

Report author: Ed Hammond, (020) 7187 7369,  
[ed.hammond@cfps.org.uk](mailto:ed.hammond@cfps.org.uk)  
(background research by Verity Clarke)

This briefing, the thirteenth in the Policy Briefing series, explores coming developments in education – in particular, free schools – and the way in which education governance is changing as a result of new Government policies. It also explores the part that local government scrutiny can play in holding education services delivered in local areas to account.

The briefing finishes by posing some critical questions – developed by scrutiny practitioners in the West Midlands – which can help to develop a baseline level of knowledge within scrutiny to allow O&S to further analyse, and make constructive recommendations on, this fast-changing area of public policy.

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## 1. Introduction and background

- 1.1 Following the 2010 General Election, the Government made the decision to significantly expand the pre-2010 academies scheme, and to allow local people to set up “free schools”, entirely responsible for their own governance and with significant freedoms over curriculum and other aspects of teaching.
- 1.2 The Government has also proposed changes to other aspects of the education landscape – further education and higher education in particular, which have both been the subject of recent consultations<sup>1</sup>.

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<sup>1</sup> “A new fit-for-purpose regulatory framework for the higher education sector” (<http://discuss.bis.gov.uk/hereform/technical-consultation/>) and “New challenges, new chances: next steps in implementing the further education reform programme” (<http://www.bis.gov.uk/Consultations/fe-and-skills-new-challenges-new-chances?cat=closedawaitingresponse>), both 2011.

1.3 These changes will mean shifts in the focus and nature of accountability in the education sector – they also present opportunities and challenges to scrutiny practitioners. In a landscape where provision is increasingly being defined by the market, and traditional means of accountability (such as through central regulation and inspection) are being dismantled, holding public sector partners to account on issues which touch on education (for example, skills, economic development, health, community safety, social care and so on) may become more challenging.

## 2. Free schools, academies and secondary education

### The original Academies scheme

2.1 The Labour Government announced the “academies” programme in 2000. Superficially, academies are similar to the “grant maintained” schools established by the previous Conservative government between 1988 and 1997. The intention of both schemes was to offer increased freedom to certain specific schools, although the new “free schools” initiative has been described as owing more to the legacy of GM schools than to Labour’s academies programme<sup>2</sup>.

2.2 The first academies opened in 2002, with the aim of opening 200 by 2010 (this figure was later increased to 400). The policy objectives of the programme were to:

- to drive up standards by raising achievement across the local area;
- to increase choice and diversity by creating a new type of local school that provides a good standard of education<sup>3</sup>.

2.3 Academy schools were to be publicly funded, but independent from local authority control. Concern was expressed at the time that this would limit the ability of local authorities to strategically direct policy relating to young people, but the changes to legislation around children’s services in 2005, in the wake of the Victoria Climbié scandal and further to the Children Act 2004, compelled local authorities to focus on education as only one element of the provision of services to young people. This more holistic approach to children’s services led to the development of the “extended schools” model<sup>4</sup>, and a local schooling landscape in which local authorities still, for the most part, can exert significant influence over young people’s lives (even if the

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<sup>2</sup> “Gove’s academies: 1980s ideas rebranded?” (Mike Baker, BBC News, 1 August 2010) at <http://www.bbc.co.uk/news/education-10824069>

<sup>3</sup> An evaluation of the first few years of the programme against these objectives can be found in “The Academies Programme” (NAO, 2007, HC 254) at [http://www.nao.org.uk/publications/0607/the\\_academies\\_programme.aspx](http://www.nao.org.uk/publications/0607/the_academies_programme.aspx)

<sup>4</sup> The notion that schools should be the base for a wider range of community, cultural and social activities than “just” education.

power to direct individual schools and head teachers has gradually fallen away).

### Governance of academies

- 2.4 Governance had the potential to raise particular issues for academy schools, especially those in the early cohort, although it is difficult to draw firm conclusions from the limited number of examples<sup>5</sup>. Disagreements between local authorities and new academies<sup>6</sup> reflected the significant cultural change for local authorities which had hitherto had substantial (although waning) control over individual schools in the area. Discussions over bids to run academies were often somewhat protracted (although this reflected the novelty of the scheme over its first couple of years) and, in a number of authorities, overview and scrutiny became involved in the process<sup>7</sup>. This experience might be seen as holding lessons for the first cohort of free schools.
- 2.5 Academy schools had to be supported by a sponsor, who provides either financial support, or business expertise, or both.. Prior to 2007, sponsors had almost complete control over the curriculum at their schools, but since then academies have had to offer at least a core curriculum in English, maths and sciences.
- 2.6 Post-2010 – the Academies Act  
The Coalition Government has taken a different approach to academies since taking office. While the Labour Government's approach was to encourage failing schools to convert to academy status – with a sponsor taking responsibility for driving up standards, using their experience – the current Government wants high performing schools to convert, using their knowledge and experience to work with maintained schools in the same area to enhance standards<sup>8</sup>.

