

Academies information sharing

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How did we get here (and what happens next) ?

- current policy position and its evolution over time
- how to consider the strategic future options for your school including due diligence
- the support that KCC can offer both prior and after any strategic decision.

What is an academy?

- Academies and free schools are state-funded, non-fee-paying schools in England, and independent of local authorities. They operate in accordance with their funding agreements with the Secretary of State
- Free schools, University Technical Colleges and studio schools also operate as academies in law

What is a Free School and why does it matter ?

- Local Authorities used to be responsible for opening all new (community maintained) schools – **where** and **when** they were needed
- Now all new schools have to be academies, operated and managed by a charitable trust
- DfE preference is for FS academies to belong to a Multi-academy trust (with a ‘track record’)
- Free School policy drivers have changed over time - ‘choice and diversity’ versus ‘demand’
- RSC approves or rejects FS bids after an ESFA led assessment process
- ESFA struggling to deliver projects generally and in the required timescales
- Impact on the school landscape – how does this affect your school ?
- Under and over provision – too few places means schools having to admit over PAN and too many jeopardises viability

Academisation – why ?

- School improvement policy
- Structural solution
- Arguments put forward include;
 - Increased autonomy
 - Economies of scale
 - Improved CPD opportunities
 - The option to sponsor another school
 - The option to open a new academy Free School

Policy evolution

- Prior to the 2010 General Election there were 203 academies in England
- Academies Act came into force in July 2010 and the first conversions took place on 1st September that year
- Criteria for conversion initially set at 'outstanding' but quickly broadened to allow 'good' and some 'RI' schools to convert on their own as 'stand alone' converters
- Policy focus then switched to tackling underperformance with the introduction of 'sponsored conversion' and a strong '**expectation**' that all schools in Special Measures would become academies

Regional Schools Commissioners

- In September 2014, eight Regional Schools Commissioners (RSCs) were appointed as civil servants in the Department for Education (DfE) with responsibility for approving new academies and intervening in underperforming academies in their area
- Their role was expanded from 1 July 2015 to additionally include responsibility for approving the conversion of underperforming maintained schools into academies and making the decision on sponsors
- RSCs take decisions on behalf of the Secretary of State and are supported in their work by a Headteacher Board comprising six to eight members
- They report through the National Schools Commissioner to Lord Nash, the Parliamentary Under-Secretary of State for Schools
- Kent comes under the South East and South London Region (SESL) and our RSC is Dominic Herrington

Education and Adoption Act 2016

Introduced to the House of Commons on 3rd June 2015, received Royal Assent on 16th March 2016

The Act's education provisions included:

- Require every school judged 'inadequate' by Ofsted to be turned into a sponsored academy
- Remove the requirements for a general consultation to be held where a school 'eligible for intervention' is being converted to a sponsored academy
- Academies subject to the same closing definition as maintained schools, and could be transferred to a new sponsor if considered to be similarly underperforming
- Give new powers to the Secretary of State for Education to intervene in maintained schools considered to be underperforming
- Place a new duty on schools and local authorities in specified cases to take all reasonable steps to progress the conversion
- Require schools and local authorities in specified cases to work with an identified sponsor toward the 'making of academy arrangements' with that sponsor

Education and Adoption Act 2016 and beyond

- Strengthened powers of intervention for the SoS as delegated to Regional Schools Commissioners
- A duty for the SoS to issue a directive academy order to schools in category, without GB involvement and removing the need for consultation
- Promulgation of a MAT led delivery system
- Best leaders extend their influence
- Rebrokerage of underperforming academies between MATs

Educational Excellence Everywhere

- The Educational Excellence Everywhere White Paper was published on **17th March 2016**
- The paper set out the Government's proposals to convert all state-funded schools in England to academy status by 2022
- The White Paper proposed that local authorities would no longer maintain schools, and an all academy system would be created

The proposed system would include:

- Most schools becoming part of multi-academy trusts (MATs);
- A reformed role for local authorities, focusing on duties such as ensuring sufficiency of school places, supporting vulnerable pupils, and acting as a champion for parents;
- A new legal framework for an all academy system
- Significant reforms to school improvement and accountability

Changes made on 6th May 2016

Seven weeks later the proposed forced academisation of all schools is withdrawn and instead legislation **may** be introduced to trigger the conversion of all schools within a Local Authority area in the following circumstances:

- Where it is clear that the Local Authority can no longer viably support its remaining schools because a critical mass of schools in that area has converted;
- and where the Local Authority requests the DfE to convert all of its remaining schools;
- Or where the Local Authority consistently fails to meet a minimum performance threshold across its schools, demonstrating an inability to bring about meaningful school improvement.

