trust to putting the community at the heart of local governance activities – whether those decisions at academy level are taken or advised on – and underpinned by parental and staff engagement.”⁵⁸ Nevertheless, the report acknowledged that “tensions can be caused if the board of trustees attempt to take delegated functions away from the local tier”. In addition, “given that governing at local level within a MAT represents a fundamental change for those who previously governed in a maintained school, this reduction in power can make volunteers feel as though they and their role now have less worth.”⁵⁹

What’s more, academies have an additional layer of governance not found in maintained schools. Above the board of trustees are ‘members’ who “have a similar role to the shareholders in a company limited by shares.”⁶⁰ The responsibilities of members include signing the articles of association for the academy or MAT, appointing and removing trustees and receiving the trust’s annual accounts.⁶¹ The DfE’s minimum requirement is that stand-alone academies and MATs have at least three ‘members’, although their ‘strong preference’ is for at least five.⁶² It is also noteworthy that where an academy trust has a sponsor (e.g. charitable organisation), “the relationship between the sponsor and trust is vested in the sponsor’s right to appoint Members”.⁶³

The connection between members and trustees is bewildering from an external perspective. For example, the Governance Handbook states that “it is for each trust to determine how best to keep members informed so they can be assured that the board is exercising effective governance and leadership of their trust” and subsequently notes that some trusts keep members “informed and engaged” by having one or more members also serve as trustees on the board.⁶⁴ However, immediately afterwards the Handbook says that “when operating as a Trustee such Members have no greater power than other Trustees, and should remain conscious of the corporate nature of the board’s identify [sic] and decision making and not seek to dominate the board because they are also Members”. The Handbook points out that DfE believe “the most robust governance structures will have a significant degree of separation between the individuals who are Members and those who are Trustees”, only to

add that the DfE's "strong preference is for at least a majority of Members to be independent of the board of Trustees",⁶⁵ which does not represent a well-defined separation.

For there to be no requirement on a clear separation of duties between members and trustees of academy trusts is far from reassuring. In addition, having members serve as a trustee on the board while simultaneously retaining the right to appoint and remove the other trustees is clearly undesirable. The absence of any requirements for (or even an expectation of) an open and transparent process for the appointment of trustees and members is also surprising, particularly in light of the open and fair processes used for governors in maintained schools. For LGBs of maintained schools to have to publish the minutes of their meetings and details of important decisions, when there are no such requirements for the boards of academy trusts, seems incongruous when it is public money at stake in both cases.

Who manages their performance?

As maintained schools remain part of LAs, the LA is ultimately accountable for their performance. Before the 1988 *Education Reform Act*, LAs could exert a significant degree of control over the running of maintained schools but this is no longer the case, as governing bodies are now largely responsible for each school and act as its legal entity. Even so, as mentioned in the introduction to this report, it was clear from 2010 onwards that the Coalition Government saw 'academisation' as a method for improving underperforming schools instead of leaving it to the LA to address.

When the academies programme was still relatively small, it was possible to operate the whole programme centrally because civil servants could manage the funding agreements and wider oversight of academies on behalf of the Education Secretary. The advent of 'converter academies' soon pushed this approach to its limits. In response, the DfE announced the appointment of eight Regional Schools Commissioners (RSCs) in September 2014, who were given responsibility for approving new academies and intervening in underperforming academies in their areas. There is one RSC for each of the eight designated regions (see Figure 6 overleaf).⁶⁶ All eight RSCs report into a National Schools Commissioner, who has responsibility for, among other things, promoting the benefits of the academies programme and identifying and encouraging more academy sponsors to come forward.

The responsibilities of RSCs have increased substantially since 2014. For example, RSCs were not initially involved with maintained schools, but from July 2015 they were given responsibility for "tackling underperformance in maintained schools through sponsored academy arrangements", which included approving the conversion of maintained schools into academies and making the decision on the sponsor.⁶⁷ The *Education and Adoption Act 2016*

provided RSCs (on behalf of the Education Secretary) with new intervention powers in both maintained schools and academies and extended the types of schools that are eligible for intervention.⁶⁸

Figure 6: the eight regions assigned to Regional Schools Commissioners ⁶⁹



In terms of tackling underperformance in academies, RSCs have several options at their disposal. These include “commissioning appropriate support, issuing a pre-warning notice or warning notice or by terminating the academy’s funding agreement, and identifying a new sponsor to take on responsibility for the academy where this is necessary”⁷⁰ – the latter often being referred to as ‘rebrokering’. Meanwhile, maintained schools were previously classed as ‘underperforming’ if they had been judged ‘Requires Improvement’ or ‘Inadequate’ by Ofsted, in which case they were mandated to become sponsored academies, although in 2018 this was altered to only include schools judged ‘Inadequate’.⁷¹ In these circumstances, the RSC “will match the school with a suitable sponsor, issue the Academy Order and agree at which point the funding agreement can be signed.”⁷² RSCs can also issue a warning notice to

maintained schools that are otherwise causing concern e.g. unacceptably low examination results or a breakdown in school governance.

In short, becoming an academy is very much a one-way street: if a maintained school underperforms, it becomes an academy; if an academy underperforms, it is 'rebrokered' to a new sponsor by the RSC. Under current legislation it is not possible for an academy to convert back to be a maintained school.⁷³ In addition to intervening in under-performing maintained schools and academies, RSCs have several other responsibilities, including:

- Approving or rejecting applications from maintained schools to convert to academies;
- Encouraging organisations in their area to become academy sponsors and deciding who can be a sponsor;
- Taking decisions on the creation and growth of MATs, including assessing the governance and leadership of MATs that converting schools wish to join;
- Advising and making recommendations to ministers on Free School applications;
- Making decisions on behalf of the Education Secretary concerning applications to make significant changes to an existing academy.⁷⁴

Each RSC is supported by a Headteacher Board (HTB). Each HTB has up to eight members – four elected by local academy headteachers, two appointed by the RSC and two co-opted with the agreement of DfE ministers. HTB members have equal status and they tend to be former academy headteachers, CEOs of MATs and/or business leaders. Despite their leverage over maintained schools, HTBs cannot include headteachers of maintained schools.⁷⁵

In their report on RSCs in 2016, the Education Select Committee in Parliament acknowledged that “the introduction of RSCs is a pragmatic approach to managing the growing task of overseeing academies”.⁷⁶ Nonetheless, one of the key themes of the report was how confusing the school landscape had become. The Committee stated that the responsibilities of RSCs “remain unclear to many of our witnesses [and] the landscape of oversight, intervention, inspection and accountability is now complex and difficult for many of those involved in education, not least parents, to navigate.”⁷⁷ The Committee was keen to emphasise the challenges that RSCs would face should the government pursue its ambition of turning all schools into academies, as “this implies a significant increase in the number of institutions for which RSCs are expected to have oversight, which will have implications for capacity and ways of working.”⁷⁸ This would also have consequences for the regional structure used by RSCs, which the Committee thought was “unnecessarily disruptive” – leading them to recommend that “for the longer term, the Government should keep the design of the regions under review as the system develops, in order to take account of further growth of the academy sector and any future devolution to areas such as Greater Manchester”.⁷⁹

The key performance indicators (KPIs) used to monitor the performance of RSCs were criticised by the Committee. In particular, the KPI relating to the proportion of schools that are academies was thought to potentially prejudice decisions made on academisation and changes of sponsor, which is why the Committee recommended that it was removed.⁸⁰ The DfE struggled to even provide the Committee with data on the performance of RSCs, which the Committee felt “undermines the Department’s claim that the impact of RSCs is being monitored and that RSCs are being held to account internally.”⁸¹ The Committee also wanted to see more consideration of the impact of RSCs “in terms of the improvement in young people’s education and outcomes, rather than merely the volume of structural changes or other levels of activity”.⁸²

The role of HTBs was another cause for concern. While the DfE told the Committee that the Boards were “primarily responsible for advising their RSC, contributing their local knowledge and professional expertise to aid the RSC’s decision-making”, other witnesses were unclear how each HTB was supposed to hold the RSCs to account, whether the HTB could make decisions itself and whether it was purely an advisory body.⁸³ The lack of clarity was further emphasised when Schools Minister Lord Nash described the HTBs as “approving” RSC decisions rather than advising on them, which appeared to contradict his own officials.⁸⁴

Transparency was an important theme throughout the Committee’s report as well. This was highlighted in the discussions of the register of interests for all RSCs and HTB members. Despite the use of ‘robust protocols and procedures’ by the DfE, the NGA said that there were “significant conflicts of interests where members of the Headteacher Boards are employed by MATs which may be potential sponsors of schools, or are headteachers of schools that may be directly or indirectly affected by RSC decisions.”⁸⁵ Witnesses also pointed out that the work of RSCs was often “clouded in elements in secrecy”, which amplified concerns about managing conflicts of interest.⁸⁶ A good example of this was the issue of the minutes of HTB meetings, which were criticised for lacking detail and only including ‘discussion points and decisions made’.⁸⁷ It was plainly apparent that HTBs had been given a significant role with regard to both academies and maintained schools yet with hardly any scrutiny to accompany their responsibilities.

Similarly, witnesses said there was “virtually no casework emerging from the work that the RSCs were doing”. This was compounded by the Committee’s view that there was “a theoretical risk that some individuals or organisations may be reluctant to criticise an RSC decision, given the power that the Commissioner has over future decisions on sponsors, academisation and free school proposals in the area.” They recommended that “to increase confidence in the work of RSCs, a formal complaint and whistleblowing procedure should be established to provide a means for decisions to be challenged or reviewed.”⁸⁸ This links to the Committee’s belief that there was “variation between regions in the level of meaningful

consultation undertaken with local communities”, leading them to “recommend that good practice is shared and standardised, to ensure that the effect of decision [sic] on a broad range of stakeholders is considered.”⁸⁹

Since the Select Committee published their report in 2016, it is hard to find much evidence of substantive progress on many of the issues they raised. It was not until late 2018 that the DfE started to publish minutes of HTB meetings that allowed observers to understand how decisions were being made,⁹⁰ and significant concerns remain in relation to potential conflicts of interest and insufficient transparency in both RSCs and HTBs. The cost of RSCs rose from £4 million in 2014 to £31 million in 2018,⁹¹ demonstrating how their responsibilities have grown in recent years with minimal external scrutiny (although, as civil servants, RSCs are still accountable within the DfE). The regional structure used for RSCs remains unchanged, despite the sharp growth in the number of academies. That said, it emerged in 2017 that each RSC area was to have four ‘sub-regional improvement boards’ to advise school commissioners on struggling schools,⁹² suggesting that the DfE may privately recognise the absence of local input when academies have become so widespread across eight large regions. The list of KPIs has also been slightly adjusted since 2016, with some new ones introduced e.g. the capacity and viability of MATs operating in each region.⁹³

Inevitably, the lack of involvement of parents and local communities in decisions about schools can cause controversy. The conversion of Barclay School, Stevenage, into an academy run by the Future Academies Trust (a MAT founded and chaired by Lord Nash) led to teachers going on strike and more than 2,700 people signing a petition opposing the academisation.⁹⁴ Parents were not given any information about the Future Academies Trust before the takeover, nor did the RSC or HTB explain their decision. In April 2018, Ofsted inspectors found that the school had improved and removed it from ‘special measures’ as a result, but this upward trajectory was not enough to prevent the academisation process from going ahead. In a separate story from April this year, about 150 children and parents marched in protest against Waltham Holy Cross primary school being converted to an academy and passed to NET Academies Trust.⁹⁵ This was followed by teachers at the school holding four days of strikes in June.⁹⁶

It was recently discovered through FOI requests that the DfE has revoked 33 ‘academy orders’ that would have forced a maintained school to become an academy, but they added that this only happens in “very exceptional circumstances”.⁹⁷ Meg Hillier MP, the chair of the Public Accounts Committee, voiced her own frustration that, when it comes to academy orders, “you can’t go to the council or someone local to talk about it” and parents are left “a very long way removed from any accountability processes.”⁹⁸ Even if the examples of ‘academisation’ cited above, and indeed many others, could be justified on the grounds of a school’s academic

underperformance, it is hard to defend the secretive and opaque manner in which such critical decisions are being made by RSCs and their supporting HTBs.