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<sup>5</sup> While the National Audit Office had positive comments to make in 2007, a review by the Public Accounts Committee in 2011 raised some concerns (<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpubacc/552/55206.htm>) A review carried out by the DCSF Select Committee in 2009 explores school governance in more general terms, making comments about governing bodies which could have application to academies ("School Accountability", Children, Schools and Families Select Committee, 2009), <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmchilsch/88/88i.pdf>

<sup>6</sup> Instances of protracted negotiations between LAs and prospective (and new) academies led the Government to lay in Parliament regulations, pursuant to the Academies Act 2010, to deal with disagreements.

<sup>7</sup> For example, strategically, in the case of Sandwell (2005), [http://www.sandwell.gov.uk/downloads/file/421/sandwell\\_academy\\_schools\\_review](http://www.sandwell.gov.uk/downloads/file/421/sandwell_academy_schools_review), or in relation to specific proposals, in the case of Westminster (2007) [http://transact.westminster.gov.uk/newcsu/Policy\\_and\\_Scrutiny\\_Committees/Archived\\_Scrutiny\\_Committees/Children\\_and\\_Young\\_People\\_PandS/2007/17%20September%202007/Item\\_3-Minutes200607.doc](http://transact.westminster.gov.uk/newcsu/Policy_and_Scrutiny_Committees/Archived_Scrutiny_Committees/Children_and_Young_People_PandS/2007/17%20September%202007/Item_3-Minutes200607.doc). Ipswich Council is planning work in 2011/12 to look at the success of Academies.

<sup>8</sup> Set out on the DfE website at <http://www.education.gov.uk/schools/leadership/typesofschools/academies/academiesfaq/a0066018/conversion-process>

- 2.7 This has involved a change to governance arrangements, moving away from the concept of sponsorship and towards one based on academies being run by charitable trusts, which more closely reflects the Government's vision for free schools and ensures that the policy direction for both academies and free schools can be merged together. We discuss the governance arrangements of academy trusts in the section below on free schools (as the governance arrangements for both types of school are essentially identical).

### Free schools – their development and their objectives

- 2.8 The Government has based their approach to “free schools” on models adopted in Sweden and the USA. As noted above, the ethos of free schools also owes something to the previous, independent grant maintained schools established during the 1990s, but abolished in 1998.
- 2.9 Drawing comparisons from international examples is difficult, however – particularly in terms of attainment. Work carried out by a researcher at the Institute for Education demonstrated that the impact, measured by exam scores, of free schools in Sweden was minimal, and short-lived<sup>9</sup>. Similarly, the US experience with “charter schools” is neither universally positive, nor negative, with the only large-scale study carried out to compare charter schools with publicly funded schools<sup>10</sup> indicating that charter schools perform no better or worse, on balance, than their counterparts. The difficult question of comparison between similar schools, and factoring in levels of improvement in the same school (including taking into account the types of areas where charter schools are likely to open, for example), makes analysis difficult.
- 2.10 The Department for Education has set out some objectives for free schools which, do, however, draw on lessons from international experience, as well as from the academies programme, which is continuing in parallel to the free schools programme. These objectives are about enhancing accountability, making education more cost-effective and meeting local demand for different types of provision.
- 2.11 How free schools compare to others – in terms of governance and operation, free schools are almost identical to academies – the only difference is that all free schools are new bodies established by local people, whereas many academies are existing schools that have undergone a conversion in status. While this may seem to be an academic distinction, it may well affect the culture and ethos of a given school. In fact, because of a recognition of the importance of developing an effective culture and ethos to support learning, in some

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<sup>9</sup> Allen, R: ““Replicating Swedish “free school” reforms in England”, *Research in Public Policy*, Issue 10 (University of Bristol, July 2010), full text at <http://www.bristol.ac.uk/cmipo/publications/allen10.pdf>

<sup>10</sup> “Multiple Choice: Charter School Performance in 16 States”, CREDO, Stanford University 2009

instances the closure of an existing school has been followed by a “gap” before the opening of a new academy on the same site., Organisations who previously sponsored academies are marketing their services to parents’ groups to support the free school application process. In some instances such bodies are actively leading the setup of such schools<sup>11</sup>.

