

The council role in education and training

1 Introduction

Following the General Election the new Secretary of State for Education, the Rt Hon Michael Gove MP, convened a Ministerial Advisory Group on the council role in education, with representation from the Local Government Association (LGA), the Association of Directors of Children's Services (ADCS), the Society of Local Authority Chief Executives (SOLACE) and representatives of academies and academy chains. The Group have been meeting under the chairmanship of the Secretary of State to discuss schools capital and revenue funding; the promotion of educational excellence; sufficiency of school places and fair access; and the council role in supporting vulnerable children and young people.

The Group commissioned *action research into the evolving role of the local authority in education*¹ which was funded jointly by LGA and DfE and was launched at the LGA Annual Conference on 26 June 2012. The aim of the action research was to move away from a theoretical debate about the council role in education and focus on how councils are actually adapting to the rapid increase in the number of academies maintained by central Government rather than local councils.

The report shows the 8 councils involved as very positively engaged in partnership working with local schools to respond to the challenges of greater school autonomy. It contains case studies of excellent practice from across the country, not just the participating authorities,

The research will be discussed by the Ministerial Advisory Group on 8 November and the intention is that the Group will move towards a final conclusion of its deliberations about the council role in a more autonomous school system. Set out below is the LGA's contribution to the discussion.

2 The challenges facing education and training

The debate about how to improve education and training to allow our children and young people to fulfil their potential and achieve their ambitions has been raging since the General Election. A variety of reforms have been implemented to improve standards, including encouraging schools to become academies to free them from centrally-imposed restrictions on the curriculum they can teach; what they pay teachers; and on the length of the school day and the timing of school holidays. National minimum standards for attainment and progress have been raised and the Ofsted inspection framework has been changed so that 'satisfactory' is no longer an acceptable outcome. A significant reform of the examination system is now underway to make it more academically rigorous.

As the economic outlook has worsened, the need for the country to improve its skills base and to tackle the cyclical and structural problems of youth unemployment has thrown the challenges into sharper relief. Promoting growth is a key priority for both central and local government. Reform of the education and skills system is central to this aim.

A significant increase in the birth rate in recent years has led to a sharp increase in the demand for primary school places, which will in turn require a rapid expansion of

¹ <http://bit.ly/MOvGIJ>

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secondary school provision in coming years. Councils forecast that the number of primary pupils will increase by 454,800 between 2010/11 and 2015/16 - a 12% increase over the five-year period.

The national figures understate the much higher growth that is being experienced in many areas. Bristol has seen a 20% increase in the number of children starting school in the city over the last four years and needs an extra 3,000 primary school places by 2015. Barking and Dagenham has seen a 50% growth in the number of 0 - 4 year olds since the last census. In Manchester 34 primary schools have been expanded since 2008 and by 2014 there will be a shortage of secondary school places.

Councils have so far responded by encouraging existing schools to expand – this is usually the most cost-effective way to bring forward new places. But in many areas new schools are now required. A major new school building programme is urgently needed, but it could also play an important part in stimulating growth in local economies.

With the introduction of the pupil premium, the Government has continued the focus on 'narrowing the gap' in attainment between children and young people from disadvantaged backgrounds and their peers. Major reforms are planned to the system for supporting pupils with Special Educational Needs and Disabilities (SEND). New ways of dealing with school exclusions are being piloted to reduce the numbers of permanent exclusions and improve provision for children and young people at risk of exclusion.

The Leitch Review of Skills in 2006 found that the UK's skills base remains "weak by international standards, holding back productivity, growth and social justice". It identified the comparatively low levels of post-16 participation in the United Kingdom as a key contributory factor². In response, the previous Government legislated for the raising of the participation age (RPA) by young people in some form of education or training to 17 in September 2013 and 18 in September 2015. The Coalition government has supported this aim. So a key challenge with the first stage of RPA less than a year away is ensuring that the right sort of provision exists to encourage young people who currently leave school at 16 to continue in full-time education or in a job with training.

To summarise, the challenges are to:

- Improve education and training to support growth and to make sure that all children and young people are given the opportunity to fulfil their potential and achieve their ambitions.
- Secure sufficient new school places to meet the trend of sharply increasing demand. A substantial investment in a national programme of school building and expansion also has the potential to contribute to growth in local economies.
- Make sure that the most vulnerable children and young people, including those with special educational needs have fair access to educational opportunities to narrow the gap in attainment between these groups and their peers.