Questions over the extent of parental engagement within the academies sector are not new. In 2013, the *Academies Commission* - directed by Professor Becky Francis (now a member of the EDSK advisory board) – investigated the academies programme to ensure that it “delivers on its promise of a better education for every child.”⁹⁹ They heard from numerous witnesses at their evidence sessions that “academies were not always sufficiently responsive to parents” and “some parents told the Commission that they felt their views and involvement in the school were no longer valued once it had assumed academy status.”¹⁰⁰ The Commission’s final report was adamant that “all academies need to find innovative ways to understand and talk to parents, including those who appear not to want to be engaged” and to achieve this, MATs could produce “an annual report underpinned with an open forum, held either in public or online, encouraging broader discussion.”¹⁰¹ Such transparency, while undoubtedly valuable, remains a distant prospect under the current system.

How are new schools created?

The 1988 *Education Reform Act* marked a turning point in the relationship between schools and LAs because, as noted in the previous chapter, governing bodies were given responsibility for running each maintained school. This freed LAs to instead focus on several core functions:

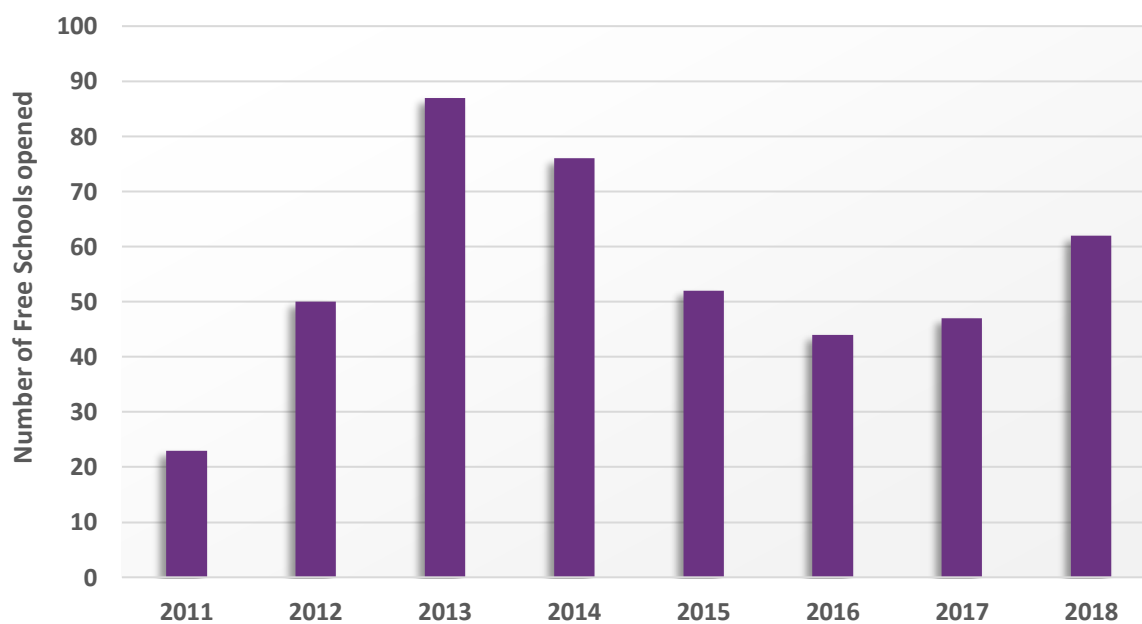
- Promoting “high standards”;
- Ensuring “fair access to opportunity for education and training”;
- Promoting “the fulfilment of learning potential by every person” that falls within their legal remit; and
- Securing “sufficient schools” for providing primary and secondary education in terms of their “number, character and equipment”, with “a view to securing diversity in the provision of schools and increasing opportunities for parental choice”.¹⁰²

The introduction of academies meant that state schools could now be run outside of LA control, as could other types of school such as foundation schools. To accommodate this changing landscape, the *Education and Inspections Act 2006* formally gave LAs the power to invite proposals from organisations other than LAs to establish a new school.¹⁰³ Shortly after the 2010 election, the Coalition Government set out their ambition for academy status to “be the norm for all state schools, with schools enjoying direct funding and full independence from central and local bureaucracy”.¹⁰⁴

To deliver this goal, the *Education Act 2011* amended the *Education and Inspections Act 2006* so that “if a local authority in England think a new school needs to be established in their area, they must seek proposals for the establishment of an Academy.”¹⁰⁵ This presumption of all new schools being an academy was the precursor to the ‘Free Schools’ initiative, as these schools are merely new academies rather than an existing school that had been rebuilt or ‘converted’ from LA control. This left LAs in the curious position of being legally responsible for ensuring that there were ‘sufficient’ schools in their local area but not possessing the ability to set up new schools if they were required to meet local demand.

Free Schools can be set up by groups such as charities, universities, teachers or even parents. The development of the first 16 Free Schools was announced in Autumn 2010, a number which grew to 24 by the time the first wave of schools opened in September 2011.¹⁰⁶ By the end of 2018, 441 Free Schools had been opened (Figure 7).¹⁰⁷

Figure 7: the number of Free Schools opened in each calendar year



The overall objective of the Free Schools programme has always been a matter of some equivocation on the part of the DfE. The list of objectives appeared to include providing new ‘quality’ school places where education standards had historically been low, the need to introduce new providers to increase diversity, supplying more places in deprived areas, responding to parental demand and generating more innovation.¹⁰⁸ Satisfying the demand for new schools in areas with a shortage of school places was, perhaps surprisingly, not prioritised in the early stages of the Free Schools programme. As a result, the NAO investigation into Free Schools in 2013 found that, while 87 per cent of projected primary places in Free Schools were in districts forecasting ‘high’ or ‘severe need’, only 19 per cent of

projected secondary places were meeting ‘high’ or ‘severe need’ and 42 Free Schools had opened in districts with no forecast need at all.¹⁰⁹ That said, more recent research by the National Foundation for Educational Research (NFER) showed that, in recent years, “primary and secondary free schools have largely been set up in areas which were forecast to have a need for more places at the time the decision to approve them was made.”¹¹⁰

In line with the desire to bring parents into the Free Schools movement, parent and community groups made up 29 per cent of open Free Schools and teacher-led groups 18 per cent from 2011 to 2013. The NFER research published last year showed that parent-led groups account for just 19 per cent of secondary Free Schools and less than 5 per cent of primaries.¹¹¹ Around 80 per cent of Free Schools are now set up by MATs rather than teachers, universities or parents as originally envisaged. The NFER also found that the number of ‘innovator’ Free Schools (i.e. those demonstrating a genuinely novel approach to their curriculum or ethos) has fallen to around 20-30 per cent of new primaries and secondaries, with many MATs preferring to set up schools in line with their existing approach. In fact, of the 22 new Free Schools approved by the DfE in June 2019, all of them are being founded by established MATs – suggesting that none of the applications were from parent groups.¹¹² Such is the dominance of MATs within the Free Schools programme, the NFER report concluded that:

*“Increasingly, free schools are neither led by parents nor are particularly innovative in their approach to the curriculum, but instead they are de facto academies, set up by existing academy trusts. Many of the schools established could have been set up under existing structures.”*¹¹³

This is not necessarily a cause for concern. Analysis by Education Datalab, a group of academics and statisticians, recently showed that Free Schools proposed by parents tend to produce much lower ‘Progress 8’ scores (the main measure of secondary school performance that records the academic progress made by pupils from age 11 to 16), whereas Free Schools proposed by MATs typically perform better.¹¹⁴ Free Schools set up by faith groups, charities and universities also showed highly variable performance. This suggests, albeit only for secondary schools, that a focus on parent-led new schools may not benefit pupils or the Free Schools programme more broadly.

Even back in 2015, it was clear to the Education Select Committee that much more clarity was needed in terms of why Free Schools are being created, saying that “the DfE needs to be clear and transparent about how the competition for free school funding is decided and the relative weight it gives to each of innovation, basic need, deprivation and parental demand”.¹¹⁵ The NFER concurred, with their report recommending that the DfE “should review and clarify the mission of free schools” because the Free Schools programme had moved away from its original intention, which was “to encourage parents and teachers to help set up new schools,

and to encourage innovation”.¹¹⁶ The NFER also called for “better co-ordination and clearer lines of responsibility for local school planning [because] at present, legal responsibilities rest between local authorities, RSCs and the Department for Education”. They recognised that “the system needs greater clarity and coordination, and better independent arbitration where disputes arise, including over the impact of new free schools on existing successful schools.”¹¹⁷ At the time of writing, it is difficult to judge whether any significant progress is being made in addressing these concerns.

3. Different expectations

The previous chapter highlighted several key differences between the structural foundations supporting maintained schools and academies. This chapter will focus on the different expectations that are placed on the two types of school in terms of how they operate on a day-to-day basis and how they carry out their duties.

Not only is it hard for parents or policymakers to make sense of a set of annual accounts for MATs that could conceivably cover 40 or more schools, the different accounting methods used by academies and the sheer scale that some MATs have reached are raising questions about the integrity and propriety of the academies programme. This is most visible in two areas: the salaries awarded to senior executives in academies, and ‘related party transactions’.

Salaries for senior members of staff

Maintained schools must follow the ‘School Teachers Pay and Conditions’ statutory framework when setting salaries. For a headteacher, the annual pay range for mainstream schools in 2018 (excluding the London area) was from £45,213 up to £111,007 to reflect the varying sizes of schools across primary and secondary education.¹¹⁸ An almost identical scale is used for other staff in the ‘leadership group’, albeit with a minimum salary of £39,965. Teachers and headteachers on secondment are also eligible for ‘performance payments’ worth up to 25 per cent of their salary,¹¹⁹ although there is no central data available on how often such payments are made.

Academy schools are responsible for setting the salaries of their own staff. The Academies Financial Handbook states that “the board of trustees must ensure its decisions about levels of executive pay (including salary and any other benefits) follow a robust evidence-based process and are a reasonable and defensible reflection of the individual’s role and responsibilities.”¹²⁰ In addition, “the board must discharge its responsibilities effectively, ensuring its approach to pay is transparent, proportionate and justifiable”. This includes ensuring that decisions about executive pay “reflect independent and objective scrutiny by the board and that conflicts of interest are avoided” as well as ensuring that “pay and benefits represent good value for money and are defensible relative to the public sector market”.¹²¹ The board must also act on the “basic presumption that non-teaching pay should not increase at a faster rate than that of teachers, in individual years and over the longer term” as well as “understanding that inappropriate pay and benefits can be challenged by [the Education and Skills Funding Agency; ESFA], particularly in instances of poor financial management of the trust.”¹²² Such aspirations appear sensible, but the reality of how academies set the pay of senior staff has been somewhat less impressive.

In 2018 the Public Accounts Committee investigated academy finances. They learned that the average annual salary of a headteacher in a maintained school is £88,000 compared to £92,000 for a headteacher at an academy, and that 96 per cent of MATs do not pay anyone over £150,000. Academies are also required in their accounts to anonymously disclose the number of staff who are paid over £60,000 (in bands of £10,000) in addition to the names of each trustee and the amount they get paid.¹²³ Even so, the Committee found 102 instances of trustees being paid salaries which were in excess of £150,000 in 2015–16 and the DfE did not know whether those who were being paid in excess of £150,000 were also those responsible for the best performing schools.¹²⁴

The Public Accounts Committee was not impressed by what they heard:

*“Unjustifiably high salaries use public money that could be better spent on improving children’s education, and do not represent value for money. While such salaries remain unchallenged, it is more likely that they will become accepted as indicative of the market rate. As well as distorting the employment market in the sector for senior staff, these may build in unnecessary year-on-year increases, both in salaries, and related costs such as pensions. Large increases in salaries, when overall funding is not increasing at the same rate, add to the financial pressures faced by schools.”*¹²⁵

In response, the DfE started writing letters to academy trusts (including individual academies) to seek justification for the large amounts being paid to some of their staff. First, Eileen Milner - chief executive of the ESFA, the funding arm of the DfE – wrote on several occasions during 2017 and 2018 to the chair of trustees of any trusts that paid salaries of over £100,000 to one or more members of staff.¹²⁶ In February 2019, the Schools Minister Lord Agnew wrote to 28 trusts to remind them that “the issue of high pay in academy trusts will remain a strong focus of the Department” and that “it is a divisive issue, diverting financial resources that are more effectively deployed to the front line of education.”¹²⁷ The DfE has recently resorted to publishing guidance for MATs that states they “should ensure there is flexibility in the employment contract of the [chief executive] to make downward adjustments if appropriate”¹²⁸ but, again, the DfE has no powers of enforcement and it is not clear if it is even possible to introduce this retrospectively for existing employment contracts.