- 2.12 The development and promotion of “free schools” as a model is all about differentiating their culture from the culture of existing maintained schools. Led by inspirational local people – who do not necessarily have a background in education – the Government considers that trustees of free schools will have the dynamism and creativity – and the autonomy – to do things which would not be possible in a maintained school.
- 2.13 The flipside to this approach lies in increased risk, both of declining standards and of service failure. The Ofsted-led inspection regime, which remains in place for free schools and academies (see section below on “Central inspection and support”) will help to identify any problems. While failure in existing academies has been passed off as symptomatic of the challenge of running services in difficult areas<sup>12</sup>, schools converting to new academies will be of a good standard already, and free schools will presumably be expected to build up a successful cultural ethos from the ground up. This is an issue to which we will return in section 5.
- 2.14 The New Schools Network<sup>13</sup> have carried out some research on the distinctions between different schools currently operating in England<sup>14</sup>. Broadly speaking, the distinction between maintained and non-maintained schools is not as stark as has been suggested by some<sup>15</sup> – particularly bearing in mind the significant freedoms given to maintained schools over the last few years<sup>16</sup>.

### Governance in free schools

- 2.15 Governance for free schools is meant to be “light touch”. Deliberately, such schools are not accountable to organisations like local councils, as they derive their funding directly from the Department for Education, and work to a “funding agreement”<sup>17</sup> with central Government. The governance focus is meant to be on parents<sup>18</sup>. Free schools are all

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<sup>11</sup> For example, E-ACT, <http://www.e-act.org.uk/free-schools>

<sup>12</sup> See <http://www.tes.co.uk/article.aspx?storycode=6043677>

<sup>13</sup> INSERT REF

<sup>14</sup> “Comparison of different school types” New Schools Network, April 2011, <http://newschoolsnetwork.org/sites/default/files/files/pdf/Differences%20across%20school%20types.pdf>

<sup>15</sup> INSERT REF

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charitable trusts and, as noted above, for practical purposes their broad governance arrangements are identical to academies.

- 2.16 The curriculum - Schools must offer a broad and balanced curriculum<sup>19</sup> but beyond the requirement to cover core subjects, are not required to keep to the National Curriculum. As such, different free schools have opted, like academies, to specialise in particular subjects (for example, science and technology) or to adopt an approach which strays significantly from the National Curriculum (for example, the requirement of the West London Free School that every pupil studies Latin up to age 14).
- 2.17 Central inspection and support – free schools are (like academies) still subject to inspections by Ofsted<sup>20</sup>. Inspections will reflect closely the framework for maintained schools, except the curriculum requirements are relaxed. It is not clear whether inspections are used in the funding agreement as an assurance of continued good performance, or what the result should be if a free school receives an “inadequate” score. As noted at the end of this section, the Government has reserved powers in the Academies Act to intervene in the case of failure, but the precise circumstances in which this will occur are unclear. It should be noted, in this context, that the inspection regime for all schools (including maintained schools) is being significantly streamlined, arguably placing more responsibility on the shoulders of governing bodies to assure consistently high standards (a point which we cover below).
- 2.18 More proactive national support is being provided through the New Schools Network, as well as by the Department for Education. This reflects the position in the USA, where state-based support agencies exist to provide assistance in the establishment and running of charter schools. The New Schools Network has been tasked with assisting those groups wishing to set up new schools to meet the criteria set by Government to enter into funding agreements, as well as providing ongoing support to free schools themselves.
- 2.19 Specific governance issues - The Government has published model Articles of Association for free schools<sup>21</sup> (which are the same as those that would apply to academies).
- Each Academy will be governed by an academy trust (which is constituted as a company and a charity, required to comply with company and charity law);

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<sup>19</sup> A requirement in section 78 of the Education Act 2002. There is no detailed definition but some guidance has been provided – for example, in relation to primary education, in the “Excellence and enjoyment: a strategy for primary schools” (DFES, 2003) at

<http://www.nsead.org/primary/national/excellence.aspx>

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<http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/freeschoolsfaqs/a0075641/free-schools-faqs-accountability>

