

## **Forum: Comprehensive education in the 21<sup>st</sup> century**

### **Reforming the school-based education system in England: A common framework, rule book and a new structure for schools**

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#### **Abstract**

The school system in England has undergone significant change following the introduction of the academies policy and the subsequent mass conversion of secondary schools to academies. In this article we address two issues arising from this process of academisation, namely equality of opportunity and local democratic accountability, both of which are fundamental to what one might argue comprehensive schooling should entail. We outline the policy changes that have taken place from 1965 and look in more detail at the changes since 2010. We then examine how equality of opportunity and democratic accountability have been affected by the legislative changes. In our final section, we put forward proposals for how the shortcomings we identify might be addressed by policy makers: these we argue relate back to the basic assumptions underpinning Circular 10/65.

#### **Introduction**

The education reforms that have taken place in England over the past decade have transformed the school-based education system. As a result of the process of academisation, a range of issues have come to the fore, particularly as regards equality of opportunity and democratic accountability, both of which are fundamental to what one might argue comprehensive schooling should entail.

In this article we provide an overview of the issues pertaining to both equality of opportunity and democratic accountability and consider ways of addressing these. In the first instance we re-visit Circular 10/65 which requested local authorities 'to prepare and submit...plans for reorganising secondary education in their areas on comprehensive lines' (DES, 1965, para 1). We then provide an overview of the changes that have taken place since then and, in particular, since 2010. We examine how equality of opportunity and democratic accountability have been affected. In our final section, we put forward some proposals for how the shortcomings we identify might be

addressed by policy makers: these we argue relate back to the basic assumptions underpinning Circular 10/65.

Circular 10/65 had as its goal eliminating “separatism in secondary education”. At this time, the separatism was in terms of the school structures in place at that time – namely the tripartite system of grammar, technical and secondary schools. In that Circular, it was stated that:

A comprehensive school aims to establish a school community in which pupils over the whole ability range and with differing interests and backgrounds can be encouraged to mix with each other... The Secretary of State therefore urges authorities to ensure, when determining catchment areas, that schools are as socially and intellectually comprehensive as is practicable (para 36).

Whilst the election of a Conservative government in 1970 resulted in the withdrawal of the request for local authorities to submit plans for the introduction of comprehensive education, paradoxically, even though the majority of local authorities were by this time Conservative controlled, local authorities continued to submit proposals for comprehensive reorganisation, demonstrating the popularity of comprehensive schools and the power of local authorities at that time. By the early 1980s comprehensive education was almost universal (Gordon et al., 1991).<sup>1</sup>

The 1988 Education Reform Act (ERA) allowed for “independent” city technology colleges (CTCs) to be established – predecessors to academies. In 2000, David Blunkett announced city academies. These were closely modelled on CTCs. Unlike CTCs, academies would (in that first phase) normally replace schools that were deemed to be failing by Ofsted (see West and Bailey, 2013). However, from 2010, under the Conservative/Liberal Democrat Coalition Government schools could apply to convert to academy status. Until this point, the national system of schools maintained by local authorities set up following the 1944 Education Act had been largely retained.

However, since the 2010 Academies Act, there has been a rapid and radical transformation of publicly-funded school-based education in England, with the widespread conversion of maintained schools to academies. In January 2020, over three-quarters of secondary schools were academies (or free schools) (DfE, 2020a). Academies are not “maintained” by local authorities. Instead they are (in law) “independent schools”, generally owned and run by not-for-profit private trusts (exempt charities): these register as companies with Companies House and are subject to company law. They are controlled and funded directly by central government by means of a contract, known as a funding agreement, between a trust (i.e. a legal entity) and the Secretary of State for Education. Thus, legally they are very different from maintained schools which are run by a governing body in accordance with statutory education law. The trust can run a single “stand-alone” academy under contract and or a number of academies (a Multi-Academy Trust (MAT)) under a single contract. The difference for the individual academy is crucially important as schools that are part of MATs have no separate legal identity and are under the direct control of the MAT.

As a result of the academies policy, a transparent national system of maintained schools where schools operated to a single legal model (albeit with some relatively minor

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<sup>1</sup> There are currently 163 grammar schools in England, around 5% of all state-funded secondary schools.

variations around that model), had their own legal identity (being run by school-based governing bodies) overseen by democratically elected local authorities, has been transformed into an opaque part-locally administered system of maintained schools, and a part-centrally-controlled system of academies (West and Wolfe, 2019).

Two fundamental issues come to the fore, and in the following sections we look at these: first, equality of opportunity and second, governance, local democratic accountability and public participation.

