

TECHNICAL NOTES FOR DISCUSSION 16 FEBRUARY 2019

School Standards & Framework Act 1998

1. Maintained Schools
 - Community
 - Voluntary Aided/Voluntary Controlled
 - Foundation
 - Special
2. VA, VC & foundation all have external involvement, most particularly in appointments to the governing body, often from a religious body.
3. However, in all cases:
 - SofS has little direct control
 - LA “maintains” through a scheme of delegation
 - Each school is a legal entity – the GB is a “statutory corporation”
 - GB decides on ethos, budget, appointments, etc.
 - Governance etc. is regulated by statutory education law in relation to curriculum (NC), SEN, admissions, exclusions, STPC, etc.
 - Schools can enter into (and withdraw from) collaborations with other schools.

Academies & Free Schools from c2002

4. Contract (funding agreement/academy arrangements) with SofS who pays in exchange for provision of a school
5. By DfE convention the contract is with an ‘academy trust’ (legal entity) often with (in effect) self-appointed trustees
6. Sometimes the academy trust runs a single school (standalone academy).
7. Sometimes it runs multiple ‘schools’ (multi academy trust: MAT).
8. In either case, there can be a ‘sponsor’ (a person or body) behind the trust.
9. Academies are ‘independent schools’ in law and so subject to the “independent school standards” but not bound by the statutory provisions applicable to maintained schools.

10. How the school is to be run is essentially set out in the funding agreement.
11. Funding Agreements vary one to another (with a 'model' but only for new ones, which has varied over time). They generally include things like a contractual obligation to comply with the Admissions Code and the provisions on collective worship etc.
12. However, some aspects of those contracts have now been universally overwritten by statute, for example: SEN and exclusions now essentially the same (by statute) as for maintained schools.
13. LA has no direct role.
14. The contractual accountability to the SofS is now generally handled by the ESFA and RSCs – no local or democratic involvement.
15. Sometimes standalone academy trusts decide to collaborate with others. Can then un-decide.

HOW THEY CAME ABOUT

16. New Labour trophies (up to 2010)
17. Rewarded successes (from 2010)
18. Punished failures (schools eligible for intervention)(latterly)
19. Nearly boiled frogs – schools who convert for fear they are heading for a poor Ofsted (latterly)
20. Lemmings – schools who move to convert because others are (latterly)
21. Religiously overborne (CES/DBE tells them they must)(latterly)
22. Stand-alone academies joining MATs

MATS

23. The MAT is the only legal entity.
24. Each "school" is merely the site through which the MAT delivers education.
25. Any local GB (and there often need not be one at all) is merely a sub-committee of the MAT.
26. Any local GB has only the powers given to it by the MAT.

27. MAT 'schemes of delegation' almost invariably reserve to the MAT itself all the important decisions on ethos, budget, head appointments, admissions policies, etc.
28. In an extreme case that could mean that the individual sites are no longer schools: the MAT governance is so centralised that it has become a split site school. Cf Kent grammar schools; also examples of MATs treating schools as if one.
29. No obligation to publish school level information such as budgets or to provide details of how money is spent in the same way as maintained schools. Concerns about how money is used and related party transactions (with 'related' companies being able to make a profit)
30. Much of their operation is opaque and unaccountable (certainly no local democratic accountability).
31. Ironically, in terms of local control (including local democratic input) the governance for academies MATs takes us back to the position of school governing bodies in LEA schools before local management from 1988.

OTHER MAT ISSUES

32. Often widely dispersed – no local/geographical connection.
33. Schools No-One Wants (SNOWs) – brokering
34. MATs divesting themselves of schools (e.g. because of schools' results). Schools being removed because of financial irregularities
35. The myth of changing to another MAT – cf Aldi and Tesco
36. Free Schools.

CHURCH MATS

37. CES and CofE are instructing VC and VA schools to convert into academies in church MATs
38. With 250 sponsored and over 650 converter academies, the CofE is the biggest sponsor of academies in England.
39. Although they retain a local GB with a similar composition in the academies within their MATs, the real power is now with the MAT not with the local GB.

40. So that amounts to a huge (and apparently unnoticed) transfer of control to the churches. (United Learning CofE has already expanded markedly.)

LOCAL AUTHORITIES

41. Still maintain most primary and some secondary schools.
42. Still responsible for SEN including EHCPs etc.
43. Still responsible for issues like SEN (EHC plans etc.) for all children and YPs in their area; also for children out of school.
44. Frequent friction with academies/MATs over issues like admissions/SEN.
45. Also obliged to secure sufficient school places in the area but “free school presumption” in the EIA2006 gives them no ability to deliver.

POLICY HEADLINES

46. “end fragmentation”
47. “power back to communities”
48. “significant power back to local government”
49. “end free schools and academies programme”
50. “National Education Service”
51. “no new academies or free schools”
52. “authorise LAs to seek proposals” under s7 EIA2006
53. “new model of school improver – the Co-Operative Schools Trust”
54. “transfer responsibility back to schools”

BIG PICTURE QUESTIONS

55. Quick wins vs medium term changes vs entrenchment?
56. Level of ambition/disruption? (at a time when many have had enough disruption)
57. Is this about symbolic change or substance? What really matters? What are the real issues to be addressed? How much or little needs to be changed to deliver that?
58. Delivery vehicles: contractual (agreement) or statute?
59. Legal impediments? Property rights? Financial irregularities? Admissions?
60. Legislation? Statutory instruments?

STRUCTURE OVERALL

61. Schools?
62. Middle tier?
63. What role for Las?
64. What role for SofS?
65. What role, if any, for residual MATs?
66. What kind of bodies should schools be (given where we are now)? (do they have to return to being statutory corporations or can what you want be achieved without that much change?)
67. Relationships between schools and middle tier/SofS? Contractual? Statutory? (options include (1) trusts operating under contract, (2) statutory bodies operating under contract (cf NHS), (3) statutory bodies operating under statutory duties (cf maintained schools).

ESSENTIALS?

68. Restoring schools as legal entities with local decision-making GBs (would require primary legislation); but what kind of entities? (least disruptive – at a time when many are concerned about yet more upheaval - would be to retain as trust based rather than recreating statutory corporations)
69. No new academies (SofS could just decide not to enter into a new FAs)
70. Same legal framework for all publicly-funded schools, but on what matters (everything?). (would require at least some primary legislation)

NEXT STEPS/OPTIONS?

71. Wholesale restoration of all schools to being maintained (or similar) schools: could bring cleanest outcome but would be perceived as maximum disruption at a time when many don't want more
72. Or maintain relationships as contracts? Perceived as relatively less disruption but could – in substance – achieve the desired practical outcomes (what are the essentials?)
73. If the latter, then novate the contracts so that they are with LAs not SofS?
74. Statutory override to ensure common provisions in all those contracts (if that is still the legal framework) for all aspects of governance (akin to imposing an improved version of the latest model FA on all)?

75. If leaving in place trust-based entities as first step could nonetheless include a legal mechanism to allow for conversion back to statutory corporation (maintained school type structure) which could allow schools to opt to return in the first instance but which could later be used to compel as the situation developed.
76. Introduce values/principles for all providers?
77. Initial steps which could be taken without legislation, leading then to (major) legislative reform?

“NATIONAL EDUCATION SERVICE”

78. What does it mean?
79. Is it like the NHS?

OTHER ISSUES

80. Grammar Schools
81. Churches

David Wolfe & Anne West

February 2019