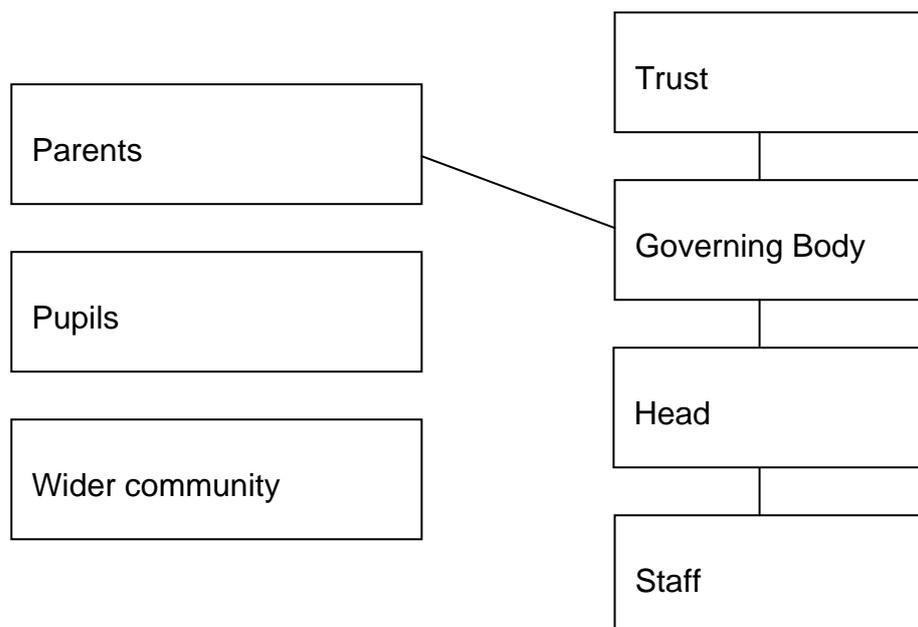
<sup>21</sup> INSERT REF

- The Academy trust will be owned by its members;
- Although there is no limit, the academy trust must comprise at least three people - one person appointed by the secretary of state (should he choose to appoint), the Chair of the governing body and any additional members appointed by the governors, if unanimously agreed by the members of the trust;
- Membership of the governing body should include at least one parent governor and the principal (ex-officio governor). Then, schools (including free schools) are free to choose whether to have, for example, a local authority governor, staff governor, or co-opted governor;
- The governors may appoint academy employees but they may not exceed more than a third of the total number of governors;
- Individuals can be both members and governors.

2.20 Responsibilities of the governing body include:

1. Ensure the quality of educational provision
2. Challenge and monitor the performance of the academy
3. Manage the academy trust's finances and property
4. Employing staff

2.21 The diagram below shows how limited the formal accountability and governance arrangements are at local level. – it will be important for individual schools to strengthen the links between all of these groups. This diagram does not include the Department for Education, which provides funding, and Ofsted, which performs inspection, both of which feed into various levels of the school's management hierarchy depending on the issue.



- 2.22 There is no obvious or automatic link here between the governing body (or other part of the school's internal governance systems) and the wider community. In the past this role was fulfilled by local authority governors who were supposed to represent the interests of the wider community, while parent and staff governors each provided their particular perspectives. This will be a challenge for free schools, whose success and responsiveness to local need will require a close connection to the wider community. While they may initially have strong connections through the parents who were motivated to set up the school, it has historically proved difficult to maintain involvement from parents as their children move on through the school system. Retention and refreshing of community links will be crucial.
- 2.23 The Local Government Association recently published a paper outlining school governance arrangements, which explores some of the issues in more detail<sup>22</sup>. Although the focus of the research was on maintained schools, the research reported the views of interviewees that the models of governance are less important than having the right people with the right skills<sup>23</sup>.
- 2.24 The research went on to look at the challenges that the education reforms would have for governance in schools<sup>24</sup>. Interestingly, there seemed to be some concern about the sustainability of high quality support services, currently bought in from local authorities by maintained schools, but in future possibly bought from a wider range of providers. There were also concerns about the fact that more autonomy would mean that governing bodies would need significantly to build their capacity.
- 2.25 Improvements for governing bodies suggested by the report seem to reflect remarkably closely the "capacity" needs often identified for councillors sitting on O&S committees<sup>25</sup>, suggesting that an approach is envisaged whereby governors will need to play a more independent, strategic, challenging role than they may have done previously. We explore the potential opportunities arising from this in the last section of this briefing.
- 2.26 While most operating free schools provide basic information on governors on their websites, it is difficult to find more detailed information on how governors (including parent governors) are selected, how decisions are made and how the governors are

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<sup>22</sup> "Governance models in schools" (LGA / NFER, 2011) at <http://www.lga.gov.uk/lga/aio/18154431>

<sup>23</sup> Ibid, particularly section 3

<sup>24</sup> Ibid, section 5

<sup>25</sup> See CfPS publications "2010 Annual Survey of Scrutiny in Local Government" (2011), "Global challenge, local solutions" (2009), "Policy Briefing 5: effective resourcing for scrutiny" (2010) all at [www.cfps.org.uk/publications](http://www.cfps.org.uk/publications)

monitoring the fulfilment of the funding agreement. Funding agreements between Government and free schools have not been published (although publication has been repeatedly promised<sup>26</sup>), and as free schools are technically exempt from the Freedom of Information Act, they are under no obligation to publish detailed information about internal processes and systems. Academies and free schools are also not covered by any Ombudsman regime – a further potential gap in accountability which may cause concern where complaints about their decisions and services arise.