None of these conditions exists in Kent then or now

EEE bill withdrawn

- **The government drops the education bill**
- Presses ahead with plans for more grammar schools

“We have rightly reflected on our strategic priorities. My department has renewed its focus on ensuring everything we do drives towards improving social mobility.

Our ambition remains that all schools should benefit from the freedom and autonomy that academy status brings. Our focus, however, is on building capacity in the system and encouraging schools to convert voluntarily.”

Justine Greening, SoS for Education
27th October 2016

Current position

- **Good and outstanding schools can choose whether or not to become an academy**
- Memorandum of Understanding (MoU) between the Church of England, Catholic Education Service and the DfE provides far reaching protection for dioceses when church schools become academies

Schools that Work for Everyone

- Published 12th September 2016 (Consultation ended on 12th December 2016)
- DfE is currently “**analysing feedback**”
- **Next steps – date unknown, direction unknown**

Stated purpose

the consultation set out the Government’s ambition to create an education system that extends opportunity to everyone, not just the privileged few by creating ‘more good school places’

Proposals (pre-election) include:

- expecting independent schools to support existing state schools, open new state schools or offer funded places to children whose families can’t afford to pay fees
- asking universities to commit to sponsoring or setting up new schools in exchange for the ability to charge higher fees
- allowing existing selective schools to expand and new selective schools to open, while making sure they support non-selective schools
- allowing new faith free schools to select up to 100% of pupils based on their faith, while making sure they include pupils from different backgrounds

What comes next ?

- Currently in Purdah
- Manifestos ?
- New SoS ?
- New priorities ?
- Creating places
- Raising standards
- Consolidation
- Wave 13 ?

Due Diligence

What is due diligence ?

- Process of gathering information about each other

Why

- to identify risks, liabilities, cultural differences and practical issues that may cause difficulties later.
- Inform negotiations
- Explore culture, systems and processes, management structures, future opportunities and business plans.

What

- Test the strategic rationale
 - How will it benefit pupils ?
 - How appealing is it for different parties ?
 - How well will this work in the future ?
 - Does everyone have what it takes to make this work ?

Due Diligence

Joining a Multi Academy Trust

The headteacher and governors will need to be satisfied that;

- the match is a good one
- the cultures are aligned
- operating at scale will bring the expected benefits for pupils.

The MAT board will need to be satisfied that;

- the school they are 'acquiring' or partnering with will fit well with the aims and ethos of the group
- will not create unmanageable risks or liabilities for the future
- de-stabilise the group as a whole

Due diligence is very important - give it the time and resource it deserves

Due Diligence

- Look at a range of factors to form a complete picture
- More than just looking at the accounts , reading the last OFSTED report and reviewing the staff list
- Look beyond the headline data – what are outcome like for discrete groups of pupils including vulnerable groups
- Requires a range of people with different skills and perspectives
- Think about hard and soft information
- Start with ‘Why?’ - can you clearly articulate the benefits to stakeholders ?
- Will you be able to monitor progress and hold people to account ?
- What is the growth strategy ?
- Do you genuinely have the capacity, resources and support systems to absorb and nurture the staff team, pupils, buildings, contracts and liabilities you will be taking on ?
- Which schools should you work with ? Why ?
- Have you clearly communicated or had communicated to you the ethos, culture and behaviours expected of those joining the MAT?

Due Diligence

- Quality and effectiveness of the MAT Leadership and governance is critical to future success
- Is it clear who is responsible for what?
- How will governance be organised after the transfer?
- Will current governors have any future role ? What authority will they hold ?
- Scheme of Delegation – what functions will be devolved to any local governing body ?
- How and when would delegation be suspended ?
- Does the MAT have a full suite of up to date policies and procedures in place and how do they work in practice?
- Have you looked at the register of interests for members and trustees ?
- Are conflicts of interest managed well ?
- Are you confident that there are good internal controls and high levels of transparency ?
- Can you be confident that you won't suffer any reputational damage ?

