



Education and Skills Board
14 January 2016

**Outline of the Impact on the Local Education Authority of the Academy
Agenda**

Purpose of the report: Policy Development and Review

An Outline on how "academisation" of schools will change the education landscape in Surrey and the further implications for the Council.

Introduction:

- 1.1 Academy Schools were first introduced during the Labour Government 1997-2010 essentially as a tool for school improvement. Early schools acquiring Academy status, usually reflected institutions in urban areas of deprivation with high levels of education underperformance over a considerable period of time. Further legislation by the Coalition Government 2010-2015 has significantly widened the scope and increased the pace of 'academisation'. The stated aim of the current government is that all schools should become Academies as a part of 'School led' system improvement.
- 1.2 Whilst the majority of Schools within Surrey remain Maintained by the Local Authority, whether as Community, Foundation, Voluntary Controlled or Aided Schools it is clear that this pace of change will impact on the provision of Education within Surrey. There will also be a consequential impact on Local Authority management, reflecting a de facto reduction in budget and control over support service provision.
- 1.3 This report highlights the current position, outlines the position for Surrey with regard the rate of Academy Conversion and the key impacts to the Council going forward. Whilst referencing school improvement functions it does not comment on the effects of 'academisation' on pupil outcomes.

Academies and System Change

- 2.1 The Academies Act 2010 received Royal Assent on 27th July 2010, forming the legislative foundation of the Coalition Government's academy policy. The Act enabled many more schools to become academies by removing the requirement for a school to be struggling

before conversion. Academies were to be funded at a comparable level to maintained schools, but their 'share' of central Government funding would go straight to the school to purchase services, rather than through the local authority. The Academies Act:

- Enabled all maintained schools to become academies, with schools rated 'outstanding' by Ofsted being pre-approved
- Extended the academy programme to primary and special schools
- Allowed for all schools to become academies in their own right (ie removing the requirement for a sponsor)
- Provided the Secretary of State with the power to issue an academy order that requires the local authority to cease to maintain the school
- Removed the requirement to consult the local authority before opening an academy

2.2 Further provisions were made in the Education Act 2011 when it received Royal Assent on 15th November 2011. The Act implemented much of the policy outlined in the 2010 White Paper, *The Importance of Teaching*, and built on the provisions of the Academies Act. It:

- Removed the duty on local authorities to appoint a School Improvement Partner for every school
- Extended the Secretary of State's powers to intervene in underperforming schools
- Removed the requirement for academies to have a specialism
- Required local authorities seeking to establish a new school, when it considers there is a local need, to first invite proposals for an academy. A community or foundation school could only be proposed if there were no proposals for an academy submitted
- Required for maintained schools converting to an academy to carry out appropriate consultation
- Clarified the provisions relating to the transfer of land to academies
- Extended the remit of the schools adjudicator to consider objections to admission arrangements of academies

2.3 Local authorities within this landscape have retained the majority of their statutory duties around education provision, including to:

- ensure sufficient school places, including early years and childcare – there has been a significant increase in demand in recent years, with our significant growth in primary numbers also transferring to the Secondary stage
- ensure fair schools admissions – increasingly challenging, given that academies and free schools are able to set their own admissions criteria
- coordinate school funding via the local funding formula – this applies to all publicly-funded schools in the authority area, although there is a strong possibility that the Government will move to a national funding formula subject to consultation to which the Council will respond as necessary
- assess and provide appropriate services for children and young people with special educational needs and disabilities (to the age of 25)
- provide home-to-school transport for some children and young people

- champion educational excellence for all children and young people, which is underpinned by an Ofsted inspection regime for council support for school improvement
- promote the effective participation in education and training of 16 and 17 year olds
- provide strategic leadership to support participation in education, training and employment
- secure sufficient suitable education and training provision, and appropriate support to access provision, for young people aged 16 to 19 and for those up to age 25 with a learning difficulty assessment or Education, Health and Care plan
- collect information about all young people and maintain a tracking system so that those who are NEET can be identified and given support to re-engage

2.3 The period since 2010 has seen a considerable evolution in national policy with the initial intention to allow those schools graded as Outstanding or Good by Ofsted (and then by degrees any school which could make a 'compelling case') allowed to convert with considerable financial advantages when compared to Local Authority maintained schools. At that time the decision to convert was one solely for the Governing Body of the school concerned. Since this time financial advantage for this choice for schools has largely been removed.