- 2.27 It is, of course, important to remember that governance structures and organisational status (ie whether “maintained” or “free”) do not necessarily guarantee the effective running of a school. Culture and leadership is of prevailing importance, as we have identified in our “Accountability Works For You” framework, which organisations can use to evaluate and improve their own governance arrangements<sup>27</sup>.
- 2.28 This is important in relation not only to those issues directly pertaining to free schools and academies, but also in the context of the wider children’s services and “safeguarding” agendas. Research suggests<sup>28</sup> that a joint approach to learning, improvement, leadership and governance will be vital in ensuring that services provided to children are of the highest quality – strategic thinking in all schools will be critical to this success.

#### Local authority influence and “control”

- 2.29 It has been said that free schools will be entirely independent of local authority “control”<sup>29</sup>. Such control has, in any case, been illusory in the maintained sector for several years, as schools have increasingly been given autonomy<sup>30</sup>. Local authorities have only vestigial power over even maintained schools in their area, limited to issues such as school place planning and issues relating to safeguarding and SEN.
- 2.30 However, schools will continue to be important centres of local community life and it is difficult to imagine that, in many areas, they will

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<sup>26</sup> A model funding agreement can be found at <http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/a0074737/free-schools-model-funding-agreement>. The Department for Education has refused previous FOI requests to release funding agreements for the first cohort of free schools on the grounds that they will be published at a future date, but there does not appear to be a timetable for this publication at present.

<sup>27</sup> See [www.cfps.org.uk/accountability-works](http://www.cfps.org.uk/accountability-works) for more information

<sup>28</sup> “Intervention and the improvement cycle: learning event” (notes of event 20/21 October 2010), National College of Schools and Children’s Services.

<sup>29</sup> See

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/academiesfaq/a0063423/local-authorities-faqs>

<sup>30</sup> “School autonomy in England” (NFER, 2007) at [http://www.nfer.ac.uk/shadomx/apps/fms/fmsdownload.cfm?file\\_uid=A981DA0E-C29E-AD4D-078D-4942AEADC20D&siteName=nfer](http://www.nfer.ac.uk/shadomx/apps/fms/fmsdownload.cfm?file_uid=A981DA0E-C29E-AD4D-078D-4942AEADC20D&siteName=nfer) provides a useful summary of this issue up to 2007.

not develop close working relationships both with the council and with other local partners.

2.31 This may happen in a number of ways:

- Governance. Some free schools may wish to have local ward councillors involved on governing bodies (provision exists for local authority members to sit on governing bodies, although recently-opened free schools do not seem to have taken advantage of this power<sup>31</sup>);
- Back office services. The cost of establishing separate back office support services may provoke some schools in the same area to share services<sup>32</sup>, or some schools to share services with other public agencies (possibly even local government). The shared service option could be seen as a possible solution to the problems cited in the LGA report referred to above;
- Partnership working and service delivery. Concepts such as “extended schools”<sup>33</sup> are sure to continue, given the benefits they bring to the local community, and so it is possible that councils will commission certain services from free schools, bringing the two partners into a contractual relationship where the council is the client. On certain matters – for example, safeguarding and special educational needs – there will need to be joint working with other agencies, in particular the local authority. This is because free schools are under the same legal obligations on safeguarding and SEN as maintained schools.
- School improvement. There is a specific presumption from the Department for Education that successful free schools will work with struggling schools in their area, and may under certain circumstances take them over. This will involve sharing of experience and resources, and close partnership working.

2.32 Through these measures local authorities and other partners may still exert some influence over the policies of free schools and academies (and vice versa). It is possible that this could, in some areas, lead to disagreement about the nature of schools’ independence, and the extent to which other agencies can involve themselves in school business.

### Central government influence and “control”

2.33 We have commented above on the “funding agreement” between the Department for Education and free schools / academies. This will be a key means for the Government to exert some control over schools independent of local authority control.