A recent investigation by *Schools Week* suggests that these letters are having minimal impact, as they found that nearly half of the academy trusts ordered by the DfE to ‘justify’ these high salaries actually paid their chief executives even more last year. Three trusts paid their leaders an extra £40,000 or more, with another handing out a £26,000 bonus despite the trust losing schools. Just one in seven trusts contacted by the DfE about salaries for their senior staff paid their chief executives less last year. 23 trusts paid their chief executives more than £200,000 a year – led by Dan Moynihan on a minimum of £440,000 at the 43-school Harris Federation.

The most egregious examples of high executive pay came from Telford City Technology trust, which paid its head a minimum salary of £270,000 to run an academy trust with a single school, while Colin Hall, the head of Holland Park school in west London, was paid a minimum of £260,000.¹²⁹

It would be wrong to conclude from these figures that any instances of high salaries within the academy sector are unjustifiable. Many academy leaders will have performed well and helped ensure that the pupils within their organisation receive an excellent standard of education. Arguably, the debate over senior salaries in academies has only come about because stand-alone academies and MATs are forced to document what they pay to senior staff in their audited accounts as well as list the number (although not the names) of people earning salaries above £60,000 a year, broken down into £10,000 bands. Maintained schools and LAs do not have to publish such information, so it is not easy to compare the salary packages for staff at different types of schools in terms of the remuneration being offered for different levels of responsibility.

In July 2019, the DfE launched a consultation on bringing maintained schools into line with academies in terms of financial reporting. It noted that, in addition to having to publish the number of staff being paid over £60,000 a year, academies must now report their total salary expenditure (broken down into teachers, leadership, and administration and support) as well as list the job titles and role descriptions for individuals who receive salaries in excess of £100,000.¹³⁰ As maintained schools are not required to publish any information on salary levels, the consultation proposes that “all LA maintained schools should be required to publish annually on their websites the number of individuals earning over £100K in £10K bandings.”¹³¹ The consultation remains open at the time of writing.

In many respects, it is entirely predictable to see senior academy executives getting paid more on average than headteachers of maintained schools when the former can be directly responsible for a large number of schools while the latter are typically responsible for just one. Although cases such as Telford City Technology trust and Holland Park school are almost impossible to justify even using this logic, it illustrates how comparisons of raw salaries can be misleading. Where high executive pay becomes problematic is when it appears detached from the level of success achieved by an academy trust or does not appear commensurate with the level of responsibility assigned to a member of staff. Even among this uncertainty, one thing is abundantly clear: the DfE has ceded control over executive pay to academies and their current approach shows little sign of influencing the decisions being made.

Related party transactions

The concept of 'related parties' refers to a situation where one party has control or influence over the other, or where the parties are subject to common control. This includes parent companies and their subsidiaries, key management personnel including company directors, their close family members and other entities in which these parties have a controlling interest.¹³² Accounting standards require transactions between related parties ('related party transactions') to be disclosed in company financial statements. These transactions are perfectly legal under company law and charity law, so long as open and transparent procurement procedures have been followed and any potential conflicts of interest are adequately and appropriately managed. A review of related party transactions by the ESFA in 2014 noted that "the most common types of related transactions to be the purchase, sale, lease or donation of goods, services, property, or money."¹³³

When there were only a small number of academies before the 2010 election, such procedures for declaring related party transactions were rarely the subject of attention. The rapid expansion of academies after the election was always likely to place a great deal of strain on the ability of ministers and civil servants to monitor what was happening. One of the earliest high-profile cases to hit the headlines was the Durand Academy Trust in 2013/14. The NAO identified numerous instances of suspicious activities in their subsequent investigation. These included a contract worth more than £250,000 a year for the executive headteacher's firm to run leisure facilities owned by the school, a lobbying and media relations firm run by one of the Durand governors being paid £240,000 a year for "project management and communications" work and £1,125 being paid every three months to Judicium Consulting Limited - a legal services firm where one of the Durand governors was Company Secretary.¹³⁴

Research by the Institute of Education in 2014 – commissioned by the Education Select Committee – found that, although "cases of deliberate fraud are rare", "the general sense from the literature and the evidence collected for this study is that the checks and balances on academy trusts in relation to conflicts of interest are still too weak."¹³⁵ To illustrate the point, the researchers commented that "there is a requirement in the Financial Handbook for academies to undertake competitive tendering but it is hard to find evidence that this is happening or that it is being monitored by auditors or the Education Funding Agency".¹³⁶ As a result, the DfE had adopted a policy in 2013 that required all related party transactions in an academy trust to be delivered "at cost only, with no profit allowed".¹³⁷ However, the Education Select Committee heard that "auditors remain concerned that this will be difficult to apply"¹³⁸ while the research by the Institute of Education commented that "we could not find evidence of whether or how the 'at cost' rule is assessed".¹³⁹

When the Public Accounts Committee investigated related party transactions last year, there was still considerable evidence of problems with the existing arrangements. They found that

in 2015–16, academy trusts undertook over 3,000 of these transactions worth a total of £120 million and 40% of academy trusts had related party transactions that involve either the academy’s headteacher or governors.¹⁴⁰ The DfE told the Committee that related party transactions can be beneficial to schools, as they may receive goods or services for free, or at reduced cost and insisted that all related party transactions are subject to a proper tendering process.

During questioning from the Committee, it transpired that under the current rules academy trusts were only required to seek approval from the ESFA for “novel, contentious and/or repercussive transactions”, meaning that the majority of related party transactions require no prior approval and the ESFA may only become aware of most transactions when it reviews the annual accounts.¹⁴¹ The Committee heard of several cases where the rules had obviously not been followed:

- Wakefield City Academies Trust purchased IT services worth £316,000 from a company owned by the Chief Executive of the Trust, and paid a further £123,000 for clerking services provided by a company owned by the Chief Executive’s daughter.
- The founder of Bradford Academy, who was a former teacher, was ordered to repay £35,000 after being sentenced to prison for defrauding the school.
- The founder and other former members of staff at Kings Science Academy paid £69,000 of government grants into their own bank accounts.¹⁴²

Furthermore, the Committee was “concerned that determining whether a service has been delivered at cost is dependent on information from the supplier, who may have a vested interest in manipulating or inflating this information and is in a position to do so”. They also highlighted the question of “incentives for trustees to take advantage of the system, due to the weaknesses in the system of oversight.”¹⁴³ The ESFA told the Committee that it reviews the accounts of some 500 academy trusts each academic year and that only in 1-2% of cases brought to its attention did it identify related party transactions which were in breach of the rules. Even so, the DfE acknowledged that they need to “reflect on the adequacy of the current arrangements”,¹⁴⁴ particularly as many questionable transactions were only coming to light through the actions of whistle-blowers and journalists.

When the Public Accounts Committee returned to the topic of related party transactions in 2019, their concerns remained evident. In response to the Committee’s work in 2018, the ESFA put in place a more rigorous system in April 2019 that required trusts to declare each and every related party transaction and to seek approval for those transactions over £20,000.¹⁴⁵ The ESFA also said it was putting together a specialist team to work on related party transactions who would receive appropriate professional training. Nevertheless, the

Committee concluded that “some academy trusts have misused public money through related-party transactions” and, despite the work of the ESFA to address the issue, “these actions are as yet unproven and in isolation will not prevent abuse.” Ominously, the Committee remarked that “we expect to return to these issues in future.”¹⁴⁶

There is little doubt that related party transactions in academies have become a serious cause for concern in recent years, yet this problem is not necessarily confined solely to academies. The aforementioned research by the Institute of Education was clear that “there is a universal recognition that conflicts of interest are not restricted to academies [and] there are numerous examples of inappropriate activity in maintained schools.”¹⁴⁷ For example, *Private Eye* reported in 2016 that Conway Primary School, a maintained school in Greenwich, paid £133,250 for maths consultancy to Digon Consultancy between 2012 and 2015. Digon’s only director was Stephen John Carlsson-Overy, husband of the school’s headteacher Yalini Carlsson-Ruban.¹⁴⁸

Moreover, the ability to track related party transactions in academy trusts is only possible because they are listed in their annual accounts – something that is not demanded of maintained schools. This suggests that the media coverage of related party transactions may present an unbalanced picture, seeing as there is no public record of such transactions of maintained schools. This makes it impossible to determine how serious this issue has become across different parts of the school system.

The aforementioned DfE consultation on bringing financial reporting for maintained schools into line with academies includes potential new requirements on related party transactions for LAs. The consultation listed three options:

- Asking maintained schools to list any related party transactions alongside their regular financial reports to their LA;
- Requiring maintained schools to report all related party transactions, or potentially just those above a certain level, to their LAs;
- Requiring maintained schools to seek permission from LAs to enter into related party transactions above a certain level.¹⁴⁹

The last option would mirror the existing requirements for academies.

In addition to related party transactions, when the ESFA have concerns about the financial management or governance in an academy or MAT, it can issue and publish a Financial Notice to Improve (FNTI) that describes what must be done to address said concerns (e.g. resolve an actual or projected deficit, improve oversight by their trustees, prevent breaches of rules on related party transactions).¹⁵⁰ The academy or MAT must comply with the FNTI, and failure

to do so is a breach of their funding agreement – which could be terminated as a result. Academies must publish an FNTI on their website within 14 days of it being issued and retain it on the website until the FNTI is lifted by the ESFA.¹⁵¹ For maintained schools, there is no such thing as a FNTI. If there are concerns about how a maintained school is being governed or managing its finances, there is no formal mechanism in place to make stakeholders such as parents aware of the problem or monitor how effectively the concerns are being addressed. As with related party transactions, there is a clear discrepancy between academies and maintained schools in terms of the transparency and accountability they face for the use of public funds.

Who controls their admissions?

The ‘Schools Admissions Code’ (SAC), underpinned by the *School Standards and Framework Act 1998*, sets out the admission arrangements for all maintained schools in England and was last updated in 2014. The requirements set out in the SAC are mandatory, meaning that maintained schools have a statutory duty to comply with its content. In contrast, the admissions for academies are included within their funding agreements with the DfE. Academies are still required to comply with the SAC, although the Education Secretary “has the power to vary this requirement where there is demonstrable need.”¹⁵²

Every school has its own ‘admissions authority’ that must ensure it complies with the SAC. LAs act as the admissions authority for two groups of maintained schools – community schools and voluntary-controlled schools – whereas the other two groups – foundation schools and voluntary-aided schools – have their governing body perform this function. Academies also act as their own admissions authority (see Table 1 overleaf). The role of the admissions authority is to ensure that a school has “admission arrangements that clearly set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school.”¹⁵³

Once these arrangements are in place, any objections to the admission arrangements of either maintained schools or academies can be made to the Office of the Schools Adjudicator (OSA), whose decisions are binding and enforceable. An Education Secretary may also refer the admission arrangements of a school to the OSA at any time if they think that they do not or may not comply with the mandatory requirements of the SAC. In addition, the OSA may investigate the admission arrangements of any school that they believe does not or may not comply with the SAC.¹⁵⁴

Table 1: the admissions authorities for different types of state schools¹⁵⁵

TYPE OF SCHOOL	DESCRIPTION OF HOW THE SCHOOL OPERATES	WHO IS THE 'ADMISSIONS AUTHORITY' AND PROVIDES FOR AN APPEAL AGAINST A REFUSAL OF A PLACE?
Academies	Run by their academy trust / MAT independently of the LA. The academy or MAT employs the staff and can own the land and buildings.	Academy trust
Community schools	Controlled and run by the LA. The LA employs the staff and owns the land and buildings.	LA
Foundation schools	Run by their governing body. The governing body employs the staff. The land / buildings are usually owned by the governing body or a charity.	Governing body
Voluntary aided schools (mostly faith schools)	A foundation or trust (e.g. religious organisation) pays a small proportion of the capital costs and forms a majority on the governing body. The governing body employs the staff. The land / buildings are usually owned by the religious organisation.	Governing body
Voluntary controlled schools	Similar to voluntary aided schools, but are run by the LA. The LA employs the staff. The foundation or trust (usually a religious organisation) owns the land and buildings, and typically forms a quarter of the governing body.	LA

Gauging how effectively admissions arrangements are working across so many types of state school is challenging. For example, a report by the NFER and the Sutton Trust in 2018 showed that both primary and secondary Free Schools have lower proportions of disadvantaged pupils than their local catchment areas. At primary level, 16 per cent of the pupils in the catchment areas were eligible for free school meals (FSM), but only 13 per cent of pupils attending those Free Schools were eligible. Similarly, 17 per cent of secondary Free School pupils were FSM eligible, compared to 19 per cent of pupils in the Free School catchment areas.¹⁵⁶ It is not possible to determine whether these differences are caused by the admissions policies of Free Schools or by other factors, such as parental preferences for certain types of schools or varying levels of awareness of Free Schools among parents from different socioeconomic backgrounds. Nonetheless, the *Academies Commission* in 2013 cited several

academic studies containing “evidence that schools that control their own admissions are more likely to be socially selective than community schools [owned by local authorities]”.¹⁵⁷

Nevertheless, evidence has accumulated in recent years that some academies appear to be (knowingly or unknowingly) circumventing the SAC. The *Academies Commission* identified several worrying trends soon after the rapid expansion of academies began, as “numerous submissions to the Commission suggest some academies are finding methods to select covertly”.¹⁵⁸ This included some witnesses telling the Commission that schools, including academies, hold pre-admission meetings or ‘social’ events with prospective parents, even though the SAC prohibits interviews with children or parents. In addition, other witnesses claimed that some academies were requesting extra information from parents that might be used to give an advantage to pupils from more privileged families.¹⁵⁹ It is difficult to establish how widespread such practices are from these anecdotes, although this does not detract from their potential impact on families who are less confident and less well versed in the admissions system.

These findings have been supported by the annual reports published by the OSA. The most recent report provides some quantitative data regarding whether academies and maintained schools are fulfilling their legal obligations under the SAC. Last year, the OSA received 129 new cases related to 78 admission authorities that covered a wide range of complaints e.g. objections to the use of feeder schools, catchment areas, faith-based arrangements, whether or not the admission arrangements were ‘fair’ and ‘clear’ and whether oversubscription criteria were ‘reasonable’.¹⁶⁰ Of the 129 new cases, 21 cases were concerning the admission arrangements for community and voluntary controlled schools, eight cases were related to the arrangements for voluntary aided schools, four cases were for foundation schools and the vast majority - 96 cases - were for academies (including Free schools).¹⁶¹

A particular area of focus in the annual reports from the OSA is the implementation of ‘Fair Access Protocols’. As stated in the SAC, every LA must have a Fair Access Protocol, agreed with the majority of schools in its area, “to ensure that – outside the normal admissions round – unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible.”¹⁶² The SAC also states that “all admission authorities must participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly.”¹⁶³ The LA must make sure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour, but ‘looked after’ children and children with SEN or an Education, Health and Care Plan must be admitted regardless.

Evidence from the OSA suggests that academies are more likely than other schools to cause difficulties with the implementation of these Protocols. One recent annual report stated that

“difficulties are encountered most frequently with own admission authority schools, including academies” and “the proportion of schools not agreeing protocols remains noticeably greater among academy schools in both [primary and secondary] phases, continuing the pattern noted in previous reports”.¹⁶⁴ A specific example cited in a separate annual report concerned a Free School that informed their LA it could not take additional pupils because this would “not only cause prejudice to provision of effective and efficient education and use of resources for students already on roll, but will contravene the explicit values, mission and purpose under which [the school] was sanctioned by the [DfE] and the [EFA]”.¹⁶⁵ Although the EFA informed the LA that this was not the case, places that became available at the Free School were instead filled from its waiting list and the Fair Access Protocol was ignored.

Another issue cited by the OSA was situations where schools that have recently converted to academy status occasionally state to their LA that the academy trust was not involved in the consultation on their local Fair Access Protocol and therefore cannot accept it.¹⁶⁶ This is part of a broader trend highlighted in the same annual report, namely that “in the view of a large number of local authorities, many such schools do not appear to know about, or to understand, their responsibilities regarding aspects of admission arrangements”. On the subject of academies, “while emphasis seems to be placed on many other matters related to becoming an academy school, the importance of fulfilling statutory admission responsibilities does not seem to be given the necessary importance.”¹⁶⁷ The OSA added that “a particular issue in this context, noted in a number of reports [from LAs], is the failure by some schools to inform applicants of the reason for refusing to admit a child, compounded often by not then advising applicants of their right to appeal the decision.”¹⁶⁸

The increasing number of academies poses a more general problem in terms of the growing complexity of the admissions system. The OSA recently noted that “the admission arrangements determined by local authorities for community and voluntary controlled schools are almost always clear and uncomplicated so it is easy for parents and others to understand how places will be allocated”.¹⁶⁹ However, for schools that are their own admissions authority (including academies) the OSA found that “frequently they are less clear and more, or even very, complicated”, adding that “arrangements set by some own admission authority schools have so many levels of priority that often it is unclear how the arrangements could actually be applied.”¹⁷⁰

Moreover, MATs can further obscure matters as there are several different ways that their admission arrangements are set. For example, “the MAT may determine the arrangements for all schools in the trust centrally, it may set parameters within which governing bodies of individual schools determine arrangements locally or it may delegate the determination of arrangements to individual governing bodies entirely.”¹⁷¹ It can even reach the point where

the “roles of the trust and local governing bodies are not always clearly set out in the scheme of delegation or always understood by the parties concerned”,¹⁷² making it difficult to ascertain whether admission arrangements are following the SAC.

The OSA recently summarised its views with the simple verdict that “the complex arrangements of some schools do not serve local children well.”¹⁷³ Such findings indicate that the enormous array of different arrangements across thousands of academies is making the admissions system harder for parents to navigate and interact with, even if genuine malpractice remains infrequent. It is not the case that academies are the only type of school that fails to comply with the SAC, but it does appear that they are the most likely to find themselves on the wrong side of the rules.

4. Recommendations

This report has shown how the pursuit of establishing more academies over many years and successive governments has spawned countless conversations around the structures in the state education system, yet the standard of education being provided within these structures has too often been ignored. Decisions around the structures for, and expectations of, state schools should always be based on improving the quality of education rather than any ideological or political considerations.

The previous two chapters have described the increasing divide between maintained schools and academies as well as the numerous problems that this fragmented system causes for those who try to interact with it. This chapter will therefore plot a new course for state education in England by focusing on bringing the two separate state school models together into a single coherent system. This will, in turn, provide a set of mechanisms and processes that can be used to monitor and improve standards across the state school sector in a fair and equitable manner.

The recommendations in this chapter are also accompanied by the set of underlying principles outlined in the introduction to this report, as these principles should form the foundations of the state education system in future. Some of the more significant proposals in this chapter are packaged within a new piece of legislation – titled ‘*The State School System Act 2020*’ – as this provides the best vehicle for implementing the required changes.

PRINCIPLE 1: SIMPLICITY

The state school system in England must be easily understood by every stakeholder, which requires a single set of terms and concepts to be applied across all government-funded schools.

RECOMMENDATION 1

The Department for Education should no longer refer to ‘academies’ or ‘free schools’ in *The State School System Act 2020* or any related documentation. Instead, the standard term for referring to all government-funded schools should simply be ‘state schools’.

This first recommendation is designed to offer a shared vocabulary that moves beyond the present distinction between academies and maintained schools. Talk of ‘academies’ as being

something separate from ‘schools’ is unhelpful and unnecessary in this context. Resetting the conversation so that the only term used for government-funded schools is to refer to ‘state schools’ will provide a sensible basis for the remaining recommendations in this report and the associated *The State School System Act 2020*.

This change of language will have obvious implications for documents such as the ‘Academies Financial Handbook’ discussed in this report. New documentation, and updated versions of existing documentation, should therefore cease referring to academies and maintained schools as separate concepts. The remaining recommendations in this chapter will explain how the distinction between academies and maintained schools will essentially be removed so that the government can focus on all state schools as a single group instead of operating two separate systems that utilise different terminology and concepts.

RECOMMENDATION 2

The State School System Act 2020 should be used to establish every state school as a separate legal entity. This is currently the case for maintained schools and stand-alone academies but not academies within MATs. Following this, all schools should be required to have a governing body that delivers a set of core functions and responsibilities.

Maintained schools are separate legal entities and have their own governing body. Similarly, stand-alone academies are separate legal entities. However, academies run by a MAT have no separate identity, as the MAT itself is the sole legal entity. It is not possible to introduce a coherent school system when such significant imbalances exist. The most effective way to address this is for the government to use *The State School System Act 2020* to establish each school as a separate legal entity.

Although this recommendation may sound like a technocratic development, it will be a vital component of several other proposals in this chapter, particularly around funding and transparency. The underlying principle of simplicity means that it is important to create a level playing field for state schools in both policy and legal terms, so that all stakeholders can monitor, assess and support schools across England in the same manner. In addition, once every state school is its own legal entity then it will become feasible to allow school leaders to choose the most appropriate collaborative arrangements that they wish to engage in going forward (see *Principle 2: Collaboration*).

The process of establishing each school as its own legal entity will require several elements to unwind some of the more problematic aspects of the current setup used for MATs. It is

provisionally suggested that *The State School System Act 2020* should be configured in such a way that it delivers the following outcomes:

1. The Education Secretary should be given the power to require every state school to have a governing body.
2. The DfE's Governance Handbook will specify the regulations related to the constitution of each governing body (e.g. how many of each type of governor are required, such as staff or parents).
3. A precise set of roles and responsibilities for governing bodies will be laid out (similar to those already in place for maintained schools) so that any existing 'schemes of delegation' used by MATs to reduce or remove powers from governing bodies within their structure are effectively overwritten.
4. Governing bodies of state schools will be allowed to delegate their powers to other groups or bodies if they so wish (e.g. a trust).

Once these changes have been established in primary legislation, every state school will be its own legal entity, irrespective of how it chooses to collaborate with other schools.

RECOMMENDATION 3

The State School System Act 2020 should specify that state schools will be funded directly by the Department for Education without passing through any intermediary organisation. Schools will then be free to share or pool their resources with other schools. This will be delivered through a standardised funding agreement for all state schools.

At present, stand-alone academies are the only schools that receive funds directly from the DfE in the absence of any intermediary organisation. Maintained schools and academies within MATs only receive their funding settlement after it has been determined by their respective ownership structures – either the LA or the MAT. This flow of funding has several important consequences, particularly in terms of transparency and schools moving between different operators (both discussed later in this chapter).

To create a simple, transparent basis on which to build a new state school system, this report proposes that government funding is passed directly to schools rather than travelling via an intermediary. As with establishing each school as a separate legal entity, this new approach will need primary legislation to override existing funding agreements for academies and introduce a new standardised funding agreement that will apply to every state school and can be updated in future by the DfE. This standardised agreement will be based largely on the most recent model agreement used by the DfE for stand-alone academies and incorporating the policy changes outlined in this report.

PRINCIPLE 2: COLLABORATION

Schools are more likely to succeed when they work together instead of working alone, which is why close and collaborative partnerships throughout the school system should be the clear expectation for all.

RECOMMENDATION 4

Headteachers will be given the autonomy to operate as an ‘independent state school’ or join any of the existing types of collaboration between schools – such as trusts, federations and partnerships – as these will now be available to every state school irrespective of their prior status as a maintained school or academy.

