

STRUCTURE, GOVERNANCE AND ACCOUNTABILITY

Governance of schools: current issues and an alternative vision

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Introduction

School-based education has been transformed since 2010 by the massive increase in academies – schools outside local authority (LA) control, funded directly by central government. In 2010, LAs ‘maintained’ most secondary schools which were run by statutory school governing bodies. By January 2023, 80 per cent of secondary schools and 40 per cent of primary schools were academies.¹ The school system thus comprises locally administered maintained schools and centrally controlled academies.

Significantly, the governance arrangements for maintained schools and academies vary (and differ between academies). Noting this fragmentation, we consider how the school system might operate more coherently to increase equality of opportunity and enhance local democratic involvement. First, we provide an overview of the development of academies; second, an overview of school governance; third, an outline of concerns in specific areas of governance; and finally, proposals for the future.

Development of academies

Academies were first introduced by the Labour government in the early 2000s, building on city technology colleges introduced by the Conservative government in the late 1980s. Those early academies normally replaced schools Ofsted considered failing. Known as ‘sponsored academies’, they comprised six per cent of secondary schools by the 2010 general election. Following the Academies Act 2010, maintained schools could apply to the Department for Education (DfE) to convert to academy status – with financial incentives – and become ‘converter academies’.²

Academies, in law, are ‘independent schools’ run by not-for-profit private trusts (exempt charities); they are registered as companies with Companies House and subject to both company and charity law. They are controlled and funded directly by central government via a contract, or ‘funding agreement’, between the trust and the secretary of state for education. Each trust can run a single academy under contract (a single academy trust, SAT), or many academies (a multi-academy trust, MAT) under a single contract.

Academies have a number of legal ‘freedoms’: they do not have to follow the national

curriculum, nor recruit qualified schoolteachers; they are responsible for their own admissions; and they do not have to adhere to the statutory framework regarding teachers' pay and conditions of service.

Governance of school-based education: past and present

In the decades following the 1944 Education Act, schools in England were largely controlled by local education authorities (LEAs), with school governing bodies typically comprising local politicians and/or church representatives. In the 1970s, the government-commissioned Taylor Report (1977) proposed a 'stakeholder' approach to school governance with LEAs, the staff, the parents of children attending the school, and the local community being represented on the governing body. The rationale was that the stakeholders had a 'common interest in the welfare of the school'³ with LAs having wider knowledge of their local communities.⁴

The 1986 Education Act (No 2) established school governing bodies as freestanding legal entities. The governing body runs maintained schools with oversight by the maintaining LA.⁵ The governance of academy trusts is more complex. Academy trusts are founded by members, who can be appointed by a foundation/sponsor body, a church diocese or existing members. The members typically have no term of office, except in the case of Church of England (CofE) or Catholic trusts. Members can (but do not necessarily) appoint academy trustees and remove trustees.⁶

The trust board is the academy trust's decision-making body and is responsible for all academies in the trust. In a SAT, the trust board runs the school. In the case of a MAT, the trust board may (but does not need to) establish one or more local governing bodies (LGBs) to oversee an academy/group of academies. The trust board may delegate certain responsibilities to the executive leader. In a SAT, the executive leader is the principal or headteacher and in a MAT, the chief executive officer (CEO) or equivalent who heads the management team.⁷ MATs are hierarchical, with the CEO overseeing the work of headteachers of its schools.⁸

School-level governance varies. The governing bodies of maintained schools and the trust boards of SATs are freestanding legal entities and responsible for running the school. For schools that are part of MATs, the trust board is the legal entity. The LGB (if one exists) may on the surface resemble a maintained school's governing body, but both its legal status and decision-making ability differ significantly. Although there is much leeway for non-religious MATs regarding local governing bodies, there are specific arrangements regarding CofE and Catholic schools; in particular, each academy within the MAT must have a governing body composed as would be the case in a voluntary-aided (faith, maintained) school. However, the MAT trustees decide what powers should be exercised by the LGB. So, although ostensibly similar to a voluntary-aided school,

a school in a church-run MAT that converts from a voluntary-aided school will in all likelihood see a shift of power away from teachers, parents and the local community, towards the church.⁹

Overall control in an academy lies with the trust board and can extend to the appointment of governors for LGBs, the appointment of the LGB chair and the appointment of academy headteachers.¹⁰ This situation is in marked contrast to that in maintained schools where the governing body is responsible for deciding the school budget, the appointment of governors and the appointment of staff, including the headteacher.