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<sup>31</sup> None of the free schools opened in September 2011 has a local authority representative on its governing body or board of trustees (at time of writing)

<sup>32</sup> Currently, shared services are common in the maintained sector – for example in Norfolk, ICT services are shared as part of the service agreement with the county council.

<sup>33</sup> See [http://www.direct.gov.uk/en/Parents/Childcare/DG\\_172212](http://www.direct.gov.uk/en/Parents/Childcare/DG_172212)

2.34 The retention of Ofsted (and the system of maintained school inspection that will apply to all academies and free schools), and the political need on the part of the Department for Education to ensure that national standards are being met, will potentially involve some tension between Government and free schools. The Government has reserved powers to remove the leadership of a school and impose new management, but under what circumstances these powers will be used in practice remains a moot point.

### **3. Further and Higher education**

3.1 The Government is proposing a new approach both to the management, and regulation, of further and higher education institutions.

#### Further education

3.2 A process of marketisation of the further education sector has been proposed by the Government in a recent consultation<sup>34</sup>. Providers are meant to provide “genuine choice”, and to be “more responsive to changing social and economic needs”. This market-driven approach will require providers to understand the local education, skills and economic development landscape, and designing courses that fit in with that landscape. This ought to mean closer joint working with other agencies – local authorities and JobCentre Plus are obvious examples.

3.3 A focus on local need will, according to the consultation, mean a reduction in inspection and regulation. Institutions offering a “quality learning experience” will be minimally inspected but, like in higher education (discussed below) there will presumably remain a need for the publication and provision of accurate information to enable inspectors to assess whether a quality learning experience is actually being provided prior to a decision being made as to whether to inspect – a situation that could become circular<sup>35</sup>. Even so, national data requirements are being kept to an absolute minimum. Performance improvement is seen by the Government as being a sector-led process<sup>36</sup>, which will place more pressure on individual institutions to work together, and with other agencies, to maximise their effectiveness.

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<sup>34</sup> “New challenges, new chances: next steps in implementing the further education reform programme

<sup>35</sup> That is to say, it will be impossible to ascertain whether it is necessary to subject an institution to inspection without carrying out an inspection.

<sup>36</sup> The consultation emphasises that regulation will be considered more of a “backstop”, with institutions individually and collectively taking more responsibility, held to account by students as consumers.

## Higher education

- 3.4 The increase in the cap on fees to £9,000 per year will make a significant difference to the relationship between the higher education sector and the Government, between the sector and the students studying at universities (both individually, and through student unions) and between higher education institutions themselves (in terms of increased competition, which differential fees are meant to provide<sup>37</sup>).
- 3.5 As a consequence, the Government is proposing changes to the regulatory framework for higher education<sup>38</sup>. External inspection and regulation is being cut back, replaced by new transparency requirements and an expectation that individual students will be involved more in decision-making. Strengthening the governance arrangements of individual HE institutions is seen as particularly important, with central intervention becoming more “risk based”. A risk based approach will involve individual HE institutions having a much clearer idea of where strengths and weaknesses exist, and providing accurate detail to inspectors.
- 3.6 What inspection and regulation remains will be led by the Higher Education Funding Council for England (HEFCE) – reflecting a funded approach to monitoring in the future. HEFCE will have a particular role as a “student champion”, although what this will mean in practice remains unclear.

## **4. The effects on accountability**

- 4.1 The effects on accountability of these various arrangements will be wide-ranging.
- 4.2 Positive
- Increased freedom from Government control will enable providers to be more responsive to “customers” – pupils, students, parents and potentially the wider community;
  - Less bureaucratic intervention in the form of regular inspection (particularly for FE and HE) will make providers focus more on students and pupils;
  - Changing arrangements gives providers an ideal opportunity to reconsider and review their existing governance arrangements, strengthening them in light of the removal of central prescription and, by so doing, building up a culture of local accountability;

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<sup>37</sup> See article at <http://www.timeshighereducation.co.uk/story.asp?storycode=415322>

<sup>38</sup> “A new fit-for-purpose regulatory framework for the higher education sector” (<http://discuss.bis.gov.uk/hereform/technical-consultation/>)

### 4.3 Negative

- Financial and capacity challenges may make accountability that is driven by internal systems rather than external pressure difficult to achieve;
- Accountability arrangements will continue to be highly silo-driven, taking no account of the interconnectedness of public services (and the idea of the “web of accountability” posited by CfPS in “Accountability Works”<sup>39</sup>, and the lessons both of the Total Place programme<sup>40</sup> and CfPS’s more recent work on health inequalities<sup>41</sup>);
- It is troubling that accountability through contract, and through marketisation of services, is not being backed up by a coherent and consistent approach to transparency and publication of information (eg the inconsistent approach to publication of governance material in schools).