2.4 Development of the programme has seen the focus of 'academisation' reverting to tackling under-performance with the introduction of sponsored conversion with weak schools coming under the auspices of stronger ones in the context of locally brokered sponsorship arrangements or nationally recognised academy trusts. Developments have included provisions for the Regional School Commissioner, a new middle tier for the Academy programme. Additionally the Education and Adoption Bill:

- speeds up the process of turning schools that are causing concern into academies and modifies LA intervention powers. The Bill places a new duty on councils and governing bodies to actively assist schools to change their status to that of an academy, to a timescale.
- states that every school rated inadequate will be turned into a sponsored academy and barriers will be removed to ensure swift progress towards conversion.
- will mean that schools meeting the new coasting definition will be eligible for academisation. A coasting school is where data shows that, over a three year period, the school is failing to ensure that pupils reach their potential. A school will only be coasting if performance data falls below the coasting bar in all three previous years. The definition of coasting school is still subject to consultation, it differs from standard measures of school performance as it relies solely on data and not on OFSTED judgements or inspection reports.

2.5 Regional Schools Commissioners (RSC) were introduced in 2014 and act on behalf of the Secretary of State for Education. They are responsible for approving new academies and free schools. They will

also intervene in instances of underperformance. Supported by a board of academy headteachers and other sector leaders, they can also intervene in underperforming local authority-maintained schools, scrutinising the authority's plans for improvement and potentially enforcing academisation if deemed appropriate. The RSC for the south east, Dominic Herrington, oversees 22 local authority areas, including Surrey and some London boroughs.

- 2.6 This structural change to academy status is regarded by the DfE as key to the raising of standards in schools that have fallen into category following an Ofsted inspection. The DfE, their brokers and the new Regional Schools Commissioner are now heavily involved in conversion decisions with it being made clear to schools and Local Authorities that in most cases the expectation is that a failing school will convert to a sponsored academy. This position is developing further with 'coasting' schools' potentially putting three out of five primary schools at a new risk of intervention. This shift in emphasis has resulted in a move from the early stand-alone converter schools to sponsored academies where failing schools are taken into more successful multi-academy trusts which have secured approved sponsor status from the DfE.
- 2.7 It is the view of the DfE that local authorities should focus their school improvement activity on the schools they maintain, and should raise concerns about performance of academies and free schools directly with the RSC. It is expected that schools will take responsibility for their own improvement and help other schools that are struggling. More than 500 teaching schools have already been established – supported by national leaders of education and governance – to provide a national infrastructure for school-led self-improvement.
- 2.8 Multiple models of school led structure have been supported by the Secretary of State through the Regional School Commissioner both nationally and within Surrey.
- Large chains of multiple (above 20) schools operate throughout the Country, these have significant buying power within the sector making use of large economies of scale and the ability to provide services centrally to schools within the Multi Academy Trust (MAT). Whilst still supported there have been notable failures with this model. In 2014 the E-Act Academy chain was split with the Secretary of State finding new sponsors for a large number of schools.
 - There are a large number of standalone Academies, often high performing Schools that converted early in the early part of this decade. Large individual Secondary Schools can be sustainable in this model but there can be a concern over the financial viability of small primary age providers.
 - A model that has been formally supported by the Regional School Commissioner nationally and for the South East are small to medium MATs of between 5-15 schools often geographically close, with a lead school. A group of schools, that can be cross phase and potentially offer the advantage of economies of scale whilst not diluting leadership and retaining good local knowledge and links.

