

From: **Patrick Leeson, Corporate Director for Education and Young People's Services**
Roger Gough, Cabinet Member for Education and Health Reform

To: **Education and Young People's Services Cabinet Committee – 8 July 2015**

Subject: **The Local Authority, Academies and the implications of the Education and Adoption Bill**

Classification: **Unrestricted**

Past Pathway of Paper: None

Future Pathway of Paper: None

Summary: This report provides the Cabinet Committee with an update on the current position of Academies in Kent, the work that Education and Young People's Services undertakes in respect of Academies and the potential implications of the key academy related elements of the Education and Adoption Bill.

Recommendation:

The Education and Young People's Services Cabinet Committee is asked to consider this report and note the current position and the issues identified.

1.0 Background

1.1 As at 1st June 2015 there are 173 Academies (including 6 Free Schools and one University Technology College) operating in Kent. There are 99 Primary academies (22%), 73 Secondary Academies (71%), and one Special School. Within this figure are 16 'old style' Secondary academies created by the previous Labour Government on a different basis. They replaced non-selective schools that were under-performing mainly in areas with significant levels of deprivation.

1.2 The 'new style' academies have been established since September 2010 when the Academies Act 2010 was implemented by the Coalition Government following the May 2010 election. These academies converted from predecessor maintained schools wishing to, or being sponsored to leave, the control of the Local Authority.

1.3 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 then any financial advantage has largely been removed.

1.4 Further policy evolution saw the 'structural solution' 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.

1.5 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 more recently 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 recent announcements by the Government about RI and 'coasting' schools, explored in more detail later in this paper. 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. Primary schools now account for the majority of academy conversions, and they are mostly to the new Diocesan academy trusts.

1.6 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. This has had implications for our processes around Basic Need. There is now a very mixed picture across Kent with stand-alone Academies and Multi-Academy Trusts run by national and regional groups, the three Kent Dioceses and Trusts which have developed from Kent schools.

2.0 Legal and Policy Framework

2.1 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.

2.2 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.

2.3 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.

2.4 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.

2.5 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.

2.6 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.

2.7 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.

2.8 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.

3.0 Working with Academies

3.1 Although the broad aim of the legislation is to move schools from the perceived control of Local Authorities the fact remains that, despite the loss of funding as schools convert, there is still a wide number of areas where we work closely with Academies. KCC actively promotes the Kent '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. The strategy gives priority to brokering school to school support in partnership with the Kent Association of Headteachers, and many of the schools that support the improvement of other schools are academies. It is in the interests of the wider family of Kent schools and their pupils that we work closely with academies and support collaborations between academies and KCC maintained schools. We also support their work by selling services to them through EduKent, and the majority of academies buy back a range of KCC support services.

3.2 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 the school through the academy conversion process and working closely with the new Trust or sponsor to enable a smooth transition whilst protecting the interests of the County Council and its maintained schools. Working to identify existing Trusts that could act as sponsors for new or failing 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.
- Basic Need – we retain the responsibility for ensuring we have sufficient good school places in the right place at the right time and so we work with potential sponsors in respect of the creation of new schools and with existing Trusts in respect of future expansions as we would with any maintained school. For example, Academies will be vital to delivering the increase in Secondary schools places that we need by 2023 given they represent over 70% of the Secondary sector in Kent.
- Finance – although Academies are funded directly by the EFA the basis of their funding remains the Kent Schools’ Funding Formula for allocating the school budget. The bulk of the work is still carried out by KCC and information (and the relevant funds) then passed back to the EFA to distribute budgets to the Academies. The Academies still play an important role on the Kent Schools’ Funding Forum which we support.
- 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.
- EduKent – academies are important customers for EduKent both in and out of Kent. New products have been developed specifically for academies as some of the existing products are not appropriate for them given their different legal status and financial and governance arrangements.
- The majority of academies in Kent 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 KCC to ensure continued joint working as part of the wider family of Kent schools.

4.0 School Improvement

4.1 Following the Academies Act 2010 and the significant resulting numbers of Secondary schools that converted it was agreed that Kent school improvement

services would continue to work with these schools. We maintain an offer to Kent Academies through regular 'Keep in Touch' (KiT) meetings offer through the Senior Improvement Advisers (SIA). This was implemented with effect from September 2011.

4.2 The aim of the KiT meetings has been to ensure that we retain contact, and continue to work in partnership and support improvements. In this way the LA engages with almost all academies to varying degrees. In many instances additional time has been sanctioned to work with individual academies to focus on specific improvements and build stronger partnerships.

4.3 Following further changes to the accountability framework, Statutory Guidance on the roles and responsibilities of the Director of Children's Services and the Lead Member for Children's Services (April 2013), the introduction of the Regional Schools Commissioner and our need to ensure we had high quality intelligence for the Kent family of schools, regardless of status, it was agreed by the Corporate Director that we extend further our offer to academies. At the current time only a small number of the academies do not engage with this offer.