Specific areas of governance

Turning to specific areas of governance, admissions policies are the responsibility of the LA in the case of maintained community (and voluntary-controlled) schools, the school governing body in the case of voluntary-aided schools and the trust board in the case of SATs and MATS. Admissions are a key ‘freedom’ of academy trusts, and two surveys have found that over a fifth of academies reported that they had changed their admissions criteria.¹¹ In a qualitative study of secondary schools it was found that admissions arrangements were, in some cases, in line with those of maintained community schools in the area, but in others the interests of the trust board were prioritised over the interests of children in the local area.¹²

The curriculum is the responsibility of the school governing body of maintained schools and the trust board of SATs and MATs. Academies are required to offer a balanced and broadly based curriculum. SATs have autonomy over the curriculum within the parameters of their funding agreement, but schools *within* a MAT do not necessarily have such autonomy.¹³ West and her co-authors found that the curriculum in academy trusts was generally aligned with the national curriculum regarding the subjects taught.¹⁴

Decisions regarding maintained schools are taken by local authorities and overseen by elected local councillors who operate in meetings subject to ‘public participation’ obligations, with minutes regarding decisions made publicly available. However, decisions for academies are taken by the trust board and there is no similar obligation. Moreover, regional directors (civil servants) acting on behalf of the secretary of state for education make decisions about academies without any local democratic oversight or requirement for open process.¹⁵ Research has found that regional directors have pressured MATs with a more decentralised model to develop more hierarchical, corporate models.¹⁶

The lack of public process regarding academy trusts raises a range of issues, including use of public resources. Academy trusts are responsible for setting the salaries of their

staff and are not bound by the school teachers pay and conditions statutory framework. The House of Commons committee of public accounts in 2018 expressed concerns that some academy trusts appeared to be paying excessive salaries using public money.¹⁷

There are also differences regarding information that must be publicly available – and on school websites – between maintained schools and academies (and between different academies), making it difficult for parents and other stakeholders to make comparisons between schools of different types.¹⁸

Implications for policy and options for the future

Several implications for policy emerge from our findings and from the overall observation that the current, highly fragmented, system leads to inconsistency, incoherence and lack of transparency in the way schools are governed, and by whom. Who makes what major management decisions, and how. Who sets the budget? Who appoints the headteacher? Who decides the curriculum? Who makes the school policies? Who deals with complaints? Who deals with school exclusions? Further, how are these decisions made? Where can information about their decisions be found (if at all)?

First, a common rulebook for all state-funded schools would ensure that there is less fragmentation across different school types, which would aid parents and other stakeholders.¹⁹

Second, a stakeholder model of governance for academy trusts and any LGB – including parents, staff, the LA and wider community – would provide representation of key stakeholders. In line with 1977 Taylor Report, we argue that there is a strong case for all state-funded schools to have local governing bodies with clear powers and responsibilities. These powers could include the appointment of the headteacher, responsibility for the budget and for curriculum, giving all schools a similar level of autonomy to that of maintained schools. This, we argue, acknowledges the importance of not only the school as an institution, but also the pupils, teachers, parents and community it serves.²⁰

Third, minutes and decisions made at school level should be available for all state-funded schools to ensure public oversight of the decision-making process, especially as regards expenditure given that schools are funded by the taxpayer.

Fourth, admissions arrangements for academy trusts, including oversubscription criteria, should be simplified to overcome the current complexity. They should be agreed at a local level and then administered by the LA on behalf of all schools, as schools have a vested interest in the mix of pupils recruited. Moreover, the Local Government Ombudsman should have jurisdiction in relation to admission and exclusion panels run by academy trusts, as in the case of maintained schools, so that parents applying for a place for their child at an academy or whose child has been excluded from an academy

have access to this form of redress.²¹

Fifth, as regards the curriculum, there would seem to be a prima facie case for all schools to teach broadly the same curriculum. If the national curriculum is not followed, pupils may not have the same subsequent opportunities as those in schools that follow the national curriculum.

Sixth, in terms of staff qualifications, pay and conditions of service, there would also seem to be a prima facie case for the requirements to be the same for all schools, again to ensure equality of opportunity in the education provided to pupils.²² If pupils are taught by unqualified teachers, their learning experiences may be of a lower quality than if taught by qualified teachers.

However, in addition to these changes to the ‘rules’ governing academies (and maintained schools), we argue that structural changes to governance are also necessary to improve the coherence of the system and restore school autonomy.

Structural changes to the school-based education system

Option 1

One option would be for wholesale statutory conversion of academies to maintained community or voluntary-aided schools.²³ However, in the short term this would in all likelihood create significant upheaval and – given the loss of LA capacity – be hard to achieve.

Option 2

An alternative approach would be for a scheme of delegation to be imposed on all MATs: they would continue to be the bodies that 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. That would at least ensure that a significant degree of school-based management was restored.