### **Equality of opportunity**

Academies, as a type of school, have more autonomy – or “freedoms” – than maintained schools in part as they are no longer maintained by local authorities and in part because of the relaxation of the particular requirements which applied to them as schools. For example, academy trusts are not obliged to follow the national curriculum (unlike maintained schools), rather they are required to offer a balanced and broadly based curriculum including English, maths, science, and religious education (RE); and they do not have to adhere to the School Teachers Pay and Conditions document – the current model funding agreement does not require teachers employed by academy trusts to have qualified teacher status; Furthermore, policies regarding capability of staff and teacher appraisal are not required by academies unlike maintained schools. Academy trusts are also responsible for their own admissions (unlike community and voluntary-controlled schools) although the process is co-ordinated by local authorities and subject to statutory guidance and a School Admissions Code (West and Wolfe, 2019).

Some academy trusts adopt the same oversubscription criteria for admissions as community schools, but there are many examples of non-religious academies – together with faith schools of all types – that have complex admissions criteria (West and Hind, 2016). As noted by the Office of the Schools Adjudicator (OSA): ‘Admission arrangements for too many schools that are their own admission authority are unnecessarily complex. The arrangements appear to be more likely to enable the school to choose which children to admit rather than simply having oversubscription criteria...that are reasonable, clear, objective and procedurally fair’ (OSA, 2014, pp. 7-8). As with other schools responsible for their own admissions – voluntary-aided and foundation – decision-making takes place behind closed doors, unless the academy trust asks the local authority to take on this role.

These “freedoms” have implications for equality of opportunity. For example, if admissions arrangements prioritise some pupils over others, disadvantaged children or those with special educational needs may be “selected out” (West et al., 2009); if the national curriculum is not followed, pupils may not have the same subsequent opportunities as those in schools that follow the national curriculum; and if pupils are taught by unqualified teachers they may have sub-optimal learning experience compared with those taught by a qualified teacher. These freedoms can mean that the ideal of the comprehensive school – as advocated by Circular 10/65 – is not realised.

### **Governance, democratic accountability and public participation**

The school governing body is fundamental to maintained schools; the members of the governing body are laid down by statute and there are obligations regarding the

publication of minutes and decisions reached. Academy Trusts are under no obligation – with the exception of Church of England and Roman Catholic Academy Trusts (DfE, 2017) – to establish governing bodies for individual schools within the trust. Indeed, whilst some (secular) MATs such as Ark (2018), have retained school governing bodies, at least one, E-ACT, has decided to abolish school governing bodies for the academy schools it runs (Dickens, 2016). Academy trusts do not have governing bodies, rather there is a board of Trustees: there are very few requirements relating to the constitution of the board of trustees, although there must be at least two elected parent trustees on the board (DfE, 2020b).

The lack of public accountability raises a range of issues including use of public resources. Academy trusts are independent institutions and as such have autonomy over financial transactions. The House of Commons Committee of Public Accounts expressed concerns that some academy trusts appeared to be ‘using public money to pay excessive salaries’ (p. 6). In the case of maintained schools, expenditure is overseen by the local authority (West and Wolfe, 2019).

Decisions regarding maintained schools are taken by local authorities under the oversight of elected local councillors who operate in meetings subject to “public participation” obligations. However, decisions for academies are taken by Regional Schools Commissioners acting on behalf of the Secretary of State for Education; these are appointed by central government, and exercise considerable power without any local democratic oversight or requirement for open process. This includes decisions about opening and closing academies, or “re-brokering” them from one MAT to another. Whilst changes to maintained schools – opening them, closing them, expanding them, changing the age range of pupils for whom they make provision – involves a public process (public notices, and opportunity to object, and so on), this is not so with academies: the MAT or Regional Schools Commissioner (depending on the issue) can simply make a decision as to how to proceed.

### **Common framework and rule book**

The current fragmented system of secondary education and specifically the massive expansion of academies, raises important issues regarding equality of opportunity and local democratic accountability. Academies and maintained schools operate under different sets of rules and this as we argue has consequences for equality of opportunity and local democratic accountability. To overcome these problems, we propose that there should be a common framework for all state-funded schools along with a common rule book.

The main principle underpinning a common framework should be coherence across the system as a whole, in order to seek to deliver equality of opportunity as regards access to academies and the teaching delivered (both the curriculum and staff qualifications). The framework would also respect the need for local democratic accountability. This we argue is fundamental given that schooling takes place within a particular local area, where there is a greater awareness of local issues than there is at Westminster, or via the Regional Schools Commissioner.