The characteristics of high-performing multi-academy trusts

- **Recognition of the crucial role played by teaching staff** – enhanced opportunities for professional and career development should be available at trust level and pipelines to leadership established;
- **Regional structures which allow schools to share expertise and resources** – the most successful trusts are those which pursue cautious expansion in a relatively limited geographical area;
- **Mechanisms for tangible accountability at all levels** – trusts should focus on both upward accountability and local engagement and publish clear schemes of delegation;

The characteristics of high-performing multi-academy trusts

- **Robust financial controls**—trusts should foster cultures and systems which promote effective use of public money in the delivery of education;
- **A shared vision for school improvement across all schools within the trust**—strong leadership at both school and trust level with expertise and resources shared across the MAT;
- **A commitment to improving performance and attainment**—the best trusts make performance across all student groups a priority, and are therefore succeeding in raising attainment and progress for pupils from disadvantaged backgrounds, as well as for other pupil groups.

No way back

“Becoming part of an MAT is like marriage without the possibility of divorce – and let’s face it, most of us would think very carefully if there was no divorce. Talk to as many people who have gone through it as you can. You really need to know and understand the process, and if you don’t yet, find a way to make damn well sure that you do.”

School Landscape

Maintained			Academies		
School Type	Total Schools	Total Percentage	School Type	Total Schools	Total Percentage
Maintained Nurseries	1	100%	Maintained Nurseries	0	0%
Pupil Referral Units	7	100%	Pupil Referral Units	0	0%
Primary Schools	312	69%	Primary Schools	140	31%
Secondary Schools	25	25%	Secondary Schools	74	75%
Special Schools	21	95%	Special Academies	1	5%
Total Non Academy Schools	366	63%	Total Academy Schools	215	37%

Academy landscape in Kent

Multi Academy Trusts						
				MATs	Schools	
National/Regional MATs with 1 Academy in Kent					8	8
MATs with 2 Academies in Kent				15	30	
MATs with 3 Academies in Kent				4	12	
MATs with 4 Academies in Kent				4	16	
MATs with 5 to 9 Academies in Kent				6	43	
MATs with 10+ Academies in Kent				3	45	
Total MATs				39	151	

Trust Overview	
Singles	28.4%
Small MATs	28.6%
MATs 5 to 9	20.9%
Mats 10+	22.3%

Single Trusts
61 single trust schools

Education Select Committee

Multi-Academy Trusts

The Education Select Committee published a report in February 2017 on the performance of MATs and the future direction of travel following an inquiry.

Key findings and recommendations include:

- There is a **gap** in assessing MATs which neither Ofsted nor RSCs presently fulfil, this must be addressed via the development of a new inspection framework
- **MATs are not sufficiently accountable** to local communities, there is too much emphasis on 'upward' accountability. In the future MATs should demonstrate a sincere commitment to community engagement
- **Uncertainty around the effectiveness of MATs** remains and there is not yet the evidence to prove that expansion would lead to significant improvements
- Clearly defining the future role of local authorities in the education system should be a priority for the Secretary of State
- If the Government is to pursue the goal of further academisation, it will need to partner with, and use the expertise of, local authorities
- The expansion of MATs will place further pressures on the financial oversight capabilities of the **DfE and EFA, their ability to cope is far from clear**

One-off Funding

Conversion Support Grant

The grant will be paid into your new academy or academy trust bank account when the Secretary of State has made an academy order agreeing to the conversion and the school or trust has completed the grant form.

DfE £25k grant to cover:

- Obtaining legal advice in respect of the conversion process
- HR and TUPE advice
- Actuarial assessment
- The costs of software licence transfers
- Rebranding costs
- Expenses incurred in the setting up of the academy trust

Academy Conversion Contribution Charge

- KCC has not previously required schools converting to become an academy to meet any of the costs in undertaking the work to change status
- At County Council on 9 February 2017 KCC Members approved the budget for the new financial year and decided to introduce a charge for converting schools as a contribution towards the costs

Academy Conversion Contribution Charge

- The contribution will apply to all schools in receipt of an academy order issued after 1 April 2017 and will be set at a standard rate of £7k irrespective of phase, designation, or conversion route
- The LA will continue to offer the same comprehensive level of advice and support to converting schools and acquiring trusts throughout the conversion process

KCC Support

- Designated lead officer charged with ensuring a smooth transition whilst protecting the interests of the LA and therefore all maintained schools
- Tailored advice and guidance to governing bodies to support informed decision making
- Ongoing source of support throughout the process
- Liaison across all KCC services
- Negotiation of legal agreements