Option 3

Our third proposal is for each school to be restored to being a freestanding legal entity as part of a statutory over-ride of funding agreements, each with its own mandatory local governing body. Each school as a freestanding legal entity would be required to engage with either an LA or a MAT and choose which powers to pass over to the MAT or the LA with which it chooses to forge a relationship.

Once a school was its own legal entity it would have choices:

1. It could choose oversight by a MAT: it could remain with the MAT or contract with another MAT.

2. It could choose oversight by the LA (which would restore links with the LA). In this case the contract would be between the individual school and the LA.
3. It could convert to a maintained school. At present, the only way an academy can become a maintained school again is for it to close and then for the local authority to open a new maintained school. Wolfe has proposed that returning academies could use the voluntary-aided school legal model (which, though often associated with faith schools, need not be).²⁴ Voluntary-aided schools, like academies, own or lease their own premises, so any conversion would not be associated with potentially expensive property transfer.

Provision would be made for schools to be able to switch from one superordinate body, subject to constraints to ensure short-term stability.

In conclusion, these proposals provide different approaches to pursuing the goal of a more coherent school-based education system. Each has particular merits, but in each case there would be more autonomy – if not control – at school level.

Notes

1. Department for Education, *Schools, pupils and their characteristics: England 2022/23*, DfE, 2023: <https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>
2. Anne West and Elizabeth Bailey, ‘The development of the academies programme: “privatising” school-based education in England 1986-2013’, *British Journal of Educational Studies*, 61(2), pp137-159, 2013: doi.org/10.1080/00071005.2013.789480; see also: Anne West, David Wolfe and Basma Yaghi, ‘Governance of academies in England: The return of “command and control”?’’, *British Journal of Educational Studies*, pp1-24, 2023: <https://www.tandfonline.com/doi/full/10.1080/00071005.2023.2258191>
3. Taylor Report, *A new partnership for our schools*, London, Her Majesty’s Stationery Office, 1977, p23.
4. Michael Connolly, Catherine Farrell and Christopher James, ‘An analysis of the stakeholder model of public boards and the case of school governing bodies in England and Wales’, *Educational Management Administration & Leadership*, 45(1), pp5-19, 2017: doi.org/10.1177/1741143215607879.
5. Anne West and David Wolfe, ‘Academies, autonomy, equality and democratic accountability: reforming the fragmented publicly funded school system in England’, *London Review of Education*, 17(1), pp70-86, 2019.
6. West *et al.*, 2023, *op. cit.*
7. Education and Skills Funding Agency, *Academy trust handbook*, London, ESFA, 2022.

8. Catherine Simon, Chris James and Alan Simon, 'The growth of multi-academy trusts in England: emergent structures and the sponsorship of underperforming schools', *Educational Management Administration & Leadership*, 49(1), pp112-127, 2021: doi.org/10.1177/1741143219893099.
9. West *et al.*, 2023, *op. cit.*
10. *Ibid.*
11. Rob Cirin, *Do academies make use of their autonomy?*, London, Department for Education, 2014; and Toby Greany and Rob Higham, *Hierarchy, markets and networks: analysing the 'self-improving school-led system' agenda in England and the implications for schools*, London, UCL Institute of Education Press, 2018.
12. West *et al.*, 2023, *op. cit.*
13. Rob Cirin, *Academy trust survey 2017*, London, Department for Education, 2017.
14. West *et al.*, 2023, *op. cit.*
15. See DfE, Regional Department for Education Directors, 2023: <https://www.gov.uk/government/organisations/regional-department-for-education-dfe-directors/about>
16. Greany and Higham, 2018, *op. cit.*
17. West and Wolfe, 2019, *op. cit.*
18. Anne West, David Wolfe and Basma Yaghi, 'Secondary schools (academies and maintained schools) in England: Issues of governance and autonomy', Clare Market Papers, 24, London, LSE, 2022: <http://eprints.lse.ac.uk/id/eprint/115362>
19. West and Wolfe, 2019, *op. cit.*, and Anne West and David Wolfe, 'Reforming the school-based education system in England: A common framework, rule book and a new structure for schools', *FORUM*, 63(1), pp20-28, 2021.
20. West *et al.*, 2023, *op. cit.*
21. West and Wolfe, 2019, *op. cit.* and West and Wolfe, 2021, *op. cit.*
22. West and Wolfe, 2021, *op. cit.*
23. See also Richard Hatcher, 'The realistic possibility of a Labour Government led by Jeremy Corbyn means we could get rid of academies for good', *FORUM*, 60(2), pp201-216, 2018.
24. David Wolfe, 'Schools: The legal structures, the accidents of history and the legacies of timing and circumstance', *Education Law Journal*, 14 (2), p100, 2013.