We propose that admissions arrangements to all schools, including academies be simplified to overcome the current complexity. A simplification of these arrangements would improve equality of opportunity – in terms of access to schools – for all children including those with special educational needs. Admissions arrangements, including oversubscription criteria, should be subject to local agreement and be administered by the local authority on behalf of all schools to ensure a degree of democratic accountability and to improve equality of access. The use of selective admissions criteria, such as selecting a proportion of children on the basis of their ability/aptitude is problematic as this can lead to the school’s social mix being more akin to that of a grammar school than a comprehensive school. It is important that admissions decisions are not taken by schools that have a clear and vested interest in enrolling a particular mix of pupils in order, for example, to enhance their league table position (see also West and Hind, 2016).

Furthermore, the Local Government Ombudsman should have jurisdiction in relation to admission and exclusion panels run by academy trusts, as is the case for maintained schools. Under the current arrangements, parents applying for a place for their child in an academy, or whose child has been excluded from an academy do not have equal access to this form of redress (West and Wolfe, 2019).

As regards the curriculum, there would seem to be a *prima facie* case for all schools to be required to teach broadly the same curriculum to ensure equality of opportunity. Although it might be argued that diversity is unproblematic as parents can “choose” the school they wish their child to attend, in practice this may not be possible; this is particularly (but not only) the case in rural areas, where parents in practice have no real choice because of the limited range of schools in the locality and a lack of home to school transport. Similarly, in terms of staff qualifications, there would also seem to be a *prima facie* case for the requirements to be similar for all schools, again to ensure equality of opportunity in terms of the education offered and delivered to pupils.

In addition to these changes to the “rules” governing academies (and maintained schools), structural changes are, in our view, also necessary in order to improve the coherence of the system and to ensure local democratic accountability.

## **Structural changes to the school-based education system**

### *Option One*

Our first proposal is to restore each school to being a free-standing legal entity as part of a statutory over-ride of funding agreements. Given that one of the drivers for academisation immediately following the Academies Act 2010 was to “set schools free” that should be uncontroversial. In addition, we propose that all MATS put in place local governing bodies constituted on a stakeholder model, along the lines of that for maintained schools. Again, given a driver for schools to be “free” this would seem uncontroversial. An alternative way of pushing in those directions would be for a scheme of delegation to be imposed on all MATs: they would continue to be the bodies which contracted with the Secretary of State. However, they could be required to pass to local governing bodies, the power to (say) decide how the budget for the individual schools in the trust is allocated. (At present the distribution of funds to schools that are part of a MAT is opaque.)

This approach would – one way or the other – result in the local governing body having broadly the same powers as a maintained school governing body, with local democratic accountability. Local governing bodies could also have the option to become separate entities with their own contract, or initiate the move into another MAT, or “float off” as maintained schools.

#### *Option Two*

Given the lack of local democratic accountability with academies, individual academies with their own legal identity could contract with the local authority. This would be a way of restoring links with local authorities. In this case, the contracts would be between the individual academies (separated from MATs with their own legal identity) and the local authority rather than the Secretary of State.

The local authority would then have no greater power over the academy than the Regional Schools Commissioner at present, but this option would restore a local connection and democratic oversight. It would also reduce the centralisation of power that has taken place (Glatter, 2018; Newsam, 2017; West, 2015). In short, there would be a shift from central government (and non-elected Regional Schools Commissioners) to local government.

#### *Option Three*

Under this option, academies (newly reinstated as separate legal entities) could convert back into maintained schools if they wished to do so. At present the only way an academy can become a maintained school again is for the academy to close and then for the local authority to open a new maintained school. Wolfe (2013) has proposed that returning academies could use the voluntary-aided school legal model (which, though often associated with faith schools, need not be). Voluntary-aided schools, like academies, own or lease their own premises so any conversion would not be associated with potentially expensive property transfer.

#### *Option 4*

This option would entail wholesale statutory conversion of academies to maintained schools or voluntary-aided schools (see also Hatcher, 2018). However, in the short term this would in all likelihood create significant upheaval.

With these options, the principle of subsidiarity would be of paramount importance, with decisions being taken at the level nearest to those affected by those decisions avoiding unnecessary bureaucracy.

### **Conclusion**

The academies policy in England has transformed the school based education system, which is now fragmented and lacks coherence. We have argued that the “freedoms” associated with academy status have diminished both equality of opportunity and local democratic accountability. To remedy this, we propose a common framework and rule book for all state funded schools. However, this would not be sufficient to ensure coherence of the system, nor would it result in local democratic accountability being restored. For this changes to school structures would also be required. The changes we

propose can be related back to the basic assumptions implicit in Circular 10/65, in which the local authority played a fundamental role.

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