Recurring Funding

Formula budget remains the same whether you are maintained or an academy and the new National Funding Formula will apply universally as currently proposed

- Additional Education services grant funding (which is currently held by the LA)
- **Currently** funded at a rate of £77 per pupil to cover:
 - Redundancy/early retirement funding
 - Maternity cover funding (additional costs)
 - School improvement
 - Statutory and regulatory returns
 - Pupil support
 - Education welfare service
 - Asset management education
 - Music services
 - Monitoring national curriculum assessment
- **BUT** From September 2017 the **ESG general funding rate will be removed**
- Schools which convert to academy status from September 2017 onwards will not be eligible for ESG funding or ESG funding protection

Financial considerations

Loans

- Existing KCC loans to maintained schools can transfer to the academy trust but KCC cannot lend to academies
- Academies can 'borrow' from the EFA against future revenue income

Deficits

- Maintained schools can run in-year and managed year end deficits with support for managing deficit budgets with facility for a three year plan to return to surplus
- Academies must end the financial year in surplus
- Academies are not allowed to run a deficit without remedial action and will be required to agree a restructuring plan with the EFA and be in surplus at the end of each financial year

Other

- Academy financial year runs September to August
- Accounting Officer (Head Teacher in single trusts, Principal/Chief Executive in multi academy trusts) is responsible to the Accounting Officer of the EFA

LA Strategic Coordination

Services that the Local Authority is required to provide by statute to all schools and academies:

- Admissions, Transport, Elective Home Education, Children Missing Education, Attendance and Inclusion
- Education psychology, Education Health and Care Plan
- Monitoring of SEN provision, parent partnerships, etc
- Individually assigned SEN resources for pupils needing tailored provision (high needs funding over a threshold of £6k)

Schools also rely on the LA for:

- Place planning and commissioning of provision
- Provision for vulnerable pupils
- Alignment with all of Children's Services
- Commissioned and traded services
- A school improvement offer, CPD, brokerage and performance monitoring, data and analysis

Passing a resolution

- Governing Bodies need to assess the advantages and disadvantages of Academy status as they perceive them for their school
- If the GB decides to or is compelled to apply to convert then a clear resolution will need to be voted on at a full governing body meeting
- The DfE will require evidence of this from the meeting minutes
- Section 7 of the Education and Adoption Act 2016 amends section 4 of the Academies Act 2010 such that the SOS is now under a duty to issue an academy order for all schools that are eligible for intervention (in an Ofsted category 4)
- These new directive orders are issued without any reference to the governing body or the Local Authority

Legal Agreements

Key conversion documents:

- **Commercial Transfer Agreement (CTA)**

Signed by:

- 1) KCC
- 2) GB
- 3) Trust (sponsor)

- **125 year lease**

Signed by:

- 1) KCC
- 2) GB
- 3) Trust (sponsor)

- **Funding Agreement**

Signed by:

- 1) SoS
- 2) Trust (sponsor)

Funding Agreement

Purpose

- A contract between the Academy Trust and the Secretary of State
- Trusts must comply with the terms of their funding agreement in return for their formula revenue budget
- The SoS (RSC) can terminate a funding agreement and assign the academy to a new trust if the Academy Trust breaches the funding agreement requirements and there is evidence of mismanagement or underperformance
- It is a rolling agreement subject to a 7 year notice period (from 31st August of any year) for academy trusts
- The SoS (RSC) can terminate the FA with immediate effect subject to invoking financial or standards criteria

Other processes involved

- Arrange for staff to be informed and consulted on their transfer under TUPE legislation
- Consult relevant stakeholders, e.g. parents, local schools, local community
- Organise additional administrative capacity to allow for increased responsibilities e.g. staff pensions remittance, financial returns
- Establish the trust as a company by registering with Companies House
- Establish a new bank account for the trust to ensure that the Academy will be able to receive funding
- Transfer, renew or procure new contracts, service level agreements and licences
- Arrange insurance either through a private provider or the DfE RPA (risk protection arrangement) scheme

School governors vs academy trustees: what's the difference?

- They have a different job title
- Academy trustees are both company directors and charity trustees
- They have more specific financial responsibilities
- They are not accountable to the local authority
- They have different liabilities

Trust Governance

When a school becomes an academy it must obtain charitable status by setting up an academy trust.

This trust is a charitable company limited by guarantee, and has at least **two tiers** of governance:

- **The members**, who operate at a strategic level with ultimate control over the direction of the academy trust. They are the shareholders
- **The trustees**, who are the directors and have responsibility for the day-to-day management and operation of the academy trust

The Trust and Governors

- **Academy Trust** – a body whose **members** are responsible for the land and assets of an Academy and are directly accountable to the Secretary of State under the funding agreement. They are responsible for appointing the Directors/Trustees
 - Under the Articles of Association, the Trust is required to provide indemnity insurance to cover the liability of its directors/trustees/governors (provided they have acted in good faith)
 - Liabilities to external parties would be those of the Trust and not the directors/trustees/governors
 - The members will be liable to contribute up to £10 if the Trust is wound up
- The **Directors/Trustees** can choose to delegate some of their decision making authority to a **Local Governing Committee** under the scheme of delegation
- **Governors** – the Local Governing Committee can make decisions within their delegated powers or make recommendations to the Directors/Trustees
- The day to day running of the Academy is the responsibility of the **Headteacher/Principal**

Multi-Academy Trusts (MATs)

- In Multi-Academy Trusts, all academies in the MAT are governed by one trust and a single board of directors/trustees
- The board of directors/trustees is responsible for decisions relating to how each academy is run, from the curriculum to staffing
- The MAT can establish a local governing board for each of its academies, to which the directors/trustees can delegate some of their functions. The MAT remains accountable for these functions
- There is nothing in current legislation that prescribes how MATs must be composed

Federation

The government promotes multi academy trusts (MATs) as the best way for schools to work together, but it isn't the only way to benefit from being part of a group of schools

What is a federation?

- A number of maintained schools come together under one governing body.
- The schools' individual governing bodies are disbanded and a new single over-arching governing body is formed.
- The accountable body for all the schools and sets the strategic direction for the group.
- Federation is not to be confused with collaboration, which is a less formal arrangement in which the governing bodies remain separate but establish a joint committee(s) for a specific purpose.
- Over 1000 schools are part of a federation in England.

Why federate?

- Effective group structure for maintained schools to improve the education of pupils.
- Low legal costs
- This enables governors and school leaders to focus on forming relationships between schools first, and then joint leadership, governance and business management.
- Remain a maintained school, so the process is much more focused on relationship building and producing tangible outcomes for pupils, instead of being dominated by legal changes in charity/company status and land ownership.

Federation

Federations have the following advantages:

- Better, broader offer for pupils – both curricular & extra-curricular
- More opportunity to employ specialist staff
- More CPD for staff
- Better recruitment, succession planning & retention of staff
- Moderating and benchmarking: same systems of assessment, data and finances
- Learning from each other
- More capacity for innovation
- Efficiencies – joint services
- Stronger governance (especially with well federated structures)
- These benefits result in improved outcomes for pupils.

Federation to MAT ?

Federation also places schools in a much stronger position to subsequently convert to become a successful MAT.

MATs and federations are not competing models; a federation can be a useful “stepping stone” to a MAT because:

- Gives smaller schools with limited resources the opportunity to form a MAT in stages by first forming a federation and then creating the capacity (e.g. in financial management) to become a MAT.
- Gives schools which are anxious about formal collaboration the chance to experience the benefits and develop confidence, whilst operating within familiar structures and the continued support of the local authority.
- There is only one governing body (that of the federation) which has to make the decision to academies, as opposed to having to convince half a dozen governing bodies.
- It is a simpler process to form a federation first than attempt a MAT in one fell swoop.

Education Committee report findings

In its report on Academies and Free Schools, published in January 2015, the Commons Education Committee stated that there was not currently sufficient evidence for or against academies as in themselves a driver of stronger standards:

- There is a complex relationship between attainment, autonomy, collaboration and accountability. Current evidence does not allow us to draw conclusions on whether academies in themselves are a positive force for change
- There is at present no convincing evidence of the impact of academy status on attainment in primary schools
- We agree with Ofsted that it is too early to draw conclusions on the quality of education provided by free schools or their broader system impact
- Academisation is not always successful nor is it the only proven alternative for a struggling school

The report did, however, highlight the particular benefits to primary schools of collaborative structures:

- **The primary sector benefits most from collaborative structures, whether these are facilitated by academy status or otherwise**

Questions ?

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