## 5. **Opportunities for scrutiny**

### 5.1 Opportunities for scrutiny in this area relate to:

- Scrutiny’s broader powers, in the new Localism Act, over partners (more detail on this will be provided in Policy Briefing 14). Schools’, and higher and further education providers’, involvement in a range of public services, give scrutiny a clear way in to speaking to governing bodies about community priorities, even though the Act will not give overview and scrutiny the legal right to engage with free schools;
- The assistance that governing bodies in schools (and similar bodies in further and higher education institutions) may well require in holding decision-makers to account – scrutiny could build positive joint working relationships with such bodies;
- The connected “power of general competence” for local government<sup>42</sup>, which in theory will give scrutiny itself broad powers to investigate issues in the education field;
- Recasting the role of the statutory education co-optees, for county and unitary authorities;
- The general increase in partnership working, both through formal partnership arrangements on strategic priorities, and the sharing of back office services, which will often put local education providers into contractual relationships with the council or other public

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<sup>39</sup> “Accountability Works” (CfPS, 2010) [www.cfps.org.uk/accountability-works](http://www.cfps.org.uk/accountability-works)

<sup>40</sup> “Between a rock and a hard place” (CfPS, 2010)

<sup>41</sup> See <http://www.cfps.org.uk/what-we-do/tackling-health-inequalities> and our publication “Peeling the Onion” (2011)

<sup>42</sup> Introduced in the Localism Act, this power broadens the existing “power of wellbeing” provided by section 2 of the Local Government Act 2000.

agencies – contracts which may be subject to investigations and input by O&S<sup>43</sup>.

- 5.2 The points above mean that scrutiny should not be reticent, where it is appropriate, in seeking to involve education providers in their work. Below we look in a little more detail about what this might mean in practice (using secondary schools as our example).

### Recasting the role of the statutory education co-optees

- 5.3 This briefing does not purport to provide a detailed evaluation of the role performed by statutory education co-optees – those members of scrutiny committees who sit on them by virtue of the Education Act 1996. The original role of the co-optees was as representatives to the council's Schools Organisation Committee, under the committee system, when maintained schools were subject to significant local authority control. Since the introduction of O&S, and the increasing autonomy of local schools, their role has become increasingly unclear.
- 5.4 Notwithstanding some work carried out nationally, by the Department for Education and Employment, in 2000<sup>44</sup>, and by CfPS in 2006, the role of the statutory education co-optees (usually, two parent governor representatives<sup>45</sup> and two diocesan representatives) remains difficult to discern. In authorities with only two or three scrutiny committees, co-optees may find themselves sitting on committees whose principal business has nothing to do with education at all.
- 5.5 Anecdotal evidence suggests that this state of affairs is being reflected in poor attendance by co-optees (although it should be stressed that this is by no means a national picture). The committees designated as those on which co-optees tend to be large and unwieldy – principally because, for the purposes of political proportionality, the co-optees are all treated as opposition members. In councils with a significant one party majority, this can result in committee membership in excess of 20.
- 5.6 The change in the relationship between councils and local education providers may provide an opportunity to rethink the role of the statutory co-optees – working with them to ensure that their skills, expertise and time can be used in the most effective ways possible.
- 5.7 For example:
- Involvement of co-optees in more task and finish work dealing with issues that have an impact on education – community safety,

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<sup>43</sup> There is a developing trend for involvement in major procurement and contract management by scrutiny. In Wiltshire, for example, scrutiny is involved in major contract work.

<sup>44</sup> Archived at [http://www.education.gov.uk/consultations/downloadableDocs/20\\_2.doc](http://www.education.gov.uk/consultations/downloadableDocs/20_2.doc)

<sup>45</sup> Further to the Parent Governor Representatives (England) Order 2001

health, social care, leisure and environmental services all may have elements where co-optees can make a tangible input;

- Reducing “formal” co-optee input at committee meetings – which they may feel obliged to attend, but which are of minimal value – by redesigning the terms of reference of committees;
- Engaging in dialogue with co-optees about both of the above, and examining how their expert input can be integrated with other, voluntary co-option schemes that scrutiny may operate through s115 of the 2003 Act.