² http://www.hm-treasury.gov.uk/d/leitch_finalreport051206.pdf

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- Successfully implement the Raising of the Participation Age to improve the skills and employment prospects of our young people and reduce youth unemployment.

3 The council role in responding to these challenges

Councils have an absolutely central role in meeting all of these challenges. They have a statutory duty to promote educational excellence in their areas and a central role in challenging and supporting schools that are underperforming. It is their responsibility to ensure that there is an adequate supply of schools to meet local needs. They have a range of statutory duties to ensure fairness in admissions and to protect the interests of the most vulnerable children and young people. And they have important statutory duties to support the raising of the participation age.

In addition, they have general duties to work with local partners to improve the well-being of children in their area and to exercise their education duties with a view to safeguarding children. They have a specific duty to promote the educational achievement of children they are looking after. Directors and Lead Members for Children's Services have a range of specific responsibilities for discharging the education and children's services functions of the local authority.

As well as their wide-ranging formal statutory powers councils also have a democratic mandate to promote and protect the interests of local children, young people and their families. As directly elected representatives of their local communities, councillors will always have an interest in improving the outcomes for local families. So making sure that the children and young people in their areas have fair access to a good local school is always going to be near the top of every council's agenda.

However, the way that councils exercise their education role is changing as increasing numbers of schools become academies. The number of academies – schools directly funded and maintained by the Secretary of State – has increased from approximately 200 at the time of the General Election to nearly 2,400 on 1 October 2012. More than half of secondary schools are now open as academies, or have agreement to convert and they form the majority of secondary schools in 72 council area.

There are more than 24,000 schools in England, so the overwhelming majority are still maintained by councils. But increasing autonomy within the education system, combined with significant cuts to council budgets, means that councils have had to adopt a more strategic role in the education system and work in partnership with schools and colleges to fulfil their statutory duties.

4 The funding of education and training

The funding of education and training has seen a marked degree of centralisation since the General Election. The key change in pre-16 education has been the introduction of an additional bureaucratic tier between local authorities and central Government by the expansion of the functions of the Education Funding Agency (EFA). The EFA's predecessor agency, the Young People's Learning Agency, was only responsible for post-16 education funding and, latterly, the direct funding of academies.

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When it was established, the EFA's remit was extended to cover pre-16 schools funding, interposing a new layer between councils and DfE. The LGA was assured that the EFA would be a lean and efficient funding body, focusing on its core business of funding. But in reality, its remit has grown since it was established in April 2012, extending now to having a seat on all local schools forums; restricting the number of factors that can be taken into account in local funding discussions between councils and schools; and most recently, issuing advice about the design of new schools.

Post-16 education funding is the responsibility of the EFA (like its predecessor bodies the Young Persons Learning Agency and the Learning and Skills Council). The intention of the Apprenticeships, Skills, Children and Learning (ASCL) Act 2009 was to transfer responsibility for the commissioning and funding of post-16 provision to councils to support the Raising of the Participation Age. However, following the General Election the funding of post-16 provision was transferred back to the EFA and it now directly funds almost 350 colleges, almost 200 specialist SEN providers, and hundreds of private training providers who offer apprenticeships

The funding divide between pre- and post-16 education funding is a divide that the LGA would like to see broken down. Councils are the most efficient part of the public sector. We believe that councils can more efficiently and effectively fulfil the functions of the EFA at a local level without the need for an additional intermediate funding tier.

We propose that cost savings should be realised by eliminating the duplication by the EFA of functions already being carried out by councils for the schools they maintain. This would include allowing councils to take over the roles of the EFA in funding academies and providing financial assurance for academies. Eliminating this duplication will allow the DfE to disband the EFA's regional structure, close its 10 regional offices and allow it to become a lean and focused national funding agency.

Under current arrangements, where councils identify a mismatch between local provision and the needs of learners (as they are legally required to do), they have to apply to the EFA for funding for the new education and training places needed. Last year only half of the additional places councils applied for were funded. The inability of councils to directly commission new provision to match the needs of learners that currently disengage from education and training means that they cannot effectively fulfil their statutory duty to support the Raising of the Participation Age.

We propose that responsibility for commissioning and funding of post-16 education and training should revert from the EFA to councils, as was the intention of the ASCL Act. This will allow them to effectively support RPA by commissioning new provision that is suitable to meet the needs of local learners that currently disengage from education or training at the age of 16.