Academies in Surrey

- 3.1 Publicly-funded schools in Surrey are now a mixture of local authority-maintained, academies and free schools. Of a total of 390 schools (including 4 nurseries and 10 PRUs), 95 (24%) have now either converted to academies or are in the process of converting: 51 Primaries (inc. 3 Infant and 8 Junior), 34 Secondaries and 6 Special Schools. Surrey also has 4 free schools.
- 3.2 Conversions per academic year:
- 2010/11 16 (3 Primaries, 13 Secondaries)
 - 2011/12 7 (1 Primary, 6 Secondaries)
 - 2012/13 12 (4 Primaries, 1 Junior, 6 Secondaries, 1 Special)
 - 2013/14 30 (3 Infant, 5 Junior, 18 Primaries, 3 Secondaries, 1 Special)
 - 2014/15 12 (8 Primaries, 2 Junior, 1 Secondary, 1 Special)
 - 2015/16* 8 (6 Primary, 2 Secondaries)
**the 2015/16 figures do not include the 10 schools currently undergoing conversion*
- 3.3 Conversion rates at each phase (as at 9 Sep 2015):
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| Primary | 17% | (51 / 302) |
| Secondary | 58% | (31 / 55 – Surrey now has two secondary phase free schools) |
| Special | 13% | (3 / 23) |
| Total | 22% | (85 / 390 – inc. 4 Nurseries and 10 PRUs) |
- 3.4 There are 17 academy trusts and umbrella trusts operating in Surrey at the moment, of which only two are large ‘regional’ trusts – Academies Enterprise Trust and The Kemnal Academies Trust – with the vast majority home-grown from Surrey converters.
- 3.5 It is important to note that a significant proportion of Surrey schools remain maintained by the County Council. Current conversion processes and the capacity of the Council to achieve conversions, unless changed by primary legislation, mean that there will be significant role for the Council in managing schools that are maintained by the Local Authority going forward. Managing this process and the implications for those schools will be a key challenge for the Council going forward.
- 3.6 The council will need to consider the profile of those schools not converting and their existing relationship and call on central services with a view as to the sustainability of current provision levels. Additional work will need to be undertaken to assess the pattern of service provision in relation to differential rates conversion and the take up of centrally offered services.
- 3.7 Additionally if, whether through legislation or other means, whole-scale school transfer takes place, within the current context would result in a

loss of ESG funding. Currently this funding block is used to support our statutory and allied functions, including school improvement, centrally employed education staff (educational psychologists, education welfare etc), HR support for maintained schools. Such a reduction would make the current model of service provision unsustainable. The Council would have the ability to trade services with schools in this scenario but there would be no obligation on schools to use Surrey services. The Council will need to categorise relevant service viability in this context in the light of the retained statutory functions to ensure that mandatory regulations are met.

Legal Position for Local Authorities

- 4.1 Local authorities are expected to seek to work constructively with academies and alert the Department for Education when they have concerns about standards or leadership in an academy.
- 4.2 Expectations placed upon local authorities in respect of academies are set out across legislation and statutory guidance issued by the DfE. These define the scale of responsibility held by local authorities in relation to academies' performance and the scope of actions open to them to monitor and act where there is cause for concern. The responsibility that local authorities retain for performance in their area as a whole is set out in the Education Act 1996.
- 4.3 Local authorities have overarching duties under the Children Act 1989 in respect of the safeguarding of children in need, or those suffering or at risk of suffering significant harm, regardless of where those individual children are educated or found. To comply with these duties, local authorities may need to work with maintained schools, academy trusts or independent schools.
- 4.4 Where a local authority has concerns about an academy's safeguarding arrangements these concerns should be reported to the Education Funding Agency (EFA) who have responsibility to take any necessary improvement action and to monitor the situation.
- 4.5 The statutory guidance issued by the Department to local authorities on powers of intervention in those schools causing concern (January 2015) recognises that as academies are accountable to the Secretary of State for Education, local authorities should focus their school improvement activity on the schools they maintain and raise any concerns they have about an academy's performance directly with their Regional Schools Commissioner.
- 4.6 Local authorities can, if they choose, look at overall performance in their area (including academies) using data available to them. This can then be used to flag up concerns with Regional Schools Commissioners; or to facilitate forums where all local schools (including academies) are able to compare data, hold each other to account and discuss school to school support.
- 4.7 Local authorities that champion educational excellence would demonstrate this through seeking to work constructively with

