

3 Oversight and monitoring

Role of central Government in oversight

70. The Government holds academies to account through performance measures, as for maintained schools, but also through monitoring the funding agreements reached between the DfE and each academy trust. The model funding agreement includes a requirement for the academy to abide by the conditions of the Academies Financial Handbook and of the Independent Schools Standards which can be amended or updated. The Education Funding Agency (EFA) has day to day responsibility for monitoring the compliance of academy trusts with the agreement, including the Handbook.

71. Throughout our inquiry concern was frequently expressed about the impracticality of the system of central Government oversight of individual schools on a daily basis. The National Audit Office (NAO) released a report on *Academies and maintained schools: Oversight and intervention* in October 2014 which was critical of the DfE's level of knowledge about the cost-effectiveness of its interventions.[116] In the evidence session that followed, Russell Hobby of the NAHT told the PAC that "One of the flaws in our current system of oversight is that because we have so few people monitoring such large numbers of schools from such a distance, we are forced to rely on data".[117] This has the dual disadvantage that problems are not picked up until after the event, on the basis of poor exam results, and that "non-measurable aspects of school performance", such as safeguarding, may not be picked up at all.[118] He argued that there was no "substitute for having someone locally who knows what is going on inside that school".[119]

Regional Schools Commissioners

72. In response to the concerns about central oversight, in the course of 2014 the DfE created eight new Regional School Commissioners (RSCs), accountable to the Schools Commissioner, Frank Green. The core role of the RSCs is to oversee academies and free schools in their area. Their responsibilities include:

- monitoring performance and prescribing intervention to secure improvement in underperforming academies and free schools;
- taking decisions on the creation of new academies and making recommendations to ministers about free school applications.
- ensuring that there are enough high-quality sponsors to meet local need; and
- taking decisions on changes to open academies, including changes to age ranges, mergers and changes to multi-academy trust arrangements, as well as changes to admission arrangements.[120]

73. The RSCs are supported by Headteacher Boards (HTBs), the members of which are partly elected by academy heads in each region and partly appointed. The National Governors Association expressed reservations about the composition of the HTBs and raised questions about the skills and expertise represented on the Boards, especially with regard to the appointed members role.[121]

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74. The full complement of RSCs was only in place from September 2014, so it was not surprising that our inquiry heard some confusion over their role and scope. In October 2014 the Secretary of State was able to clarify that each Commissioner would have six staff and would be responsible for the oversight and monitoring of those academies which are in special measures, currently 112 schools across the country.[122] The RSCs have no responsibility in respect of maintained schools at the moment but the Secretary of State confirmed that the "direction of travel for the Conservative Party" is for Regional Schools Commissioners to oversee all schools: academy and maintained.[123] It remains unclear whether the RSCs have any responsibility for promoting school-to-school support, which is one of the duties of the Schools Commissioner which perhaps could be expected to be delegated.[124]

75. The RSCs were welcomed by some witnesses as providing a more localised service than was possible before. John Readman of Bristol City Council told us that, from the local authority perspective:

You have DfE, civil servants, sometimes quite junior, making major decisions around education business a long way away from London and sometimes it feels that, so the role of the regional schools commissioner to really improve and increase that level of local knowledge is crucial.[125]

76. Concern focussed on the size of the regions covered by each RSC and how they have been designed. Witnesses argued that the regions covered by each Commissioner were too big to be manageable and that there should be more localised oversight. Sir Michael Wilshaw told us "They have large responsibilities—a large number of local authorities to look after [...] it looks to be a very big challenge to have oversight of academies and free schools in a large number of local authorities and a large number of schools".[126] The regions were criticised by some witnesses for not recognising natural geographical boundaries,[127] and by representatives of the Church of England for creating difficulties for academy chains where their schools spanned different RSC regions. [128] The lack of alignment with Ofsted's eight regions was also raised as a lost opportunity for closer working between central bodies with responsibility for oversight and monitoring of academies. Emma Knights described the lack of commonality as "daft", whilst Sir David Carter, RSC for the south west, felt that "it would be very helpful for the system" for the RSCs and Ofsted regional directors to work together.[129]

77. David Blunkett MP has prepared a report for the Labour Party arguing that many more such regional officials would be required and they would need to be responsible for all schools.[130] Frank Green acknowledged that, as the number of academies increased, the regions may need to be divided up and the DfE "will need more [RSCs]."[131] Theodore Agnew defended the current number on the ground that "there are not that many underperforming academies" in each region but he accepted that "if all schools are to become academies [...] then I would see there being maybe 30 regional school commissioners".[132] The Secretary of State herself was firmly of the view that "I don't think we will have more regional schools commissioners", but rather that there would be more support staff for the RSCs in the future.[133]

Role of the local authority in strategy and monitoring

78. The role of the local authority with respect to education has been changing for many years. Several witnesses reminded us that "Local authorities have not run schools for 25, 30 years", since the reforms initiated by Kenneth Baker in the 1980s.[134] The main responsibility of local authorities is now to ensure good

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provision for all children in their area. In this context the academies programme is part of a long-term development, but the speed of conversions and the possibility of a fully academised system in the future require a major adjustment on the part of local authorities in relation to the schools in their area. This is true of all authorities despite the uneven distribution of academies across England, with some local authorities almost fully academised while others are still almost fully maintained.

79. Evidence to our inquiry indicates that many local authorities now see their role as regulator and overseer of education, rather than provider. Ofsted told us:

The most successful local authorities are those that engage with all the schools in their areas, regardless of whether they are fully maintained, academies or free schools. They typically view themselves as the 'commissioner of education for the children and young people in their area'. If the local authority believes that provision isn't good enough for the children then it challenges schools to do better, irrespective of status.[135]

80. John Readman of Bristol City Council told us that: "the local authority's role clearly is as champion, as commissioner and as convenor of partnerships welcoming the diversity of the education landscape".[136] Later he added that "where [the new system] is working best [...] is where the director and the local authority [...] sees itself very clearly as that champion of children role and builds that relationship between the DfE, Ofsted, the local authority and academy sponsors within an area", with the local authority aiming at providing "advocacy and influence".[137] Jon Stonehouse of York City Council agreed that the role "is changing massively":

The traditional model of intensive school improvement resources within the local authority is no longer the case. We are much more in a place where we are quality assuring the school improvement, the peer to peer support that schools give one another. This gives us a much better basis on which to challenge how those arrangements are working and to what extent they are improving outcomes for children.[138]

81. We heard first-hand in Hull how the local authority had worked with schools to develop a multi-academy trust and how heads continued to maintain "a very good relationship" with the local authority.[139] This was echoed in evidence elsewhere. The local authority officials from whom we took evidence were unanimous, however, that it was not the role of the local authority to sponsor academies directly as this would create a conflict of interest to their role as "a champion for all children".[140]

82. Not all local authorities have embraced this change. Sir Daniel Moynihan described his experience where local authorities used the idea of "protecting the local family of schools" to resist the academisation of failing schools.[141] John Readman acknowledged that "There are some local authorities where they have not necessarily grasped that role and there is work to do".[142]

83. It is also the case that the role of the local authority in working with academies can be a difficult one. Kent County Council expressed concern that "one of the biggest challenges in the current school system is that LAs are legally responsible for the education performance of all children, but have powers to intervene locally in maintained schools only".[143] David Whalley of Calderdale Council told us that his authority challenges academies where they see underperformance and "to date, academies have responded". However, he also acknowledged that "there has been some tension" where chairs of governors have questioned the power of the council to enforce cooperation. The Calderdale response to this was to "have another dialogue with DfE and with Ofsted".[144] The new statement was published on 20 January

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2015.

84. The Local Schools Network suggested that "A local education authority should be able to prompt an Ofsted inspection if it is concerned about the progress of a school in its area".^[145] Sir Michael Wilshaw agreed that "If they do not have the powers to intervene themselves, they should ensure that they telephone the sponsor, write letters, talk to the Department about their concerns, and they can write to Ofsted to do an inspection."^[146] That does not, however, resolve the difficulty that the authority can be held accountable for the performance of schools over which it has influence but ultimately no control. It also does not address the position of those stand-alone converter academies which do not fall below intervention thresholds but which may be declining from their previous positions. In evidence to us, Ofsted identified a gap in support for these schools, of whom only some will seek support from the local authority.^[147]

85. In addition, the dialogue between the local authority and the DfE is not always easy. Some local authorities expressed concern that issues raised with the DfE about particular academies in their area were not addressed. Calderdale Council considered that there was "very little stability" at the DfE with the result that that "we are constantly meeting new people and it has been very difficult to establish a working relationship".^[148]

86. The NAO found that the confusion over the responsibilities of local authorities in relation to academies extended to safeguarding. 15% of local authority directors of children's services told an NAO survey that they were not monitoring safeguarding in academies and the same percentage would not intervene directly in academies if pupils' safety were threatened.^[149] The NAO attributed this to "the very strong messages that have been sent to local authorities more generally about not overseeing and meddling in academies".^[150] They concluded that "The Department has not clearly articulated some of the roles and responsibilities of external oversight bodies" and both the DfE and Ofsted have sent "mixed messages" to local authorities^[151]:

with academies, local authorities have no powers to intervene and the Department only expects them to maintain constructive relationships and raise concerns about performance with itself. The Department's policy is that local authorities do not need to monitor academies proactively and should not require academies to report performance data to them. However, Ofsted has interpreted local authorities' statutory duties differently, and has criticised authorities for not working effectively with local academies to improve performance.^[152]

87. The NAO found that there was no single up to date document that sets out the roles and responsibilities of oversight bodies.^[153] The DfE told the NAO that this was the purpose of the Accountability System Statement, which has not been updated since 2012, despite a commitment to update it annually. In June 2014 the DfE announced that it was working on a revised statement.^[154] The NAO recommended that "The Department should update its framework for oversight and intervention" and that "future iterations of its Accountability System Statement should set out: the responsibilities and accountabilities of oversight bodies, and how they interact with schools' own responsibilities".^[155] The statement was published on 20 January 2015.

88. Apart from the disputed area of oversight, local authorities still hold statutory responsibilities in relation to place-planning and admissions, the exercise of which duties has been complicated by the academisation process. Local authorities can compel maintained schools to expand, if necessary, but have no power to force

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academies to take additional children if there are insufficient school places in the local area. Academies can also set their own admission arrangements (subject to the Admissions Code). Comprehensive Future, a group which campaigns on the issue of school admissions, warned us that: "As more schools become academies i.e. own admission authority schools able to set their own admission criteria, decide which applicant meets them and carry out appeals, we are likely to return to the confusion and unfairness of the past."^[156] Children who do not find places in academies must be allocated a place elsewhere by the local authority, putting further pressure on place-planning.

89. David Whalley from Calderdale Council called for a "more robust process [within the DfE] in working with local authorities when agreeing to expand free schools and academies", to take into account the impact on the local authority and their ability to plan future pupil places.^[157] The Secretary of State told us that under the new system the DfE would "continue to work with [local authorities] in the way that we have done", recognising that there was a need for liaison on "a variety of different issues", including safeguarding.^[158] With regard to underperforming schools, she argued that local authorities "should be passing that information on", either to the Regional Schools Commissioners or to the DfE itself.^[159]

Parent voice

90. The DfE's original written submission to our inquiry did not mention parents except in relation to free schools.^[160] Other witnesses raised concerns about the accountability of academies to parents, both collectively and as individuals with complaints. Warwick Mansell described the structure of Regional Schools Commissioners appointed by the Secretary of State and assisted by Head Teacher Boards as "a very top-down paternalistic system" and questioned why the Government was not "trying to get the pupil and the parent very much to the fore".^[161] On governance within academies, one parent wrote that "parents are sidelined from all important decisions, both over whether schools convert in the first place, and over how they are run once they become academies".^[162] Anastasia de Waal argued that "Because it is a changing landscape, it is difficult for parents [...] to find out what the accountability mechanisms are. There needs to be much greater clarity around that."^[163]

91. An important part of the accountability mechanism for parents is knowing how to raise issues of concern with particular academies. If the parents of a child at an academy have a complaint, the first port of call is the headteacher. If a complaint is not dealt with satisfactorily by the head, a panel of governors is convened, which must contain one member who is not a governor, but is appointed by the governing body. One parent told us:

Complaints against an Academy heard by Governors of the Academy with no further recourse, is a very good example of how self-regulatory accountability will fail. The Governors cannot be expected to be self-critical to the degree that might be required and there is a real danger that children are not adequately safeguarded by this system. Complaints against an Academy should be heard by a wholly independent body with no involvement of the Governors where the complainer feels this to be necessary. Headteachers who are confident of the backing of their Governors (often people they might personally have persuaded to become Governors) can act towards parents and children pretty much as they wish—unless there is evidence of criminality. This is a very uncomfortable state of affairs.^[164]

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92. The DfE told us that:

all schools, including academies, are required to have a complaints policy and procedure in place. In the first instance, parents who have concerns can follow the school's process by raising their concerns with the head teacher and the governing body. Local authorities are responsible for working with and acting on complaints referred for state maintained schools. The Education Funding Agency is responsible for handling complaints about academies (and free schools) where complaints have been referred to the academy and these have not been addressed through that route.[165]

93. From September 2013 to August 2014, the EFA received 1955 complaints from all sources. Of these, only 68 were deemed to be the responsibility of the EFA to investigate because the academy's complaints procedure had been exhausted. 51 of the 68 complaints were from parents.[166] Other routes of redress were proposed during our inquiry. Sir Michael Wilshaw, for example, suggested that Ofsted's regional offices were a further port of call for parents concerned about academy performance and he highlighted the role of parents in the Trojan Horse allegations.[167] In addition, the Schools Commissioner argued that "parents should have [...] accessibility to the Regional Schools Commissioner and their teaching board, if needs be, for resolution of an issue between the dean of an academy and a parent".[168]

94. Robert Hill suggested that "there was weakness and confusion for parents in the system" and that "there is a case for a proper regulator that is independent of the Department".[169]

Regulatory function of the EFA

95. The EFA is responsible both for funding academies and for monitoring their financial performance and probity. In particular, one of the EFA's objectives is to ensure the proper use of public funds through financial assurance undertaken by the EFA itself, or by others.[170]

96. As part of this inquiry, we commissioned independent research from the Institute of Education into potential conflicts of interest in academy sponsorship arrangements. The resulting report noted that there was a sense amongst those interviewed that "the academy system lacks transparency, is heavily politicised and prone to favouritism".[171] One interviewee told the researchers:

Civil servants in the EFA have become very politicised. Transparency needs to go right to the top; ministers and senior figures at DfE are still associated with or on boards of trusts. Although they have tried to build Chinese walls and avoid accusations of impropriety this involvement could still contribute to a wider culture in which it seems that some Heads are favoured by ministers. Human behaviour is such that civil servants and Ofsted might give these schools preferential treatment, even if they haven't been asked to.[172]

97. The research suggested that there was a real or perceived conflict of interest in one body both allocating funds and ensuring that they are spent appropriately. It recommended that we should consider whether the regulatory powers of the EFA should be split from its funding role, positing as an alternative a requirement that the EFA becomes a Non-Departmental Public Body rather than an Executive Agency, thereby giving it greater independence from Ministers as it conducts its regulatory work.[173] David Wolfe QC considered that splitting the functions "would be a very good idea": "parents often perceive, rightly or wrongly, that the EFA is an apologist

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for the academy, trying to paper over things rather than independently investigating on the parents' behalf". He added: "That may be a wrong perception but the fact that they are a single organisation certainly reinforces that sense".^[174]

Conclusions and recommendations

98. The evidence to our inquiry supports the need for a middle tier between Whitehall and individual schools. The Regional Schools Commissioners are intended to fill that gap but their role is still evolving. There are differing views, including amongst postholders themselves, as to how the functions of RSCs will develop. We recommend that the Government clarify what that role is and how it will develop in the near future.

99. The RSC regions are too large as currently devised. We do not believe that an increase in staff numbers, as envisaged by the Secretary of State, 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.

100. We recommend that the Government review and increase the number of schools commissioners.

101. Local authorities cannot embrace their new role in education without a clear and unambiguous codification of their role and responsibilities. These should include the championing of the interests of local children, families and employers in ensuring high quality, accessible local provision, rather than championing the schools themselves.

102. As local authorities adjust to their new role, the Department should also adjust and ensure that local authorities can play a constructive role in challenging all schools, including academies, to be effective. If local authorities perceive themselves to be marginalised and ignored, they will not fulfil their role in holding schools to account.

103. We recommend that the DfE, as a matter of urgency, clarify the respective roles of local authorities and RSCs in relation to academies.

104. The voice of parents can be marginalised in some academies. We recommend that the DfE work with academies and local authorities to ensure parents know how they can make representations and that these are meaningfully heard.

105. We also recommend that the Education Funding Agency and the Regional Schools Commissioners establish protocols so that parental complaints are dealt with effectively and information from the process is shared between the authorities.

106. Many witnesses have complained about the lack of transparency at the EFA. We recommend that the DfE and EFA further enhance the transparency and accountability of the monitoring process to ensure that academies comply with the terms of their funding agreement.

107. Public confidence in the academy process is undermined by having the EFA as

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both regulator and funder. We recommend that its regulatory and funding roles be split and that the DfE carry out a review about how that can best be achieved.