5 School improvement and promoting educational excellence

The role of councils in school improvement is probably the most contested area in the debate within the Ministerial Advisory Group. There have been many contributions about the role of the 'middle tier' in education, including thoughtful and helpful contributions from ADCS³ and SOLACE⁴. These focus on how school-to-

³ The Missing Link: The evolving role of the local authority in school improvement:

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school improvement can be supported and who should be responsible for driving improvement and holding school improvement partnerships to account.

A variety of candidates have been suggested to take the lead in this area, including councils, academy chains and elected or appointed local schools commissioners. It is widely accepted that other partners such as Ofsted, teaching schools and the National College for School Leadership will have an important role to play.

The LGA has argued strongly for 'sector-led' improvement for councils, believing that will deliver better results than a target driven top-down approach. So we have also supported a greater role for 'school-to-school' improvement in driving up educational standards. The international evidence bears out the thesis that sustainable school improvement is best achieved by a self-improving schools system based on school-to-school improvement. But the evidence also shows that the most improved schools systems also benefit from a 'mediating layer' that acts between the centre and schools. It acts to provide targeted hands-on support to schools; as a buffer between the school and the centre; and as a channel to share best practice across schools.⁵

There was widespread agreement among the participants in the LGA/DfE action research, including academy representatives, that school-to-school support mechanisms are far more effective when they are sharply brokered and robustly held to account by someone external to the two schools involved. Many councils are proactively promoting and supporting local school improvement partnerships in this way and we have argued that convening and holding school improvement partnerships to account should continue to be a key part of the council role in education, backed by a continuing council role in tackling underperforming schools.

Other candidates for this 'mediating layer' role have been proposed, including academy chains. We agree that strongly-performing chains will have a crucial role to play because they have an interest in their 'brand' and a clear incentive to tackle underperformance. However, there is no guarantee that academy chains will always perform well and chains are not a completely disinterested 'external party' in relation to the schools that form part of their chain.

The other weakness with relying on academy chains to provide the mediating layer for school-to-school improvement is that the majority of recently-converted academies are not part of a chain – 1,339 of the 2373 academies open at 1 October 2012 fall into this category. The LGA/DfE action research highlighted concerns about the monitoring of these 'stand-alone' academies for early signs of declining performance and who will intervene early to broker appropriate improvement support.

DfE have been clear that the EFA has no improvement role, so it is unclear who will be performing this monitoring and early intervention role for academies that are not sponsored. Councils have a statutory duty to intervene in maintained schools that are

<http://www.adcs.org.uk/schoolscausingconcern/>

⁴ Filling the Gap: the championing role of English councils in education: SOLACE 2012
http://www.solace.org.uk/library_documents/Filling_the_Gap_Councils_championing_role_in_education_SOLACE_Call_to_Action_April_2012_FinishedFinalVersion_word.pdf

⁵ *How the world's most improved school systems keep getting better*, McKinsey & Company 2010:
http://mckinseyonsociety.com/downloads/reports/Education/Education_Intro_Standalone_Nov%2026.pdf

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'causing concern'. There will be no parallel arrangements for stand-alone academies that are placed in an Ofsted category of concern. And under the new Ofsted framework, where maintained schools and sponsored academies are judged to 'require improvement' councils and academy chains will be inspected on their performance in supporting the school to improve. Again, it is not clear who will be responsible for performing this role for 'stand alone' converter academies.

We believe that that sustainable school improvement is best achieved by a self-improving system based on school-to-school improvement. Improvement partnerships are likely to be more effective when they are sharply brokered and robustly held to account by someone external to the two schools involved. A number of partners in the schools system will have an important part to play in bringing this accountability, including academy chains, school improvement partnerships and teaching schools. But it is not clear who will play this support role and brokerage role for the majority of academies which do not have a sponsor. We believe that councils are best placed to ensure that all schools are held accountable in this way, including stand-alone converter academies.

Currently, when schools become academies, responsibility for performance management and intervention in cases of underperformance transfers to DfE and EFA. As increasing numbers of schools become academies we do not believe that this is a sustainable position. The primary function of EFA is to be a funding body and DfE have been clear that it does not have a school improvement function.

We propose that in council areas where more than half of secondary schools are academies (currently 72 councils⁶), the functions of the DfE and EFA in relation to funding, financial assurance, monitoring performance and intervention in the case of underperformance should revert to the local council.

We believe that in these areas councils will have already demonstrated their willingness to take on the more strategic council role in the local education system envisioned by the Schools White Paper. So these councils should be trusted to take on this role for all local schools, including academies.