#### Dealing with the risk of failure – individual schools

- 5.8 One area that has been focused on a great deal is the risk of failure for free schools and academies. Under the Government’s approach, failing schools can be taken over by successful ones (and, as we have noted, this applies just as much for academies as it does for maintained schools). However, it is important that the reasons for failure should be understood, and that they should be examined with a view to strengthening other schools in the area.
- 5.9 In this context, the involvement of scrutiny might provide a positive way, with other governing bodies, of exploring how improvements can be made – as well as providing an open forum for the discussion of these issues with local people. It would be important, under these circumstances, to recognise that this would not be the council trying to assume its former role as a controller of local schools – here, a task and finish group or committee would be more of a facilitator of discussion between a variety of affected parties.
- 5.10 This activity would not be possible unless attempts had previously been made by overview and scrutiny to build up relationships with local schools, and all those involved (including the school’s governing body, with whom this work would have to be carried out in partnership) agreed that scrutiny’s involvement would help to develop a more collegiate approach to improvement across all schools in the area. It would be difficult, and inadvisable, for O&S to attempt to carry out delicate work of this kind without having first built up these important relationships with relevant stakeholders. As yet, CfPS is not aware of any examples of the failure of non-maintained schools being investigated by scrutiny. It should be remembered that overview and scrutiny, as noted above, has no formal powers in legislation over free schools or academies. As such it would need to be demonstrated at the outset that scrutiny’s involvement would add value to the process of learning lessons following failure.

#### Partnership working – schools across the authority’s area

- 5.11 Work which we have referenced above cites the importance of governing bodies of schools being stronger at holding to account decision-makers (in particular, head teachers) – taking on a role that

would be recognisable to a backbench scrutiny councillor. It could be possible for governing bodies to work more closely with O&S to try to influence the policy of other partners across a wider area, or O&S could help to bring together governing bodies to discuss issues of common concern in the context of council, or other partner, priorities.

- 5.10 Scrutiny will, in any case, find itself needing to work with governing bodies to examine a range of issues which might appear at first sight not to be relevant to secondary education. Health, social care, transport, community safety and other local services – as we have noted – will all have some impact on local education providers.

### Making it work

- 5.11 Both of these possibilities are predicated on the building of strong relationships with governing bodies. If, as the evidence seems to suggest, they are to be taking on a more obviously scrutiny-focused role, O&S could be in a position to work with them to build up those skills – such support could, in fact, form part of a wider support agreement with the local authority, as discussed in 2.27 above. Or arrangements could be more informal, with joint working only on areas of mutual interest. Any joint work would, however, require careful and delicate discussion about roles and responsibilities – particularly bearing in mind local authorities' previous roles in education, of which this would not be a replication. It would be particularly important to ensure that councillors understand this crucial distinction.
- 5.12 In the context of all of the foregoing, scrutiny practitioners in the West Midlands have put together a draft list of questions that scrutiny can ask within their authorities right now, to prepare for these forthcoming changes. CfPS suggests that these can provide O&S with crucial baseline information, to allow it to take advantage of some of the more strategic opportunities outlined in the rest of this report, and particularly in this section. Doing so will help to identify where opportunities lie for further partnership working and, ultimately, strengthened accountability in local education. The principles, if not the terminology, can equally be applied to local FE provision, and to an extent to HE provision.
- What education services is the local authority continuing to provide to schools?
    - How are these services being funded?
    - How do these services relate to the priorities for children and young people in the area?
  - Is the local authority considering trading education services with schools?
  - What education services has the local authority stopped providing to schools?

- How is the local authority ensuring that it will still be able to deliver the statutory duties?
  - What are the statutory duties?
  
- The local authority will continue to have a statutory duty to ensure there are sufficient school places in the area. What information does the local authority have about:
  - proposals for free schools?
  - plans from schools to increase their admissions numbers?
  
- How is the local authority continuing to foster relationships with schools in the area?

### Further reading

- "Academies: research into the leadership of sponsored and converting academies" National College for Leadership of Schools and Children's Services, 2011  
(<http://www.nationalcollege.org.uk/docinfo?id=149138&filename=academies-leadership-of-sponsored-and-converting-academies.pdf>)
- 'Changing School Autonomy: Academy Schools and their Introduction to England's Education', Stephen Machin and James Veroit, Centre for the Economics of Education Discussion Paper NO.123, April 2011  
(<http://cee.lse.ac.uk/ceedps//ceedp123.pdf>)
- "Transparency in Academies" (CIVITAS, 2009 / 10)
- "Higher Education Reforms: Progressive but Complicated with an Unwelcome Incentive" (Institute for Fiscal Studies / ESRC, 2010)  
(<http://www.ifs.org.uk/bns/bn113.pdf>)