4.4 In its report from October 2014 on Academies and maintained schools: 'Oversight and Intervention' the National Audit Office concluded that:

'Local authorities have a legal responsibility to ensure that their educational functions are exercised in a way that promotes high educational standards. With maintained schools, they can discharge this duty through routine oversight, using their statutory powers to intervene when necessary. But with academies, local authorities have no powers to intervene and the Department only expects them to maintain constructive relationships and raise concerns about performance with itself. The Department's policy is that local authorities do not need to monitor academies proactively and should not require academies to report performance data to them. However, Ofsted has interpreted local authorities' statutory duties differently, and has criticised authorities for not working effectively with local academies to improve performance.'

4.5 Equally it found that practice varies between local authorities in a way that demonstrates the confusion. Whilst the vast majority of local authorities monitor academies' educational performance and a significant proportion monitor academies' governors, it is clear from multi-academy trusts with academies in more than one local authority area that there are a variety of approaches taken.

4.6 KCC does actively monitor the quality of Kent academies through Ofsted inspections, our own keeping in touch meetings and through our analysis of national published data on Key Stage results and examination results. Where there is a need for improvement we offer support, and help to broker support through collaboration with other schools, and in rare instances we write formally to the Regional Schools Commissioner or to Ofsted with any concerns about an academy school's performance.

5.0 The Education and Adoption Bill

5.1 The Conservative Manifesto committed the Government to ensuring 'a good primary school place for every child with zero tolerance for failure' and to 'turn every failing and coasting secondary school into an academy'.

5.2 The resulting draft Bill was published recently and received its first reading in the House of Commons on 3rd June 2015. The first opportunity to debate the Bill will be at its second reading, and a date has yet to be announced.

5.3 The Bill incorporates two core elements: stronger intervention powers and a faster and more streamlined approach to conversion to academy status. A greater number of schools are identified for conversion in line with references to 'coasting' schools and those which hold an Ofsted rating of Requires Improvement.

5.4 The Bill details how LA maintained schools rated as inadequate by Ofsted will have their legal options curtailed or removed, enabling the DfE to move more quickly to replace their management and impose academy sponsors. It is not immediately clear where this additional capacity to deliver this will come from. The education purpose of the Bill is to strengthen the Government's intervention powers in failing maintained schools.

5.5 The main elements of the Bill are:

- To speed up the process of turning schools that are causing concern into academies and modifies LA intervention powers. The Bill will place a new duty on councils and governing bodies to actively assist schools to change their status to that of an academy, to a timescale.
- An inadequate Ofsted judgement normally leads to a school being converted into an academy. The Bill proposes that in future every school rated inadequate will be turned into a sponsored academy and barriers will be removed to ensure swift progress towards conversion.
- To make schools that meet a new coasting definition, having shown a prolonged period of mediocre performance and insufficient pupil progress, eligible for academisation.
- A new definition of a coasting school will be set out in regulations in due course.

Implications of the Bill for KCC

5.6 Assuming that the Bill does become law in the way it is currently framed the implications for Kent may not be significant. The obligation to actively assist schools to change their status to that of an academy would not, on the face of it, require us to change our approach to managing the conversion processes unless shorter timescales are set. This would create resource implications within the current Academy Conversion Team and several other teams and functions within the authority which provide information and support to the process. These include Property, Legal, Pensions, Finance and HR.

5.7 We already have a clear picture of the performance of Kent schools and the majority of our RI schools are already on a positive trajectory to become good schools at their next inspection. We expect many of them to move out of RI status in the coming months so reducing the need for further sponsored conversions. Over 81% of schools in the county are now rated as Good or Outstanding.

5.8 Further analysis is underway to identify the number of schools that could be affected by the proposals in the Bill because they are coasting, in order that we can target support even more effectively, either directly from KCC or through existing collaboration arrangements between schools and academies. Any reasonable definition of coasting would include schools where insufficient numbers of pupils are making expected rates of progress, even where headline results are not necessarily poor and may even be good.

5.9 We already have work underway to seek to encourage existing Kent academies or Kent multi academy trusts to sponsor the new schools we will require to meet the growth in the school population and to sponsor weaker schools, which under the new proposals 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 Kent schools and academy trusts, in preference to academy chains from outside of Kent. In addition, we continue to encourage hard Federations amongst maintained schools to support school improvement and stronger system leadership by Executive Headteachers.

Recommendation:

The Education and Young People's Services Cabinet Committee is asked to consider this report and note the current position and the issues identified.

Background Documents

Schools causing concern, statutory guidance for local authorities, January 2015
The common inspection framework: education, skills and early years (with effect from September 2015)

Contact details

Lead Officer

Name: Ana Rowley

Title: Academies Conversion Team Manager

 03000 416630

 ana.rowley@kent.gov.uk

Lead Director

Name: Keith Abbott

Title: Director of Education Planning and Access

 03000 417008

 keith.abbott@kent.gov.uk