6 Ensuring a sufficient supply of school places

The council role in making sure that there are enough school places to meet local demand and take account of parental preferences is not contested. Councils have a clear statutory duty to secure 'sufficient primary and secondary schools' in their areas. Post-16 they have a duty 'to secure that enough suitable education and training is provided to meet the reasonable needs young people over compulsory school age'.

However, decision-making over the building and funding of new schools has increasingly been centralised, with the Secretary of State for Education having the final decision over the building of new schools and the Education Funding Agency seeking to ever more tightly control the funding, procurement and even the design of new schools.

⁶ Hansard. House of Commons (2012). 'The proportions of secondary schools that are open as, or in the pipeline to become academies in each local authority', *Commons Debates*, 582W, 3 July:
<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120703/text/120703w0002.htm#120703137000087>

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The Education Act 2011 introduced the ‘academies presumption’ which means that new schools have to be established as academies or free schools and responsibility for the final decision on proposals for new schools rests with the Secretary of State for Education. The role of councils is to identify the need for new schools and invite proposals from free school and academy sponsors. Although councils may express a preference as between competing proposals, there is no obligation on the Secretary of State to take these into account.

Councils face a major challenge in responding to sharply increasing demand for school places. During the passage of the Education Act 2011 we argued against centralising all final decisions about new school proposals in Whitehall on the basis that councils, with their local democratic mandate and local knowledge are best placed to make such decisions. We do not believe that the DfE has the capacity or the expertise to make judgements about new schools proposals.

We are working with DfE to ensure that their new role in making decisions about new schools proposals does not introduce unnecessary bureaucracy and delay. But we are concerned that there is no clarity or transparency about the process by which decisions will be made by the Secretary of State.

We ask for reassurance that the new role of the Secretary of State in making decisions about all new school proposals will not introduce unnecessary bureaucracy and delay into the process of bringing forward new schools to meet rising demand.

We would like to see more transparency in the decision-making process within DfE for agreeing new school proposals, including the publication of information about the way in which decisions will be taken and the criteria against which new schools proposals will be judged. We would also ask for reassurance that if the Secretary of State does not agree the recommendation made by a council, the reasons for his decision will be published and there will be an opportunity for the council to make further representations before a final decision is taken.

The DfE and EFA have also taken an increasing role in the allocation of capital funding for schools; in commissioning new provision; and even in the design of new schools. The experience of the Building Schools for the Future (BSF) scheme, which the Secretary of State Michael Gove MP characterised as being beset by “massive overspends, tragic delays, botched construction projects and needless bureaucracy”⁷ does not provide a good precedent to suggest that a centralised and top-down approach to funding, commissioning and design will produce optimal outcomes.

The BSF scheme was scrapped in July 2010 and there has been a 2 year delay in the announcement of its replacement, the Priority Schools Building (PSB) programme. There was an announcement about the schools that will benefit from the PSB programme in May this year, but no announcement yet about when work will start. Funding will come in ‘waves’ and many schools will have to wait many years for funding to carry out urgent work to bring school buildings up to an acceptable state of repair but there is no detail about which schools will have priority.

⁷ <http://www.bbc.co.uk/news/10514113>

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The other announcement that accompanied the scrapping of the BSF scheme in July 2010 was the setting up of the James Review of the DfE's capital expenditure, which was tasked with making recommendations on the future delivery models for capital investment for 2011-12 onwards. The Review reported in April 2011 and the Government made an initial response and launched a consultation on its proposals which ended in October 2011. A year later, the government's final response to the James Review is still awaited.

The key recommendation of the James Review were that there should be a notional 'single capital pot' allocated to local authority areas and a local process hosted by the council, to agree a short local investment plan to allocate the money fairly. The other issue that still needs to be decided is how procurement will be carried out; whether centrally, regionally or locally. DfE has indicated that it would want to see a 'mixed economy' of procurement.

Given the urgent need to respond to sharply increasing demand for school places we urge the Government to announce its response to the James Review and move forward quickly with reform to schools capital funding based on a 'single capital pot' based on local authority areas.

Councils have a proven capacity over many years to deliver cost effective, well-designed and efficient school buildings on time and to budget. Recent experience of Government procurement at a national level suggests that it is inefficient and introduces delay, so we believe that school procurement should be carried out at the local authority level.

An announcement on when the Priority Schools Building Programme will commence; how it will work in practice; and how it will be phased is urgently required to allow urgent work to start to bring school buildings up to an acceptable state of repair.

7 Councils as champions of vulnerable pupils

Councils have a clear and continuing role in supporting and protecting the interests of vulnerable pupils, including children and young people with Special Educational Needs and Disabilities (SEND) from 0 - 25. The LGA has supported the proposed reforms to the SEND system, which arguably give councils a stronger and clearer role in this area. We strongly support the proposal to transfer funding for 16–25 year old 'high needs' learners to councils in April 2013, though the transition to the new system is presenting a number of challenges. We are also pleased that the draft Bill to implement the reforms will apply its provisions to FE colleges and to academies and free schools on a statutory basis, rather than on a contractual basis through funding agreements.

An important element of this role is ensuring fairness in admissions as greater numbers of schools become 'own admission authorities' when they become academies. Again, the council role in this area has arguably been strengthened with the duty placed on councils in the 2011 Education Act to make objections to the Schools Adjudicator if they suspect a school's admission arrangements are unlawful.

However, the LGA/DfE action research flags up concerns that supporting vulnerable pupils will become more difficult with greater school autonomy, including concerns that fair access arrangements are being undermined because councils no longer

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have the power to direct academies to admit vulnerable pupils – this now rests with EFA. Our proposal for dealing with this issue - that EFA functions in relation to funding and intervention in individual academies should revert to councils – is set out in earlier sections.

8 The council role in raising the participation age

Councils are committed to the Raising the Participation Age (RPA) ambition which aims for full participation in some form of education or training by all 16 year olds by 2013 and all 17 year olds by 2015. That means increasing the participation of those who currently leave learning at 16 and reducing the number of young people not in education, employment and training.

Councils are working with schools, colleges, providers and employers to put plans in place to deliver RPA, beginning next September. They have a statutory duty to secure local provision for young people up the age of 19, but their ability to secure it is not straightforward, and is hampered by the system. This is because commissioning has been taken over by the Education Funding Agency, which funds providers directly, and coordinates commissioning on a national basis.

The rationale for this change was to simplify the funding process. But the effect is that where councils identify gaps in provision locally, having discussed this with local providers, they have to apply to the EFA for funding. If the application is successful, it is the EFA which determines the procurement process and chooses the provider from an EFA-approved list, not the council or its partners. And even if councils have identified gaps, there is no guarantee that the EFA will fund the additional places needed.

We believe that if councils are to effectively discharge their duties to secure sufficient places for young people over compulsory school age and realise the ambition of raising the participation age, the commissioning model needs significant change. Funding, planning and commissioning need to be carried out a more local level and responsibility should be devolved to local partnerships which include representatives from councils, providers and local employers rather than being run by the EFA.

These partnerships would have the local knowledge and connection to effectively commission provision for young people which matches the needs of local employers and provides a better match with local labour markets.

Councils have statutory responsibilities to support young disengaged people and work with schools to support those at risk of disengagement. Funding for councils for the type of provision that re-engages young people in learning, which used to be delivered by Connexions Services, is being reduced, with a 32% cut in the funding going into the Early Intervention Grant at the last Spending Review and further cuts likely in 2013/14.

Other funding is available, most notably through the recent three-year £126 million Youth Contract to re-engage 16-17 year olds Not in Education, Employment or Training (NEET). The LGA argued that the provision funded by the Youth Contract should be locally commissioned, given councils' role in supporting RPA, so that those organisations that are known locally to provide the most effective support could be

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used to deliver the service. Councils also argued that local commissioning would allow re-engagement provision to be co-ordinated, so young people would be able to access a single offer of support, rather than multiple schemes based on multiple funding sources, which do not have a lasting impact.

The Government decided instead to manage and commission the Youth Contract nationally through the EFA with large regional contracts let through a national commissioning process, although it did devolve commissioning responsibility in three City Deals – in Liverpool, Leeds-Bradford-Wakefield, and Newcastle-Gateshead. Except in those areas, this decision adds to an already complex funding picture, introducing yet another funding stream supporting a new set of organisations competing to help the same people. Councils are left with the unenviable task of trying to co-ordinate the local offer to help young people access the support they need.

The system to re-engage young people in learning to support RPA and reduce the number of NEET young people is complex and fragmented. A variety of providers offering multiple interventions are competing at a local level to target the same group of young people. We believe that all the funds that seek to support young people to stay in learning or re-engage them, should be brought together into one re-engagement programme, planned and commissioned at a local level, to allow councils and their partners to identify, plan and target and tailor provision to meet the needs of local young people.