academies and alert the DfE when they have concerns about standards or leadership in an academy. Local authorities should raise any concerns about governance arrangements in academies with the Department for Education.

- 4.8 The framework for inspection of local authority arrangements for supporting school improvement states that:

Inspectors will consider and report on the extent to which the support and challenge the local authority offers the schools for which it is responsible is promoting improvement in those schools. They will also explore whether local authorities seek to work constructively with academies in their area and, where they have concerns about standards or leadership in an academy, whether they alert the Department for Education through the Regional Schools Commissioner as appropriate.

- 4.9 Of significant concern for the council remains our statutory requirement to provide for the Basic Need of School places. We retain the responsibility for ensuring we have sufficient good school places in the right place at the right time. The Education Act 2011 introduced the concept of Academy Presumption in respect of all new schools which effectively requires all newly created schools to be Academies including all Free Schools. This has had implications for our processes around Basic Need. We work with potential sponsors in respect of the creation of new schools (Free Schools) and with existing Trusts within Surrey in respect of future expansions. Academies will be vital to delivering the increase in Secondary schools places that we need by 2020 given that they represent over half of the Secondary sector in Surrey.
- 4.10 We already working with partners to seek to encourage existing Surrey academies or Surrey based multi academy trusts to sponsor the new schools that are required to meet the growth in the school population. We also look to the Surrey family of schools to sponsor weaker schools that the DfE may require to convert, whether from maintained to academy status, or from existing academy status to a new sponsor. We actively seek to ensure that new sponsors will be existing Surrey schools and academy trusts, in preference to academy chains from outside of Surrey.
- 4.11 The Authority recognises that it does not have the ability to direct academy schools to admit additional pupils. Whilst the approach with all schools in Surrey has been consultative, formal directions have been issued, in extremis, to Community Schools, to ensure that our statutory duty for the provision sufficient school places has been met. The ability to direct Academy schools resides with the Regional Schools Commissioner and the Schools Adjudicator and this can be done on the advice of a Local Education Authority. It will be important for the Authority to retain cooperative links with these organisations. This will be especially relevant for local areas currently with a high proportion of Academy Schools, where the only feasible options for

additional places may be within an Academy or in a future fully academised system.

Our wider Work with Academies

5.1 Although the broad aim of the legislation is to move schools from the control of Local Authorities, despite the loss of funding as schools convert, there are still a wide number of areas where Surrey must work closely with Academies. Surrey County Council actively promotes the Surrey 'family of schools' and seeks to work in partnership with all schools to promote their improvement. Our school improvement strategy is focused on improving outcomes for all children and young people wherever they are educated.

5.2 Many of the schools that support the improvement of other schools are academies. It is in the interests of the wider family of Surrey schools and their pupils that we work closely with academies and support collaborations between academies and our maintained schools. We also support their work by offering services to them through our joint venture with Babcock 4S, and the majority of academies buy back a range of support services through this route. The contract with Babcock ends formally in 2019 and the county council will consider options up to that date and beyond. The contract includes a range of services including school improvement and the financial context is important with regard to the reduction in funding resulting from further academy conversion and a reduction in Government ESG to Local Authorities.