Although the divergence between academies and maintained schools has become a contentious political issue, there remains strong support across the main political parties for schools to collaborate with one another. In 2013, the Education Select Committee carried out an enquiry in ‘school partnerships and cooperation’. Despite the absence of substantive research studies into the effects of such relationships between schools, the Committee’s final report was strongly in favour of developing them:

“School partnerships and cooperation have become an increasingly important part of a self-improving or school-led system. We believe that such collaboration has great potential to continue driving improvement to the English education system. The diversity of structures and models already in place is a strength and proof of vitality. Schools should be able to adopt models of partnership and cooperation that suit their needs within a legislative and policy framework that is as non-prescriptive as possible.”¹⁷⁴

The same report cited research commissioned by the National College of Teaching and Leadership, which suggested that 87% of headteachers and 83% of chairs of governors describe partnerships with other schools as “critical to improving outcomes for students”.¹⁷⁵

As discussed earlier in this report, there are already a variety of structures used to bind schools more closely together, including federations of maintained schools and MATs. Given the need to create a sustainable school system, the ability to offer all the different options for partnerships and collaborations to every school will be an important development. To illustrate the problem, at present only maintained schools can form federations while only academies can form MATs. This demonstrates how conversations about structures have dominated the debate over the future of state schools while discussions of how best to improve standards have too often been excluded.

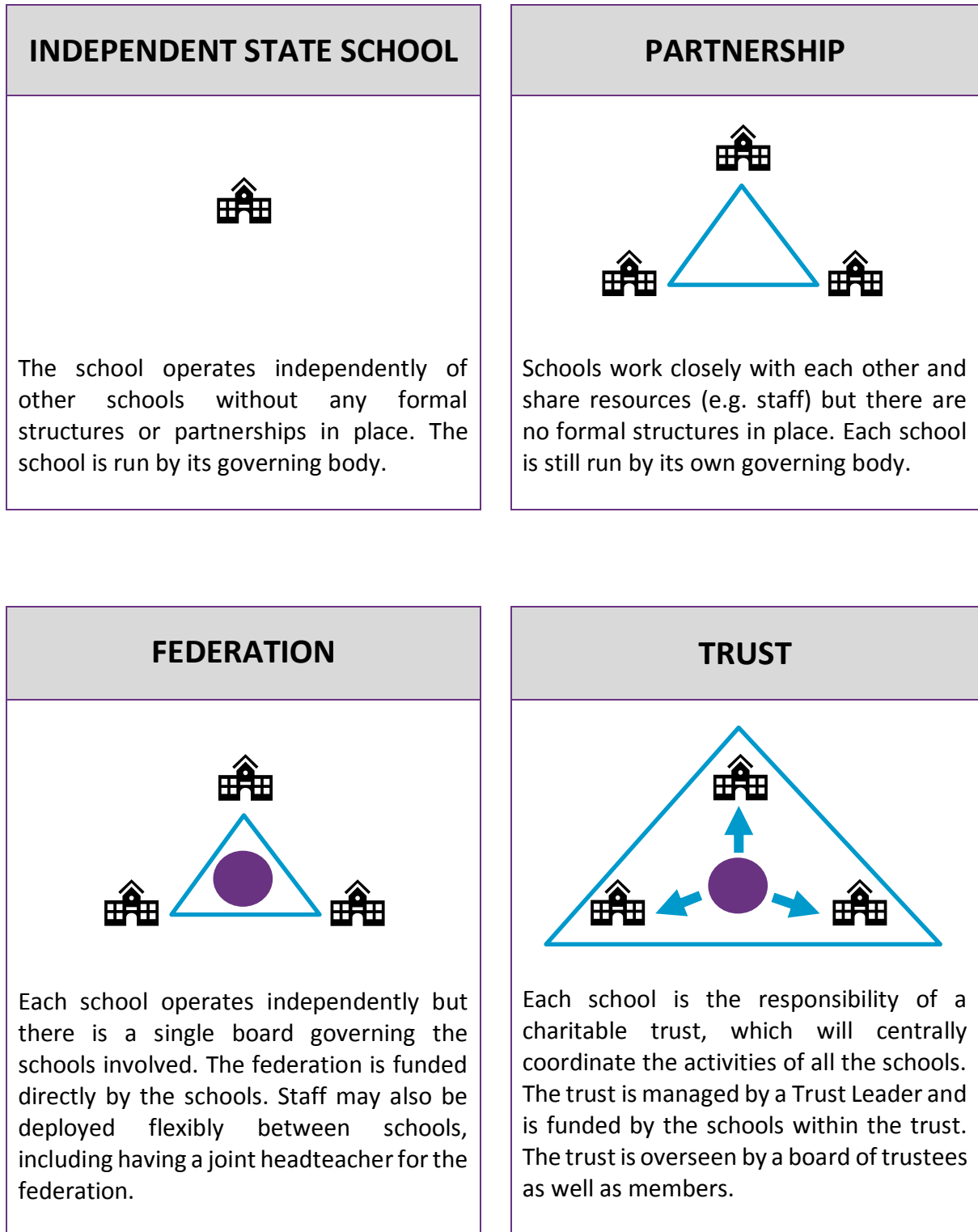
This report proposes that each state school can choose any of the four available ‘statuses’ to suit their particular needs, as shown in Figure 8. These options, which are based on those already available across the academies and maintained school sectors, create incrementally more structure and formality, ranging from individual state schools operating by themselves up to a trust that formally controls its schools (although, unlike now, the schools will still exist as separate legal entities). It will be for school leadership teams to decide on the best collaborative arrangement for their particular context.

Crucially, all forms of partnership and collaboration will be available to every state school, irrespective of their prior status as an academy or maintained school. It is also worth considering the introduction of minimum timescales for remaining within such collaborations, as the process of setting up federations and trusts should not be rushed and once a school has signed up to a collaborative arrangement then one cannot expect an immediate change in the standard of education being delivered.

With each state school acting as its own legal entity, it will be perfectly feasible for the governing body to effectively ‘delegate’ some of its powers to another organisation such as a trust. For example, a school may pass responsibility for appointing headteachers, setting pay scales or designing curricula to the trust so that a more standardised model can be implemented across all schools within the trust. The key difference between this and the current model used for MATs is that the individual schools will remain autonomous organisations that actively choose to pass their functions onto a trust, as opposed to now when a MAT simply absorbs the school and it ceases to exist as a separate entity (which shifts the balance of power from headteachers to senior executives in MATs).

This model of allowing schools to choose the right form of collaboration for them echoes the findings of the Education Select Committee enquiry in 2013. For example, the National Association of Headteachers told the Committee that “open and transparent collaboration can provide school leaders and governors the opportunity to tailor partnerships to their individual school and pupils’ needs”.¹⁷⁶ The National Association of School Partnerships added that “if schools are going to benefit long-term from real partnerships that begin to transform the system, then a large degree of autonomy is always going to be important.”¹⁷⁷ Even the then Schools Minister Lord Nash said that, while he thought MATs were the best form of collaboration, he also accepted that “most school partnerships should be down to local determination”.¹⁷⁸ The Committee concluded that “in common with the Government’s view of the education system, schools are best placed to identify the most effective ways to work with other schools, based on their particular history, ethos and challenges.”¹⁷⁹ This report endorses the same approach.

Figure 8: proposed options in the new state school system



RECOMMENDATION 5

The State School System Act 2020 will make all stand-alone academies ‘independent state schools’. If they so wish, these schools can choose to set up a new partnership, federation or trust or join an existing group.

Multi-academy trusts will also be renamed ‘national school trusts’.

Stand-alone academies currently operate outside of any formal collaboration with other schools, although some have chosen to set up looser partnerships – typically with neighbouring schools. In this new state school system that no longer recognises the ‘academies’ label, stand-alone academies match the concept of an ‘independent state school’ and will therefore be simply moved across to the new system under this banner. Now that all forms of collaboration are available to every state school, existing stand-alone academies will also have the option of working together in different ways, including informal ‘partnerships’ or more formal structures such as federations or trusts. As noted earlier in the report, federations of different sizes are already in operation around the country and are governed by statutory regulations such as *The School Governance (Federations) Regulations 2012*. Where possible, these regulations should be used as the starting point for extending access to the federated structure to all state schools.

MATs will be renamed ‘national school trusts’ (NSTs) to highlight the fact that they already operate independently of local authorities and their networks of schools can cross local authority boundaries. Their governance arrangements will remain broadly similar to the present setup, save for the changes to how schools are funded (Recommendation 2), the new processes for schools to move between, and out of, trusts (Recommendation 8) and new regulations on the separation of duties within the governance structure (Recommendation 14).

RECOMMENDATION 6

Within *The State School System Act 2020*, the default option for existing maintained schools should be that they join a new form of school grouping called a ‘local schools trust’ (based on the current model for MATs) that will be created to allow local authorities to run state schools in their area.

Alternatively, a maintained school can choose to become an independent state school, after which they can join a different partnership, federation or national schools trust.

Ever since it was first devised in the early 2000s, the academies programme was designed to exclude LAs from taking an active involvement. This is most visible in the rules around who can become a trustee or member of a MAT. Representatives of LAs are restricted to taking no more than 19.9 per cent of the positions on the board of trustees as well as accounting for

fewer than 19.9 per cent of members of the trust.¹⁸⁰ In effect, this bans LAs from taking an active role in any academy trust, be it a stand-alone academy or a large MAT.

If the goal is to create a single coherent system for state schools, it is not reasonable or beneficial to prevent local state schools from forming the same trust-based structure as independent state schools. On that basis, it is proposed that a new form of trust called a 'local schools trust' (LST) is created, which shares many of the regulations currently used for MATs but utilises them in a new way. Each LST will be a charitable trust with a board of trustees and will be bound by the same legal and ethical responsibilities set out in company and charity law that apply to MATs. This will mean that formerly maintained schools will be operated by an arm's length body separate from their LA in future rather than being owned by the LA.

The vast majority of existing content with the DfE's Governance Handbook that discusses MATs will apply equally to LSTs. However, a crucial change of policy is nevertheless required: the LST will not be bound by the requirement to have fewer than 19.9 per cent of its board and members associated with the LA. This will free LAs to set up an LST that encompasses as many local schools as wish to participate in this new structure. LSTs will have an additional requirement that they are only allowed to accept schools within their existing LA geographical boundaries to ensure that their focus remains on local provision. As existing MATs have been renamed 'national school trusts' (NSTs) in parallel with the creation of LSTs, parents and policymakers can now easily understand how any given trust operates in terms of the dispersion of its schools.

In 2013, the Education Select Committee considered the issue of whether local or dispersed arrangements for school cooperation were likely to produce better outcomes. Having heard evidence on both sides of the argument, they came to the following judgement:

"...we consider that the best partnerships are built bottom-up and, while many are likely to emerge on a geographically coherent basis under these conditions, some may not. The idea of a self-improving school system is that schools are generally the right bodies to identify the support they need. As such, it would not be right to circumscribe schools' options on geographical lines." ¹⁸¹

The introduction of LSTs and NSTs will ensure that every school is given the opportunity to form the right arrangement for them while also protecting the diversity within the state school system. If the government wishes to see education standards improve then it would seem imprudent to ban or limit high-performing trusts from operating across geographical boundaries. So long as parents and other stakeholders can understand the way that each trust is configured, there is no reason at this stage for the government to dictate how many schools a trust should operate or where those schools within the trust should be located.

PRINCIPLE 3: COHERENCE

The school system should be designed in such a way that every school starts from a similar position and should be treated fairly and equally in terms of funding and accountability.

RECOMMENDATION 7

The State School System Act 2020 should replace the system of eight 'Regional Schools Commissioners' with 35 'Local Schools Commissioners' (LSCs) across the country. The new LSCs will be responsible for managing the performance of all state schools operating in their area, holding the funding agreements with schools, commissioning new school places and deciding on the most suitable operators of schools in their locality.

The rapid expansion of the academy sector coupled with RSCs' additional responsibilities for maintained schools in recent years has meant that the current model of eight RSCs covering the entire country has become untenable. Even by 2015, numerous witnesses to the Education Select Committee were calling for more officials to oversee the school system as well as dividing up the eight regions into smaller areas.¹⁸² Theodore Agnew, then CEO of the Inspiration Trust and now a minister at the DfE, accepted that "if all schools are to become academies [...] then I would see there being maybe 30 regional school commissioners".¹⁸³ The Committee concluded that:

"The RSC regions are too large as currently devised. We do not believe that an increase in staff numbers ...would allow the RSC offices to be sufficiently in touch with local information, given the number of schools potentially involved. The number of Regional Schools Commissioners will need to increase from the current eight if they are to perform an effective oversight role for the academies in each region, and even more so if they are to be extended to cover maintained schools as well." ¹⁸⁴

The Committee also called for RSC regions to match the regions used by Ofsted as part of their school inspection system, as there was almost no match between them¹⁸⁵ - creating another barrier to implementing a single coherent system for state schools.

This report recommends that a new set of 'Local Schools Commissioners' (LSCs) are introduced. LSCs would be recruited through an open competition and appointed by the DfE on a fixed term five-year renewable contract. At present, each RSC has an average of almost 3000 schools in their region, making it virtually impossible to pay close attention to their performance and viability. It is proposed that England should instead be divided into 35 areas, each containing around 600-700 schools (see Table 2 overleaf). These 35 areas should be

designed as sub-regions of the larger regions used by Ofsted, which should improve coordination and data-sharing in the oversight and management of school performance. These areas will therefore be broadly similar in scale to those proposed by the Labour Party in 2014 through their ‘Directors of School Standards’.¹⁸⁶

Table 2: the geographical coverage for the new LSCs

CURRENT REGION	NUMBER OF STATE SCHOOLS ¹⁸⁷	PROPOSED NUMBER OF LSCs
NORTH EAST	1,185	2
NORTH WEST	3,303	5
YORKSHIRE AND THE HUMBER	2,302	4
EAST MIDLANDS	2,112	3
WEST MIDLANDS	2,483	4
EAST OF ENGLAND	2,624	4
LONDON	2,674	4
SOUTH EAST	3,516	5
SOUTH WEST	2,441	4
TOTAL	24,316	35

The responsibilities of the new LSCs should largely reflect those of the current RSCs, albeit at a more localised level. Their primary function will be to monitor the performance of all state schools in their locality, regardless of whether the school has chosen to operate independently or as part of a collaborative arrangement. Should any school be judged as underperforming based on criteria set by the DfE, the LSC would be responsible for commissioning appropriate support and interventions for the school as well as potentially moving the school to a new operator (see Recommendation 8). The LSC would also assume responsibility for planning new school places using data from the LAs within their locality, and they would commission new places whenever required (see Recommendation 9).

Another function of the LSCs will be to hold the new standardised funding agreements with every state school in their area. Each agreement will last for a set period (e.g. five years), after which the LSC will decide whether or not to continue with the agreement. By having LSCs manage the funding agreements rather than the DfE, it is hoped that the LSC will be able to make decisions about school performance and improvement that better reflect their local context rather than being merely a technical arrangement with the DfE.

LSCs will report into the National Schools Commissioner, as RSCs do at present. At present, the National Schools Commissioner has responsibility for promoting the benefits of the academies programme, which will no longer be required in this new state school system,

although they will continue to play an important role in identifying and encouraging more school operators to come forward alongside monitoring the performance of the largest trusts. In addition, the National Schools Commissioner should be responsible for ensuring that the LSCs deliver on their new requirements for transparency and openness in relation to monitoring and managing existing schools as well as setting up new ones (see *Principle 4: Transparency*).

RECOMMENDATION 8

Alongside their role in monitoring the performance of each state school, LSCs can formally intervene by changing the status, operator or management of any underperforming school (e.g. moving an independent state school into a school trust) if improvements are not recorded within a reasonable timeframe.

One of the most significant implications of establishing each school as a separate legal entity (Recommendation 2) is that school leaders can freely enter into the most appropriate collaborative arrangements for their specific context, and the LSC can hold school leaders to account for the decisions that they make. If a school is not delivering a suitable standard of education over a sustained period of time, the LSC will intervene and move a school to a new arrangement ('status') if it would be in the best interests of pupils e.g. putting an independent state school into a trust or federation. The LSC can also move a school between operators (e.g. moving a school between trusts or federations) and can remove a school from a trust if it is deemed necessary to improve standards. Should an independent state school perform poorly, the LSC would be able to replace the governing body and / or headteacher, or in extreme cases the school could be merged with another institution or closed. Once a new status or operator is in place for an underperforming school, it should be given a reasonable period of time (e.g. a minimum of two years) to generate improvements in educational standards before any further action is taken.

Aside from the LSC's powers, the question of whether schools should be able to voluntarily leave trusts has been a point of contention throughout the academies programme. Single academies can generally choose their preferred arrangements for collaborating with other schools, but the fact that schools in a MAT have no separate legal identity becomes a significant barrier to them changing direction in future. In 2015, then Shadow Education Minister Tristram Hunt voiced his concern about an "outstanding school leader trapped in a near unbreakable bond with a poor or failing chain" and highlighted the fact that the DfE has never set out a process for good schools to "float off" from poorly-performing MATs.¹⁸⁸ During the Education Select Committee's enquiry into school partnerships and cooperation, several witnesses suggested that "being able to leave hard partnerships, in particular, academy chains, under certain circumstances, was important."¹⁸⁹ It transpired that schools can

leave MATs by mutual consent, but even then the procedure was not entirely clear. In contrast, the process for leaving a federation is set out in the *School Governance (Federations) Regulations 2012* and one witness to the Committee argued that the mere fact that schools can ‘de-federate’ at a later date is a “very attractive” feature of this model.¹⁹⁰

The prospect of a school voluntarily leaving a MAT raises several issues. The 2013 Select Committee enquiry heard from then Schools Minister Lord Nash that “I do not see how the organisation of the chain group can work if people can, frankly, come and go at their will”.¹⁹¹ Other witnesses to the Committee took a different stance, with one saying that “I do think it is a reasonable thing to think about how schools could move between chains or different governance arrangements”.¹⁹² The Committee agreed there needs to be stability in the system, but added that academies within a MAT not being their own legal entity may prevent them from moving between MATs or extracting themselves from the MAT structure. Even four years later in 2017, when a primary school wanted to voluntarily quit its MAT, their RSC described the situation was “unique” as “this is about a process where there’s no precedent”.¹⁹³ In 2016, the DfE had considered the idea of creating ways for parents to petition RSCs to move their child’s school to different trusts in cases of underperformance or in other exceptional circumstances,¹⁹⁴ but this was never implemented due to the collapse of the wider push for full academisation.

The Education Select Committee felt it was “logical that in a mature education market, schools should have the flexibility to move between partnerships where this is the right thing to do for their pupils.”¹⁹⁵ This report concurs with the Committee’s view. It is therefore recommended that LSCs are given the power not only to place schools into an LST or NST if they consistently underperform, but also to move schools between trusts and even remove them from trusts and place them in a different arrangement (e.g. federation) if that is deemed the best way to improve the standard of education being delivered.

Because school trusts (formerly MATs) will be a legal vehicle that must comply with charity and company law, this report recognises – as did the Select Committee – that allowing schools to walk in and out of trusts at will could destabilise the school system in some areas. On that basis, it is proposed that any school wishing to leave a trust – either an LST or NST – should have to apply to their LSC setting out the following information:

- Why they wish to remove themselves from the school trust
- Which partnership arrangement (if any) they will instigate instead e.g. joining another school trust
- How their departure from the school trust will lead to better educational standards

Even if an LSC approves a request to leave a school trust, a minimum timescale should be put in place for the departure to be enacted so that the trust has time to make any necessary adjustments in terms of financial resources, staffing and property rights. Only allowing schools to switch between trusts with at least 12 months' notice, and only after an initial period of three years with the trust,¹⁹⁶ has been previously proposed by Jonathan Simons (a former think tank education lead and a member of the EDSK advisory board). This approach represents a useful starting point for deliberations on this matter. What's more, ensuring that all schools are their own separate legal entity, even when they are operating as part of a trust, will make the process of allowing a school to change direction more straightforward.

This process of applying to an LSC would mean that not only could poorly-performing schools be moved between trusts or out of a trust altogether, high-performing schools may also wish to apply to leave their trust if they want to create a new trust or federation (or even escape a weak existing trust). The new state school system proposed in this report will therefore allow much greater flexibility in generating ways of improving standards than the existing MAT-dominated model.

RECOMMENDATION 9

Should the need for a new school arise, the LSC will be responsible for identifying the most appropriate operator of the school through a fair, open and rigorous procurement process – with the highest priority being given to existing operators of successful state schools.

As discussed earlier in this report, the Free Schools programme has changed in nature over time. Many Free Schools are being established by MATs instead of being led by parents or other local stakeholders.¹⁹⁷ Seeing as Free Schools established by MATs are the highest performing group of new schools overall, it would be unhelpful to curtail their activities.

This report recommends that LSCs are given responsibility for establishing new schools. The list of justifications currently used for new Free Schools include supplying more places in areas with a shortage, providing new 'quality' school places where education standards have historically been low, introducing new providers to increase diversity and supplying more places in deprived areas. It will be up to the DfE to decide where the balance should lie between these different motivations for any new state school, as each could potentially contribute to improving the standard of education in a local area. Nevertheless, a one-size-fits-all rule is unlikely to be suitable across the entire state school system in England, so LSCs should be given responsibility for selecting how to expand school capacity in a way that is most likely to improve overall standards.

LAs would remain responsible for identifying any potential shortfall in places for children in their locality and will make recommendations to the LSC in terms of where additional places should be established. Accordingly, each LSC will be required to work closely with LAs to understand how place needs and demography are changing each year to ensure that their decisions, especially those about basic need, are informed by the latest evidence.

Once it has been determined that a new school is needed, the LSC will take charge of identifying the most suitable operator for the school as well as working closely with the ESFA to find an appropriate location. An open, fair, rigorous and transparent procurement process should be run for every new school – as previously proposed by the *Academies Commission* in 2013¹⁹⁸ – and applicants should come forward with their proposals for operating the school. The LSC will then assess the applications and judge which organisation or trust is most likely to deliver high educational standards, with priority given to trusts or federations that already operate high-performing schools. The procedure for assessing applications should involve public hearings at which potential operators of each school put forward their case to the local community. Successful local and national school trusts will be well placed to provide new school places, albeit with each new school still being created as a separate legal entity. LSCs should also consider the option of expanding any existing high-performing schools alongside proposals for new institutions, as this may in some cases represent the best use of limited resources.

RECOMMENDATION 10

In this new state school system, the core role of local authorities will be to act as a ‘champion’ for all children and young people in their area. Rather than providing education services directly, they should focus on commissioning services from others and supporting education in their area as well as taking control of admissions for state schools.

Now that LSTs will be operating local schools at arm’s length from LAs, the role of the LA itself can be recast in a way that separates their responsibilities between running schools (the LST) and supporting the provision of education in their area (the LA). The main role of the LA should be, as it is now, to act as a ‘champion’ for children and young people because LAs have a legal responsibility to promote the wellbeing of all local children.¹⁹⁹ The other roles for LAs in this new state school system will be similar to their existing responsibilities:

- Working closely with the LSC network to identify and subsequently establish new schools when required (Recommendation 9);
- Arranging transport for pupils who need assistance to attend their school (e.g. pupils with mobility problems);

- Arranging suitable education for permanently excluded pupils, which includes Alternative Provision;
- Providing support for children and young people with SEN or disabilities.

Moreover, the evidence presented in this report shows how problematic the admissions system has become. The increasing number of academies has, by definition, increased the number of schools that can operate their own admissions policies. The level of confusion, duplication and uncertainty that this has created is hard to quantify, suffice to say that the reports from the Office of the Schools Adjudicator were clear that this situation is only likely to get worse. On-going concerns related to whether academies are discharging their responsibilities under the Schools Admissions Code in a fair and ethical manner are not helping matters.

As this report is striving to build a single state school system, this disparity over admissions policies between academies and local authority schools cannot be justified. It is therefore proposed that local authorities should act as the admissions authority for all state schools that were formerly academies, community schools or voluntary-controlled schools. This would mean that these schools will no longer be able to implement their own admissions policy. This will, in turn, make it easier for LAs to ensure that their 'Fair Access Protocols' are adhered to by every school in their vicinity so that each child's best interests are prioritised over the self-interest of any individual school.

PRINCIPLE 4: TRANSPARENCY

Taxpayers have a right to know how, where and when their money is being spent on education. Transparency regarding the use of, and decisions related to, public funds for state schools is therefore essential.

RECOMMENDATION 11

All state schools should publish annual accounts on their website, including income, expenditure and balances. These accounts will also include any financial contribution made by the school to their chosen collaborative arrangement (e.g. a trust) as well as details of contracts currently held by the school worth £10,000 or more. Every state school can also be issued with a 'Financial Notice to Improve' should their financial position deteriorate.

The previous chapter described how the DfE is consulting on bringing financial reporting for maintained schools into line with academies. One of the main proposals in the consultation is that "all LA maintained schools should be required to publish annually on their website their

latest Consistent Financial Reporting statement of income, expenditure and balances.”²⁰⁰ This is a reasonable step to promote transparency within the maintained school sector, not least because this information is already recorded by LAs. However, it is ironic that the DfE is keen to push greater transparency among maintained schools on this issue when it is simply not possible to reciprocate these same arrangements for academies in MATs.

As has been noted on numerous occasions throughout this report, any academy operating within a MAT ceases to be its own legal entity, and as such there is no requirement or even an expectation that each MAT will publish financial information at a school level (the published accounts for a MAT only refer to the trust as a whole). This means that no external stakeholder – including parents and LAs – knows what is happening with the finances of each academy within a MAT. If the goal is to build a single state school system, this must be addressed directly. Now that every state school has been reinstated as its own separate legal entity (Recommendation 2), all state schools should have to annually publish a full financial breakdown each year on their website that is visible to stakeholders.

It is proposed that several other important details are provided alongside these annual accounts. This includes any financial contribution that a school makes to a collaborative arrangement such as a school trust (either local or national). Because the funding from government now flows directly to schools rather than through an intermediary (Recommendation 3), it is up to school leaders to effectively ‘subscribe’ to the collaborative arrangement that they feel is most appropriate. LSTs and NSTs will require investment from the schools themselves, but unlike now the money will flow ‘upwards’ from schools to the trusts rather than the present model of an LA or MAT top-slicing the funding from government and then flowing the money ‘downwards’ to individual schools. As a result, each school’s accounts should include a single line that shows the total sum of money in the financial year that has been passed to any trust, federation or partnership that a school has chosen to join. In addition, the accounts should include a list of existing contracts (and named beneficiaries) worth at least £10,000 that a school has authorised.

Now that every school will be held to the same standards of transparency, the ESFA should take on the financial oversight functions for maintained schools that are held at present by LAs so that all state schools – not just academies – can be issued with a ‘Financial Notice to Improve’. Not only will this level the playing field between state schools, it will give the DfE a comprehensive oversight of the financial health of state schools at a local and national level. As now, the ESFA should be able to instruct a school or trust to dismiss an individual if they have grounds for concern, and the issuance of a Financial Notice to Improve should result in the termination of a funding agreement in the most serious circumstances.

RECOMMENDATION 12

Alongside their annual accounts, all state schools should publish the names and total remuneration for any individual(s) earning over £60,000 including base salaries, bonuses and pension payments.

Although the DfE consultation on bringing financial reporting for maintained schools in line with academies is trying to close the gap between the two systems on executive pay, this report urges the government to go a step further. Academies must already publish the number (but not the names) of staff being paid over £60,000 a year in £10,000 bands. The consultation document proposes that academies should report their total salary expenditure and list the job titles and role descriptions for individuals who receive in excess of £100,000. As maintained schools are not required to publish any information on salary levels, the consultation proposes that “all LA maintained schools should be required to publish annually on their websites the number of individuals earning over £100K in £10K bandings.”²⁰¹

To introduce full transparency on executive pay, it is proposed that the pay transparency used for the Civil Service should be rolled out across the state school system. This means that the following information will be available on an annual basis for senior members of staff on a named basis:

- Salary
- Bonus payments
- Benefits in kind
- Pension benefits
- Total remuneration

It is recommended that this degree of transparency should be applied to all staff in any state school, partnership, federation or trust receiving a total remuneration package worth more than £60,000 a year.

Given the negative publicity that some academies and MATs have generated through excessive pay for senior staff, there remains a reasonable argument for introducing some form of pay scale across the single state school system that this report envisages. That said, if schools are to remain autonomous organisations then there is an equally strong argument to maintain the status quo in terms of schools, federations and trusts retaining their responsibility for such decisions. This report has therefore chosen to create substantially more transparency at this stage to see whether it has the intended effect of curtailing – if not preventing – excessive remuneration packages for senior staff in schools and trusts.

RECOMMENDATION 13

Related party transactions in the state school system should be banned, regardless of the type of school or collaboration that seeks to use them.

Earlier in this report, countless instances were cited of ‘related party transactions’ being used to enrich family members or other close connections of those involved in running schools. It is clear that their continued acceptance, even with the tighter rules now in place through recent ESFA guidance, represents a significant risk to the credibility of the school system and to the appropriate use of public funds. The ESFA’s new plan is to expend huge amounts of time, energy and resources policing their new mechanisms for monitoring related party transactions across thousands of schools. This represents a poor use of precious government funding and will never be able to catch every instance of public money being misspent. What’s more, it is almost impossible to prove that a related party transaction was not “at cost”, making the ESFA’s focus on these issues even less worthwhile.

The most logical step at this point is for related party transactions to be banned altogether within the new state school system outlined in this report. Far from being a radical proposal, former National Schools Commissioner Sir David Carter called for a complete ban on related party transactions in October 2018.²⁰² Some related party transactions can be useful for schools in certain circumstances, but the reputational damage that they can cause the whole school system means that, on balance, the best outcome is to eliminate them entirely.

RECOMMENDATION 14

A full separation of duties between employees, trustees and members along with a higher minimum number of members should be formal requirements for all school trusts as part of the implementation of *The State School System Act 2020*.

As a starting point, this report has recommended that the existing rules for MAT trustees and members should be utilised as much as possible when setting the regulations for LSTs and NSTs in future. The Academies Financial Handbook states that each MAT must have at least three ‘members’ who oversee the work of the trustees, although the DfE prefer there to be five or more members. Moreover, employees of the MAT are not supposed to be members unless their MAT permits this arrangement, but the current model ‘articles of association’ for MATs do not allow members to be employees²⁰³ – yet another example of how tightening the rules going forward does not necessarily resolve problems from the past. This means that a very small number of individuals can exert a significant degree of control over the strategic direction and operations of a MAT. The Academies Financial Handbook also says there “should be significant separation between the individuals who are members and those who

are trustees”, yet it still permits individuals to take on both roles and merely expresses a “strong preference ...for a majority of members to be independent of the board of trustees”.²⁰⁴

These rules should be recast as the new regulations are put in place for LSTs and NSTs within the new state school system. Conflicts of interests can seriously undermine confidence in state-funded education and, although the DfE has recognised this in more recent iterations of its model articles of association for trusts, it is not acceptable to ignore potential conflicts of interests caused by legacy versions of the same model articles. It is therefore recommended that a clear and unequivocal separation of duties should be required of all school trusts in future. This would mean that, for example, no employee of a trust can be a trustee or member, and no member can act as a trustee. Schools and trusts that do not comply will be served with warning notices, and the LSCs and ESFA should have the powers to intervene directly in such situations by removing individuals who break these rules.

In addition to instigating a full separation of duties within the governance of trusts, the minimum number of members should be increased to prevent a small group of individuals from dominating proceedings. For example, the DfE’s current ‘preference’ for five or more members could be increased to a ‘requirement’ for seven or more instead. At the same time, the DfE could introduce stricter rules on the composition of the group of members (e.g. at least two members must be parents of children currently attending one of the trust’s schools). It would be sensible for DfE to consult on the different options for how best to construct an effective set of members in trusts across the school system, suffice to say that the current setup of three individuals being able to run an entire school trust is not appropriate in the context of the transparent and locally-responsive school system envisaged by this report.

RECOMMENDATION 15

The new LSCs should operate in an open and transparent manner. This includes publishing full details of the decisions they make in relation to school interventions, holding public consultations and meetings on major issues (e.g. setting up a new school) and scrapping the concept of ‘headteacher boards’.

One of the most enduring criticisms of RSCs is that it is hard to find out what decisions they have taken, and why. As civil servants, RSCs work away from the public eye as they carry out their duties in accordance with the DfE’s wishes. This is problematic from the perspective of transparency because it means that stakeholders – particularly parents and local communities – are often unable to discover what is happening regarding important decisions about nearby schools. Even once a decision has been made by an RSC (e.g. ‘rebrokering’ an academy from one MAT to another), there is no requirement for RSCs to publish the evidence that informed

their decision or the advice they received from their Headteacher Boards (HTBs). Inevitably, this sows distrust and can create hostility between central government and local parents.

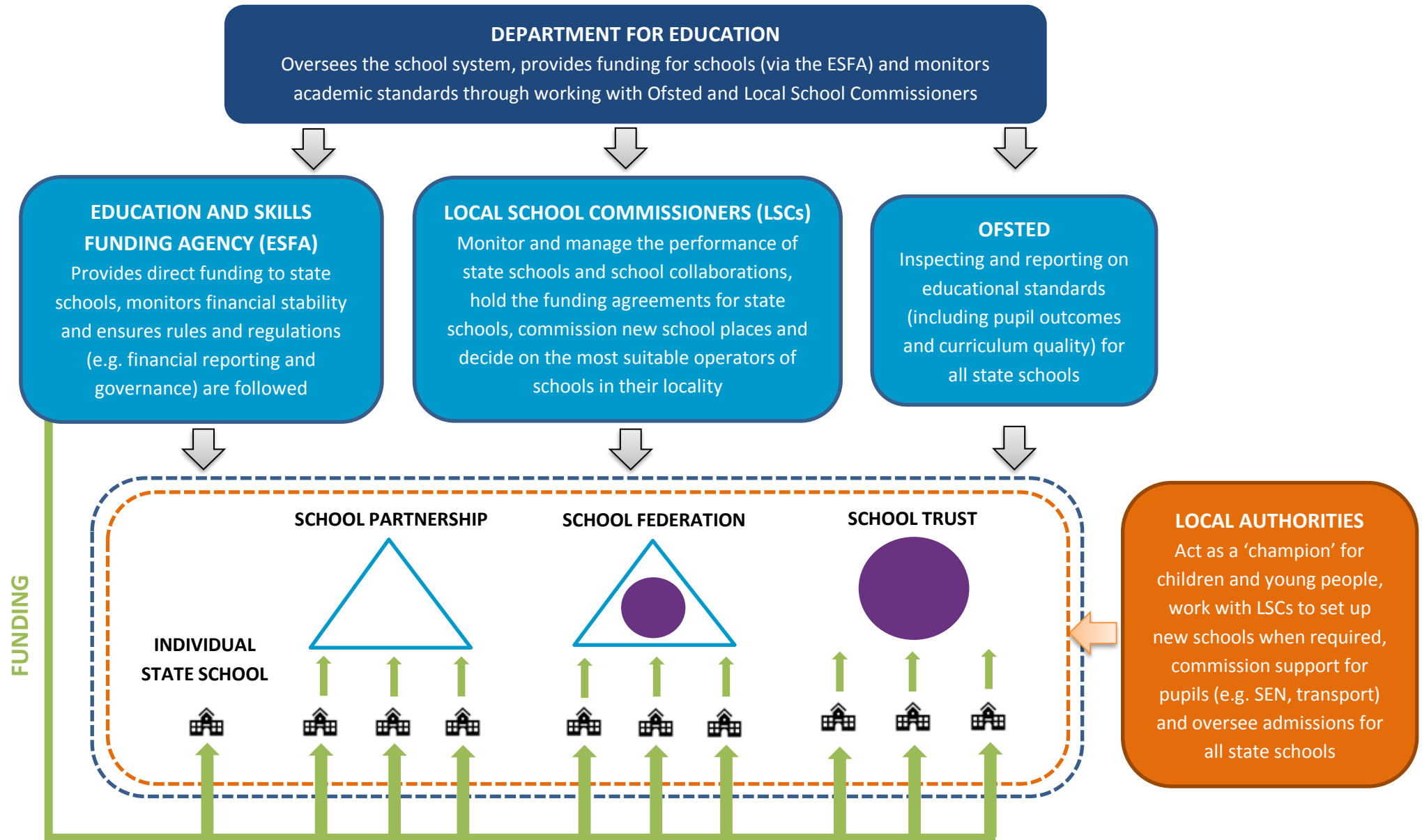
This report proposes a new approach for the LSCs that will replace RSCs. Due to their reduced geographical coverage relative to RSCs, the introduction of LSCs is intended to reduce the gap between the decision-makers and those affected by their decisions. This should involve several new initiatives across all LSCs:

- The minutes of LSC meetings, including any accompanying decisions and supporting evidence, should be published online within three months of the meeting taking place, with no redactions permitted apart from commercially confidential information.
- Each LSC should be required to hold public meetings at least once a quarter, during which local stakeholders such as parents, community groups and councillors can ask questions about the actions and plans of the LSC in their area.
- Whenever a new school is deemed necessary (Recommendation 9) or a school is to be moved from one collaborative arrangement to another, a public consultation along with public forums should be held to gather the views of local stakeholders about the proposals being considered.

This form of open dialogue with stakeholders should not be interpreted as requiring LSCs to agree with the views that are expressed to them. Each LSC will be responsible for improving the standard of education in their area, and this may on occasion involve making unpopular decisions about the future of one or more schools. The purpose of the open dialogue is merely to ensure that LSCs have gathered the widest possible range of evidence to inform their decisions and then subsequently explain their decisions to stakeholders in a transparent manner. Furthermore, the evidence that each LSC takes into consideration should be a matter of public record instead of being stuck behind closed doors. On that basis, the minutes of meetings held by LSCs (including full details of their deliberations) should be publicly available to ensure that key decisions can be scrutinised effectively.

Continuing the theme of allowing public scrutiny of LSCs, the drive for greater transparency cannot be achieved while HTBs remain in place. These groups of individuals may be providing some useful advice to RSCs in the current system but, as Select Committees in Parliament have repeatedly noted, it is even harder to get information about the work of HTBs than it is to find out what an RSC is doing. This situation will not be tenable in an open and transparent school system that focuses on improving standards at local schools with the support of local stakeholders. The fact that HTBs do not even represent a sensible cross-section of headteachers due to their heavy weighting towards representatives from the academy sector is yet another reason why the concept of HTBs should be jettisoned as soon as possible.

The proposed future state school system



5. Areas for further consideration

Curriculum, pay and qualifications

There are several areas where academies are treated differently to maintained schools that have not been discussed at length in this report. These include:

- The ability of academies to ignore the National Curriculum, aside from being required to offer a ‘broad and balanced curriculum’ (which includes English, mathematics science and Religious Education).²⁰⁵ Academies within a MAT do not always enjoy the same flexibility on their curriculum as stand-alone academies because some MATs impose a form of coordinated central offer on their schools, but the principle of being released from the National Curriculum still holds.
- Academies do not have to adhere to the ‘School Teachers Pay and Conditions’ framework (including national pay scales) as they can choose their own method of remunerating teachers and school leaders.
- Academies can hire staff who do not have formal teaching qualifications.

When seeking to build a single state school system in which the concepts of academies and maintained schools are no longer utilised, there is a strong case for revisiting these discrepancies between the different types of schools. For example, *The State School System Act 2020* could require all schools to adhere to the national pay scales for teachers and leaders, removing one of the freedoms currently enjoyed by academies but not maintained schools. Seeing as these issues are intertwined with much broader discussions about a government’s approach to autonomy within and between schools, this report does not express a view on the merits of each of these freedoms. That said, a unified state school system would undoubtedly benefit from consistency on such matters on the basis that state schools should be treated fairly and equally wherever possible (*Principle 3: Coherence* in the Recommendations chapter).

Inspections of school trusts

For several years, there has been a tension between the inspection of individual schools by Ofsted and the inspection of MATs. In July 2019, Ofsted’s Chief Inspector Amanda Spielman yet again questioned why MATs are not subject to formal inspections, noting that it is “peculiar” MATs are not inspected on the quality of their education, governance, efficiency and use of resources²⁰⁶ (particularly when Ofsted already inspects local authorities). Ms

Spielman went on to warn that Ofsted's inability to inspect MATs meant parents had only been given a partial picture of what is happening in schools. In the new model for the state school system described in this report, there will be several forms of school collaboration – partnerships, federations, local school trusts and national school trusts. Ofsted will continue to inspect individual schools regardless of the proposals in this report, but the greater use of such collaborative arrangements will reignite the debate over whether Ofsted should be able to inspect the collaborations as well as the schools they include.

This report takes the view that the greater variety of collaborations in the envisaged state school system will make it harder to justify allowing Ofsted to inspect them because many collaborations will be much less formal than a legally-constructed 'trust'. The additional resources that Ofsted would require to even understand each collaborative arrangement in detail, let alone see it in action, could be significant. When Ofsted is already providing stakeholders with insights into individual schools through their schedule of on-going inspections, the prospect of adding another layer of inspections into a more fluid and diverse educational landscape may not add much value. It might be more feasible for LSCs and the National Schools Commissioner to be made responsible for monitoring the performance and sustainability of school collaborations (e.g. trusts and federations), although this too would require further deliberations regarding the extent and consequences of such monitoring.

Penalties for misusing public funds

The recent Public Accounts Committee report on academy finances was uncompromising in its criticism of the DfE's apparent inability to sanction academy trustees and leaders who preside over serious failings. The Committee noted that although the DfE can ban individuals from teaching and stop them from being school governors, "there is nothing to stop people involved in malpractice from acting as trustees or governors elsewhere, for example at a further education college, or from setting up businesses that could trade with the education and training providers that it oversees and regulates."²⁰⁷ The DfE and the government's Insolvency Service signed an agreement in May 2019 to regularly share information about academy trusts to make it easier to ban trustees who break ESFA rules, as the Insolvency Service can disqualify people from being a director of any company - not just those in the education sector.²⁰⁸

In the new state school system described in this report, there will be many collaborations between schools across the country, including trusts that operate at a local and national level. At the very least, the existing rules detailing the conduct required of governors and trustees should be moved over to the new school system. This also provides an opportunity to look again at whether the DfE can strengthen their potential sanctions for those who work in

positions of responsibility. This report does not make any specific recommendations on this matter, but it recognises the importance of taking robust action against any individual or organisation involved in fraud or malpractice if this new state school system is to gain credibility.

Implementation timescales

The Coalition Government from 2010 to 2015 oversaw a dramatic expansion of the number of academies in England, with hundreds of schools removing themselves from LA control each year. Even so, this still represented a form of ‘phased approach’ rather than simply switching off the LA-dominated model that preceded it.

A similarly phased approach could potentially be used for the proposals in this report. For example, it would be feasible to use legislation to convert all state schools into separate legal entities, but an alternative model might instead roll out this change over several years. This could begin with converting schools in failing MATs into their own legal entity so that they can be removed from the MAT and placed into a different collaborative arrangement (including a new local school trust run by the LA), which would be followed by gradually converting schools within other MATs into their own legal entity over the next three to four years.

This report does not express a strong preference for any specific timetable for implementing the full set of proposals. Some changes will require primary legislation whereas others will not (e.g. moving from RSCs to LSCs). Careful consideration should therefore be given to how and when the recommendations in this report should be implemented.

Funding for school improvement

One of the most salient drivers of schools converting to academy status in the early years of the Coalition Government was the financial incentives available for doing so. Although these incentives are no longer being offered, the DfE has occasionally released small pots of additional funding to help MATs take on more schools under the guise of ‘building capacity’. In July 2019, the DfE announced that a new £17 million ‘Trust Capacity Fund’ would be divided between strong MATs that plan to “grow and innovate in areas of long-standing need”, MATs that want to convert and improve weaker maintained schools and medium-sized MATs that want to accelerate their development.²⁰⁹ This came after a MAT development and improvement fund worth £53 million was opened in 2017 and, prior to this, a regional academy growth fund was supported with £31 million.²¹⁰

There has been little in the way of formal evaluations of these schemes in terms of whether the funding has led to sustainable growth in high-performing trusts or whether the trusts go on to deliver excellent educational standards following their respective expansions. That said, it is hard to see how trusts – either MATs in the current system or LSTs and NSTs in future – will be able to grow sustainably without some kind of financial assistance. What’s more, federations and partnerships may also wish to expand in the new school system outlined in this report, and there is a reasonable case to argue that they too should be able to access financial support from government if they are able to deliver better outcomes for learners.

It is unlikely that major changes to DfE funding streams will occur in advance of the ‘Spending Review’ for all government departments scheduled for 2020. Even so, the DfE will need to invest in the capacity of the school system if the best-performing schools and collaborations are to drive improvements across the country.

Conclusion

“The preoccupation with school structure has absorbed a great deal of energy to little effect. We know what it takes to create a good school: a strong, skilled head who understands the importance of clear leadership, committed staff and parents, high expectations of every child and above all good teaching. These characteristics cannot be put in place by altering the school structure or by legislation and financial pressure alone.”²¹¹

Despite voicing their opposition to academic selection at age 11 in the run-up to the 1997 General Election, the newly-elected Labour Government decided that it was not worth expending time and effort trying to abolish the remaining 163 grammar schools. As a result, the 1997 White Paper ‘Excellence for Schools’ stated that their “focus will be on standards, not structures”.²¹² Even so, they recognised that, in order to achieve higher standards, it was important that “all the partners understand their roles and can work effectively together towards the common goal of raising standards”, adding that “in some areas there is a lack of clarity about who is accountable for what.”²¹³ Their solution was to call for “a new framework which strikes a better balance between fairness, co-operation, diversity between schools, and the power of schools to decide their own affairs”, and this framework “must allow all good schools to flourish, leaving in place whatever is already working well, while providing better support for those schools that need to improve.”²¹⁴ Setting a clear objective of focusing on standards, not structures, was laudable. In hindsight, though, it only served to emphasise how ironic it was that, just a few years later, the same government embarked on a course of action that ensured ‘structures’ would remain a source of controversy for the next two decades.

Considerable political oxygen has been (and continues to be) consumed by fraught debates over the impact of ‘academies’ at a local, regional and national level since 2002. Nonetheless, it would be wrong to suggest that there is no link between structures and standards. Former Prime Minister Tony Blair noted in his own memoirs that, in the years immediately following the 1997 election, it was a mistake for his government to ignore structures: “It was a bunkum as a piece of policy. The whole point is that structures beget standards. How service is configured affects outcomes.”²¹⁵ While this report agrees with such sentiments, it has evidently reached the point where the seemingly endless focus on whether one set of structures is better than another makes it increasingly difficult to hold sensible discussions about how to improve school standards. It is regrettable that some people now appear more interested in debating the label attached to a given school rather than the substance of what is happening in the classrooms within those same schools.

As noted in the title of this report ('Trust issues'), the conversations around how to organise and deliver state education are frequently conducted in an atmosphere of mistrust and suspicion – particularly in relation to academies and the trusts that typically run them. This report takes the view that the best way to move beyond these polarised opinions is for the government to set the explicit goal of bringing all state schools together again over the next few years into a single, unified system. In effect, the proposals in this report aim to take the best of what the academies programme has promoted – more autonomy for headteachers, greater innovation and the use of collaboration between schools to drive up standards – and combine this with the foundations of the maintained school system – a commitment to fairness, openness and a local approach to schooling. In doing so, supporters of both maintained schools and academies will hopefully recognise the benefits of building a simpler, more coherent and more transparent school system that enshrines the values and principles that they each cherish. After all, despite their differences, these two groups of supporters want to achieve the same thing: a better education for children and young people in this country. It is hoped that the analysis and recommendations in this report make a valuable contribution to deliberations over the future of state schools in England.

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