5.3 The quality of school improvement is reviewed by the government. Ofsted now inspects separately the school improvement functions of local authorities through a relatively new Framework. The stated purpose of these inspections is to:

- provides parents, elected council members, schools and other providers and those who lead and manage the local authority with an assessment of how well the local authority is performing in supporting and challenging its maintained schools to improve¹ and how well it works with other education providers within the local authority area
- provides information for the Secretary of State for Education about how well the local authority is performing its role in promoting high standards and championing excellence, ensuring equality of access to opportunity, fulfilling children's potential and providing support to schools causing concern
- promotes improvement in the local authority, its schools and the education system more widely
- requires the local authority to consider the actions that it should take in light of the report and prepare a written statement that sets out those actions and the timetable for them.

The inspection is designed to support improvement by:

- raising expectations about the standards of performance and effectiveness of local authorities in supporting and challenging educational provision in a local authority area
- identifying good or outstanding practice so that it can be shared more widely
- providing a sharp challenge and the impetus to act where improvement is needed
- recommending specific priorities for improvement and, when appropriate, checking on subsequent progress
- promoting rigour in the way that local authorities evaluate their own performance, enhancing their capacity to improve their functions.

5.4 Many reports assessed through the new framework have been critical of the efforts made by Local Authorities to monitor and intervene in schools. The council will want to be prepared for a possible inspection of school improvement although the basic indicators that merit an inspection do not seem to be currently present in the LA's data and outcomes. Ofsted tends to inspect local authorities that have worrying trends in standards and school Ofsted report outcomes, whereas Surrey currently has generally positive indicators.

5.5 At the same time in carrying out our statutory responsibilities, we work with academies in a number of other ways. The main areas of work with Academies can be summarised as follows:

- Academy conversion work – supporting schools through the academy conversion process and working closely with the new Trusts or sponsors to enable a smooth transition whilst protecting the interests of the County Council and its maintained schools.
- SEND – meeting all of our statutory obligations for students and their families in exactly the same way that we do for maintained schools.
- Home to School Transport – meeting all of our statutory obligations for students and their families in exactly the same way that we do for maintained schools.
- Finance – although Academies are funded directly by the EFA the basis of their funding remains the Surrey Schools' Funding Formula for allocating the school budget. The bulk of the work is still carried out by Surrey and information (and the relevant funds) then passed back to the EFA to distribute budgets to the Academies.
- Admissions – we still manage the coordinated admissions process for all schools and academies in the county. This becomes an increasingly complex process with all Academies being their own admissions authority.
- Babcock 4S – academies are important customers for both in and out of Surrey.
- Many academies in Surrey are working in partnership with maintained schools as part of local collaborations across the county. Their changed status does not preclude them in any way from working with other schools in sharing good practice and there has been considerable work on the part of academies,

maintained schools and Surrey to ensure continued joint working as part of the wider family of Surrey schools.

- 5.6 Surrey will need to consider the delivery of these services in relation to a significantly reduced ESG.

Conclusions:

- 6.1 There has been significant system change within the management of schools and school improvement in relation the roll out of the Academy agenda. The stated aim of the Government is to increase the pace of this change that sees the role of the Education Authority change from directing and managing school change to a facilitator of these functions.
- 6.2 Within this framework the Education Authority is expected to retain many of its statutory obligations but has choice in the way it defines its strategic role going forward. It can continue to be the champion for education outcomes for all children resident within its boundaries, reflecting on its current role within school improvement. Similarly it can consider how it manages and shapes the market of school provision with regard to brokering relevant school partnerships.
- 6.3 The implications for these changes can be seen to relate to our relationships with schools, Trusts, Diocese the Regional Schools Commissioner and other partners and the wider need for collaboration between these groups to meet certain retained roles, such as the provision of sufficient school places. At a wider operational level the need to continue the discharge of statutory functions in relation to a reduced budget reflective of both a reduction in funding from Central Government and the proportionate change attributable to Academy conversion will require further consideration.

Recommendations:

The Education and Skills Board is asked to consider this report and note the current position and the issues identified. It can consider future areas for further research and development.

Next steps:

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Sources/background papers: