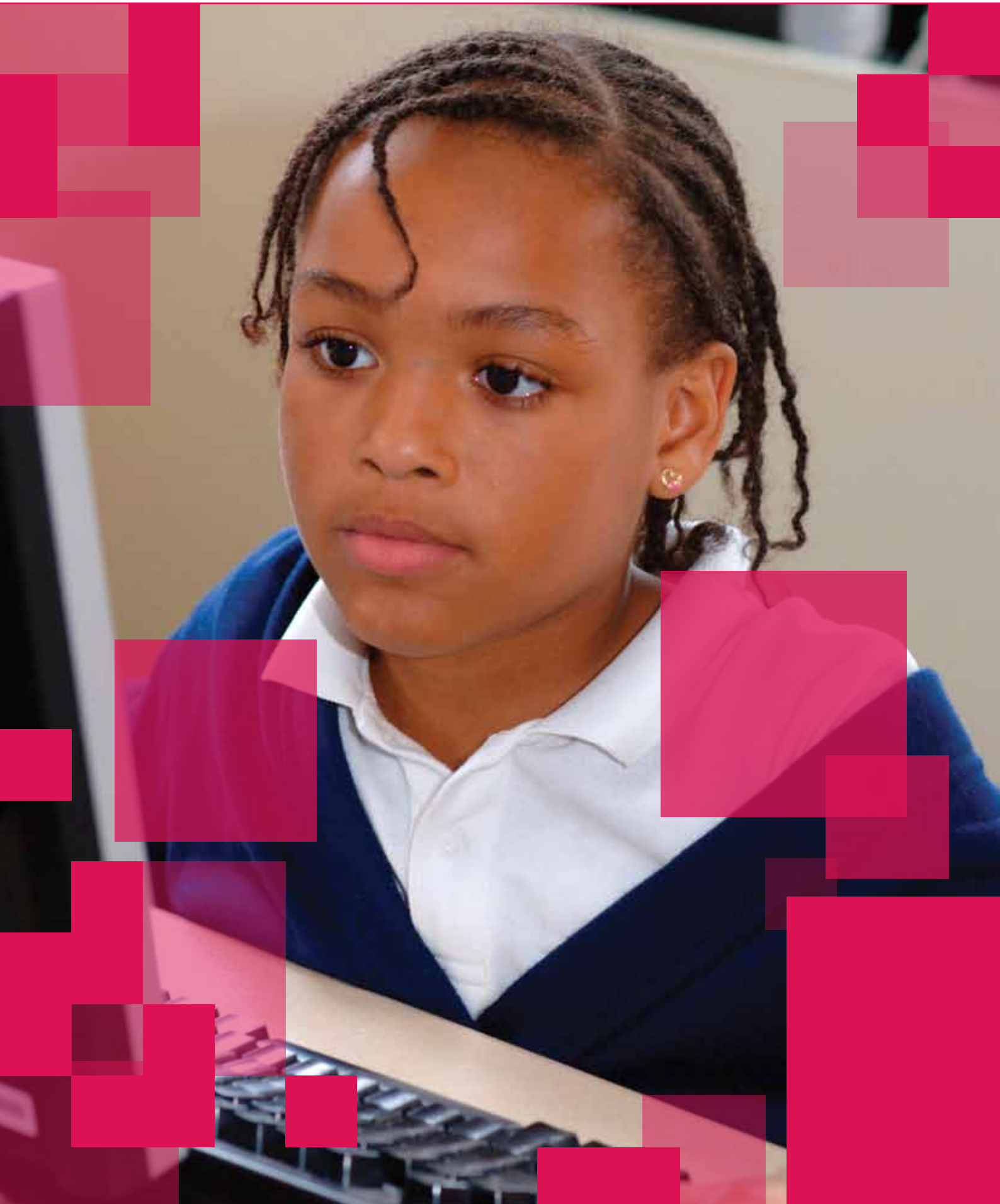
Free schools:
challenges and opportunities for accountability

cfps Centre for Public Scrutiny
accountability, transparency, involvement



The Centre for Public Scrutiny

The Centre for Public Scrutiny (CfPS), an independent charity, is the leading national organisation for ideas, thinking and the application and development of policy and practice to promote transparent, inclusive and accountable public services. We support individuals, organisations and communities to put our principles into practice in the design, delivery and monitoring of public services in ways that build knowledge, skills and trust so that effective solutions are identified together by decision-makers, practitioners and service users.

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Introduction

The Schools White Paper – The Importance of Teaching, published in November 2010, has as one of its key messages that local authorities will have a strong strategic role in education as champions for parents, families and vulnerable pupils within an increasingly autonomous schools system. Local authorities will ensure "that the school system works for every family and use their democratic mandate to challenge every school to do their best for their population"[1].

In this context, the introduction of free schools is likely to present challenges, as such institutions are not bound to any standards which are overseen by local authorities. Consider for example the draft curriculum being supported by The Evening Standard campaign regarding literacy, which will require children to learn certain words, suggested as a way for government to promote higher literacy standards across the country. Free schools and Academies as a whole – soon to make up a majority of all educational provision in England - will be exempt from this policy[2]. As we shall see this will place an onus on all those within the system to be prepared to build relationships, to work well together, and to understand that accountability derives from a range of different sources.

There are three important areas relating to accountability and governance that this report will look at: involvement, information alongside academic results and funding.

Involvement is of importance in the context of accountability as a free school's integration within the community it operates has an impact on the (i) families who live in and around the free school; (ii) other schools and (iii) planning issues.

The report will look closely at what information free schools must disclose and how, and what information it can disclose at its own discretion, especially information relating to exclusions and staff turnover.

Finally, the report will look at the funding arrangement of free schools, as this is the issue that fundamentally separates Academies from Maintained schools. Free schools receive their funding directly from the Department of Education whereas Maintained Schools receive their funding from local authorities[3]; the question is whether the checks on how this public money is being spent by free schools are robust enough to satisfy the principles of democratic accountability.

1 The importance of Teaching: The Schools White Paper, November 2010

2 The London Evening Standard, Anna Davies 11th June 2012

3 education.gov.uk

Methodology

Telephone interviews and face to face interviews were undertaken with governors and professionals from free schools and one professional from a traditional academy sponsor carried out between May and June 2012. Six existing free schools and six free schools due to open in September and beyond were contacted. In addition a focus group was conducted consisting of scrutiny officers[4] from authorities from various parts of the country centred on the issue of the future of free schools and their impact on communities. All responses have been anonymised, including the comments of scrutiny officers, so as not to single out the views of individuals.

4 Council employees with a responsibility for providing policy support to local authority overview and scrutiny committees.

Executive summary

There may be a tension between the national and local accountabilities of free schools.

While some in the education sector have made the assumption that the 'parent led' nature of free schools, bolstered by financial accountability to central Government, will be enough to secure their accountability, for practical purposes this won't be sufficient in the long term – especially if and when these two accountabilities come into conflict. There will need to be some engagement with the wider community and with local public service partners (going beyond what is required by law during the consultation phase of free school planning) if free schools are to be a success. This engagement will, inevitably, mean an engagement with local formal accountability structures such as overview and scrutiny.

This does not mean that free schools will, or should be, accountable to local authorities – an accountability which this Government, and previous Governments, have sought to remove. It means, instead, that there should be dialogue, communication and negotiation over shared objectives and solutions to mutual problems.

In order to work, such a system requires:

- The provision of accurate and timely information – to parents, prospective parents, and partners;
- Formal or semi-formal systems locally which allow the school to be at least answerable for the decisions it takes which will have an effect on the local community;
- A means for resolving disagreements and disputes between schools and partners around conflicting service delivery responsibilities;
- A more transparent approach to funding so that parents and partners can more effectively understand what free schools' priorities will be in the context of their funding agreements with Government.

There are some specific areas where action around accountability should be taken by Government, schools and their partners.

Working together

The procedure for approval and establishing a free school must be more transparent. The establishment of free schools will have an impact on other schools, and other agencies delivering services to young people – they need to have an opportunity to be involved, or at least be informed.

A more transparent approach will also lead to more success in involving a wider range of prospective parents. This is not necessarily the same as suggesting that a traditional, lengthy "consultation" exercise is carried out. But without such engagement, it seems more likely that local opposition groups will attempt to frustrate free schools, and may enhance the risk of local hostility to these plans.

Information sharing should be led locally. Local authorities will find it very difficult to maintain their role in oversight of adequate education within their boundaries if such basic information as school attainment is not willingly submitted for their broad analysis of the state of education within their remit. A best practice procedure of sharing information, which has developed in the United States regarding charter schools, may be necessary. Ofsted has a clear role to play in education monitoring; however a local authority by its proximity to a free school can play a critical friend role if based upon local agreements (formal or informal) between free schools and local authorities which does not question the independence of the school in principle.

Free schools themselves

Free schools should be prepared to consider a more coordinated procedure for capital allocation and procurement. Economies of scale cannot always be realised, but local authorities will be in a position to assist and advise new schools on purchasing, and free schools themselves may be able to engage with authorities and other schools in the area to purchase certain items jointly.

Groups interested in establishing a free school should coordinate with local authorities so that they can be sure that they are targeting relevant areas of need, through accessing the demographic information and expertise at the council's disposal. This will be particularly important in ensuring that free schools and existing schools do not compete with each other in such a way that will be damaging to either schools, or their pupils.

Accountability for individual parents and pupils will need to be a priority – particularly on the issues we have identified around statementing and admissions policies.

Free schools should ensure that the roles and powers of the governing body and sponsor trustees are clearly explained and understood by parents and partners, and that the business of the governors is transacted in as open a manner as possible.

Background to free schools

Free schools are, by law, academy schools[5].

Unlike traditional Academies, which are large organisations with a strong middle tier, i.e well established with their own 'back office' that provides multiple schools under the same sponsor's umbrella with support services such as HR, payroll and so on, free schools on the other hand are stand alone, wholly apart from all other school structures in a local area.

Traditional academies are large organisations with a strong middle tier, i.e. well established with their own 'back office' that provides multiple schools under the same sponsor's umbrella with support services such as HR, payroll and so on. Free schools on the other hand are stand alone, wholly apart from all other school structures in a local area.

England's position in the OECDs PISA[6] rankings has motivated reform in this area. The rankings have shown England falling behind other nations in key core subjects and have been frequently cited as a cause for concern and action by the Secretary of State for Education, Michael Gove.

Concerns have been raised at the speed with which free schools are coming into being in England. It was only in the summer of 2010 that Michael Gove declared an invitation to treat with proposals for free schools. As of June 2012 there are 24 open and running free schools and eight[7] expected to open in September. Local authorities are attempting to get to grips with their new role amidst the changing educational landscapes, although warnings of a 'perfect storm'[8] by one educational director and comments emanating from a focus group of scrutiny officers demonstrates that there are pockets of uncertainty among local authorities which have not been fully addressed. The unions representing teachers have been far more critical of the free school proposals describing them as a 'Back way of dismantling the state system'[9].

5 ibid

6 OECD PISA (Programme for International Student Assessment) is an international study which began in the year 2000. It aims to evaluate education systems worldwide by testing the skills and knowledge of 15-year-old students in participating countries/economies. Since the year 2000 over 70 countries and economies have participated in PISA

7 Education.gov.uk

8 Future Role of LA in School improvement, 2012, p3

9 bbc.co.uk, Coughlin 2010

The positive role of local authorities in ensuring that all schools, regardless of academy status, meet the needs of their populations with effective mechanisms for scrutiny, will be argued in this report as an area requiring further development by decision makers.

All this being said, the fact that free schools are being planned, and are opening, suggests that there is a clear demand for them. They are a part of the education sector that will only expand in the coming years.

Why free schools? The international context

To understand the free school phenomenon in England it is important to have some understanding of its forerunners in other countries, particularly in Sweden and the Charter Schools in the United States, both reported to have inspired the new free school system in England. An initial, less detailed assessment of these issues can be found in Policy Briefing 13, "Accountability in education"[10].

The case of Sweden

Background

Free schools have been around for almost two decades in Sweden, Susanne Wiborg, in her report Swedish Free Schools: Do they work?[11] suggests it is important to understand that Sweden has a historical tradition of policies on educational equality that culminated in the 1960s as one of the most radical comprehensive school systems in Europe. The provision of educational and social welfare was a deeply intertwined process when post-war governments sought to achieve a more equal and fairer society.

It is not the general educational system in Sweden that has fascinated the Coalition Government, however, but the free schools which operate on the periphery of the Swedish school system as a whole. Wiborg observes that there is a tendency in the English debate to discuss the Swedish free schools in isolation from the rest of the Swedish Schools System in which free schools are an integrated, but small part.

The attitude to social services in Sweden is such that education until recently was organised as a virtual monopoly of carefully planned and subsidised services and, therefore offering hardly any choice for its citizens. Regardless of income, social status or cultural disposition, citizens have historically been referred to public services whether health or education in their area of residence.

Since 1988, however, there has been a gradual decentralisation in educational provision in Sweden, with the aim of private providers contributing to the establishment of a wider range of schools thus increasing freedom of choice. This would, it was argued, lead to the creation of more specialisation, greater variety and increased flexibility in the school system and thus combat perceived inefficiency, as well as the perception that private providers could enhance the overall quality of the school system.

10 http://www.cfps.org.uk/policy-and-skills-briefings

11 Wiborg,S (2010) Swedish Free Schools: Do they Work? Published by the Centre for Learning and Life Chances in Knowledge Economies and Societies at http://www.llakes.org

Differing providers with differing profiles competing for pupils would thus revitalise the school system. This would lead to better forms of school governance and improvements of teaching. Ultimately private provision would lead to a more cost effective school system as the free schools would contribute toward a more effective use of resources in the school system as a whole. This was established through the introduction of vouchers. However, strategic matters have remained under central and local municipal responsibility through powerful instruments of control, financial resources, national curriculum[12] and inspection. Policy in England is based on a far more deregulated approach, with accountability being exerted principally at local level – although some backstop powers are reserved to the Secretary of State through the funding agreement, which we will consider later.

In 1991 there were around 60 non public schools in Sweden; by 2009/10 their number had reached 709. Similar to the health care sector, private providers tend to be overrepresented in high income areas. Free schools take various forms – from small cooperatives whose establishment may have been caused by the closure of a municipal school, to schools with a particular approach or subject specialism and schools which are run by large for profit education companies.

It was the hope by the non social democratic governments that a trend toward schools offering a particular specialism and more parental involvement would develop. By the late 1990's however the majority of the free schools had adopted a more generalist approach and the fastest growing type of private schools were for profit based schools run by private families. Parental involvement in setting up free schools has 'remained rather modest'. Five out of every six free schools made a profit of more than half a billion SEK, many of them made a profit between 8-50% of turnover (Holm and Arreman 2010, cited by Wiborg, pg 12).

Competition

Competition has also been criticised as being unequal, with many free schools employing various marketing strategies such as offering free computers, sports profiles, and famous teachers – although this could be described as a key driver for accountability. Most importantly the common criticism is that companies are allowed to make a profit at the expense of the Swedish taxpayer.

Due to national differences in school systems, the international research community has not reached a consensus on the effect of independent schools on attendance and school competition on student achievement.

12 Although free schools need not follow the national curriculum, the education they provide must match the knowledge and skills and comply with general objectives of the national documents.

Achievement

Data on the question of whether free schools in Sweden have achieved a higher quality of learning through competition, using the measure of attainment have largely rested on the works of Bjorkland et al (2005) and Bohlmark and Lindahl (2007 and 2008). The researchers analysed the relationship between growth in free schools and municipality and changes in test scores over a short period of time. They were unable to identify a consistently positive impact by free schools' on their share of educational attainment. They found a small positive impact on Swedish and English attainment but a negative impact in Maths, the researchers conclude that there is no evidence that students are harmed by competition from free schools, as public schools tend to improve their quality because of it (Wiborg, S 2010).

Costs

The hypothesis that competition between free schools should produce the same amount of learning at a lower cost is an assumption unsupported by a number of studies, including one conducted by the Swedish National Agency for Education. The agency, in a report from 2006, state that 'municipalities with a high proportion of free schools have had financial effects in the form of overcapacity and significant increases in costs….public schools are induced to maintain a certain level of education as they are obliged to accept every child in a certain attendance zone- they have long term contracts …Also a shifting pupil base makes planning more difficult which in turn increases the municipalities costs in the short and long term (Wiborg, S 2010). This has important contextual lessons for England, where local authorities maintain overall responsibility for pupil attainment.

Wiborg suggests that on the basis of the Swedish experience, the following questions need to be addressed by English educational policy makers:

1. Are parents in England really interested in running schools? Sweden has a limited tradition of this, but England does not, so why would we see a large number of locally run schools in England when this is not even the typical outcome in Sweden? It seems more likely that private educational providers will run the schools on a not for profit basis, but Sweden is not the best model for this since its experiment has involved for profit schools.
2. Should Swedish companies be allowed to run schools in England when they are not able to produce outstanding results?
3. Is more choice desirable if free schools do not reconcile high academic standards and social integration?
4. How can the existing comprehensive schools in England compete on equal terms with the free schools if they are not subject to the same regulation and receive less state funding? Is this fair? (Wiborg, S 2010).

The final two questions must be considered very carefully, considering the general perception that the social and economic gap in the UK is growing rather than diminishing. All four raise significant issues about accountability and governance.

The case of charter schools

Charter schools are playing an increasingly significant role in the educational system in the United States. These schools are independent public schools allowed freedom to be more innovative. Their aim is to foster a partnership between parents, teachers and students to create an environment in which parents can be more involved, teachers are given the freedom to innovate and students are provided the structure they need to learn. All three are held accountable for improved student achievement.[13]

The main features of a charter school are that it is:

1. Tuition free and open to every student who wishes to enrol
2. Non sectarian, and do not discriminate on any basis
3. Publicly funded by local, state and federal tax dollars based on enrolment, like other public schools
4. Held accountable to state and federal academic standards[14]

The centre for Research on Educational Outcomes (CREDO) at Stanford University in July 2009 undertook a study to analyse how well charter schools do in educating their students. Due to the progress in student data systems and regular testing, CREDO were able to compare students experience in charter schools with how they would have fared in the traditional public schools they would otherwise have attended.[15]

The report found that of the 2403 charter schools analysed 46% of the schools have maths gains that are statistically indistinguishable from the average growth among their traditional public school (TPS) comparisons, with 17% exceeding their TPS counterparts and the remaining 37% posting maths gains that were significantly below what their students would have seen if they enrolled in local traditional schools. The effectiveness of Charter schools was found to vary widely by state (Stanford University 2009).

13 http://www.publiccharters.org/About-Charter-Schools/What-are-Charter-Schools003F.aspx

14 ibid

15 Stanford University (2009) Multiple Choice: Charter School Performance in 16 States published by Centre for Research on Education Outcomes (CREDO) at http://Credo.stanford.edu

The report acknowledges the strength of demand, as of 2009 more than 4700 charter schools enrolled over 1.4 million children in 40 states including the District of Columbia. However the report reveals in unmistakeable terms that in the aggregate, charter students are not faring as well as their TPS counterparts. There is a great variation in academic quality among charters being the norm rather than the exception, with the problem of quality being the most pressing issue that charter schools and their supporters face. The report does note some encouraging features of charter schools including two subgroups that fare better in charter schools than in traditionally public schools: students in poverty and English Language Learner students. However those students not in poverty and students who are not English language learners on average do notably worse than the same students who remain in the traditional public school system. First year charter students suffer a sharp decline in academic growth; overall findings of this report indicate a subset of poorly performing charter schools. The report suggests that if the charter school movement is to flourish, or indeed to deliver on promises made by proponents, a deliberate and sustained effort to increase the proportion of high quality schools is essential. Authorisers[16]' will also need to be willing and able to fulfil their end of the original charter school bargain: accountability in exchange for flexibility. 'When Schools consistently fail, they should be closed' (Stanford University 2009).

The report highlights that neither market mechanisms nor regulatory oversight have been a sufficient force to deal with underperforming schools, with an apparent 'authorizing crisis' in the charter school sector. Authorizers according to the report find it difficult to close poorly performing schools, due to powerful and persuasive supporters in their communities who feel strongly against shutting the school and only evidence of financial insolvency or corrupt governance may lead to a closure rather than poor academic performance. But the report suggests the apparent reluctance of authorizers to close underperforming charters ultimately reflects poorly on charter schools, with a negative effect on students (Stanford University 2010).

The report calls for more accountability, the public should know the status of each school in an authorizer's portfolio, and to gauge authorizer performance just as authorizers currently gauge charter performance. This would mean a national set of performance metrics, collected uniformly by all authorizers in order to provide a common base line in which to compare performance of charter schools and actions of authorizers across state lines to provide full transparency and put pressure on authorizers to act in clear cases of failure (Stanford University 2010).

16 Authorizers: Equivalent to academy sponsor- includes non for profit organisations and traditional public school districts

Involvement and sharing information

Free schools have been set up specifically to be independent from local authority control – they are parent-led institutions, managing themselves. However, they cannot operate in isolation, despite the assumption having been made by some that the external environment of the local community will have little impact on free schools themselves[17] (See Cummings, Dyson and Milward 2002 cited in Case & Hadfield). For some time there has been a shift towards a more inclusive approach to partnership working in the field of education (Wilkin et al 2004, cited in Case & Hadfield), and this is a development from which free schools are not immune.

Involvement of the community will, therefore, be critical, and at no point is involvement more important than at the consultation phase of a free school's establishment, in which they must demonstrate to the Department for Education parental demand for their school. This engagement and consultation will, naturally, become less intensive once the school opens, but it will still need to continue.

Involvement of partners is also important, to ensure that policies and services being delivered by other agencies take account of free schools' activities, and vice versa. Many free schools have set out an intention to sit at the heart of their communities, delivering 'extended schools'-style services. In order to do this effectively, liaison with partners will be necessary. Along with this engagement will come some form of shared accountability, particularly for services delivered jointly.

Involving the community

The first opportunity a prospective free school has to engage and involve the community is through the consultation phase, during which they must demonstrate to the DfE parental demand for their school[18]. Free schools are required to survey parents to ascertain who would identify the school as a choice for their child if it were available. They need to provide a list of parents with children of the relevant age equivalent, as a minimum, to 50% enrolment in their first two years of operation; if they do not do this their application will not be accepted. Parental demand – and engagement with the plans – is here treated as a key means of accountability.

17 S Case & M Hadfield, NCSL (2006) Community involvement in the Networked Learning Communities programme: http://networkedlearning.ncsl.org.uk/knowledge-base/conference-papers/eera-paper-draft-300704.doc

18 Newschoolsnetwork.org: Demonstrating parental demand

As such, working with the local authority from an early stage may help identity families on waiting lists or specific areas of need for school places – assuming that the local authority is also willing to take part in this process.

The example of Free School Norwich[19] demonstrates how this might work in practice - during their parental demand survey the school worked closely with the local authority that now looks after the admissions process for the school. Norfolk County Council sent out application packs to parents with school age children, including information about the free school.

Governors and professionals of free schools to whom we have spoken are adamant that their school makes tremendous efforts to engage with their local community taking advantage of working with local ecclesiastical establishments, the police and local business. This does raise the prospect of ongoing, long-term relationships being built up. However, with the focus across many schools having been on engagement in the initial consultation phase, questions remain about commitments to maintain these relationships in the long term.

Involving other partners – particularly the local authority

The relationship between free schools and local authorities is typified by caution on both sides.

Schools are keen to emphasise the voluntary nature of their involvement with councils – they are not obliged to use council services, but professionals we spoke to saw themselves as part of the "family" of local schools, participating in the same way as any maintained school.

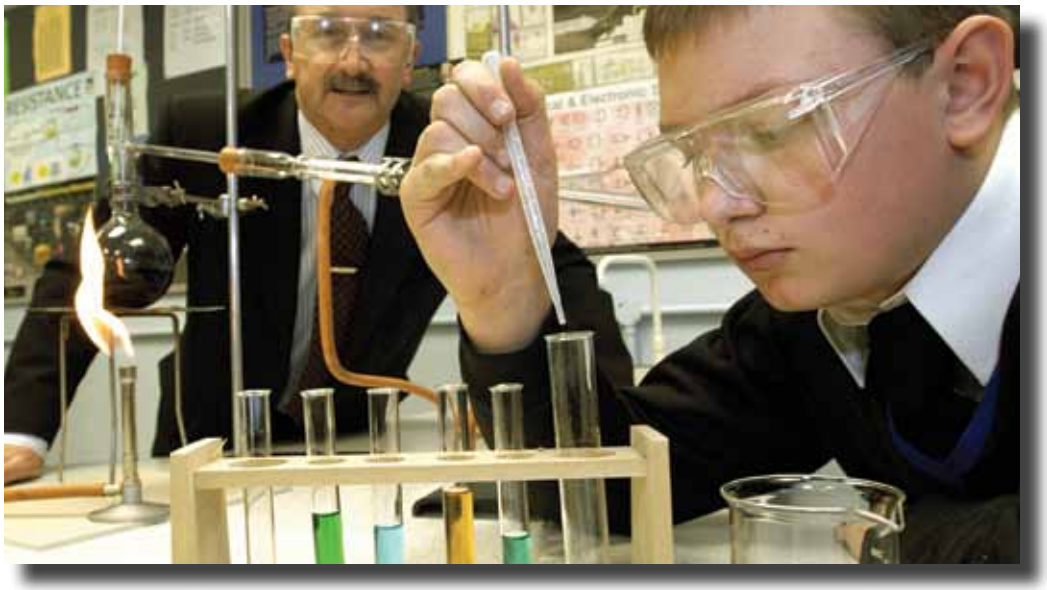
This poses questions about the relationship between school and council under such arrangements – particularly considering the council's duties around pupil attainment. Is it merely the relationship between contractor and provider, or does the council's duties make its role look slightly different – a role of light-touch oversight, understanding what free schools are trying to achieve and identifying any early warning signs of future problems (which it will be obliged, in some respects to act upon)?

Oversight and support services - the quality of support or advice given by an authority is of course dependent on how effective the authority's children's services department is, and whether the skills still exist within that department to maintain this oversight (if, indeed, it is even thought necessary).

19 http://newschoolsnetwork.org/sites/default/files/media/norwich%20case%20study%20formatted.pdf

It also depends on whether the council is prepared to provide support to free schools in its area for ideological reasons. The conversations we have had with authorities suggest that even where there is political opposition to the policy, for practical purposes new free schools may be dependent on local authorities for a range of things including payroll, governor services and staff training. In the course of researching this report we have spoken to authorities who have carried out extensive work with academies, and plan to do the same with free schools. However, one person we spoke to suggested that schools might end a contract if they felt that the local authority was intruding on its independence – which emphasises the need for delicacy in these arrangements, which will be different to a mere client/provider relationship insofar as the provider might see itself as rightly having more of a say in how the school educates its pupils.

This issue was highlighted by Croydon Borough Council, who commissioned a report on the impact of new academies and free schools in Croydon[20]. The report sought to investigate among other things, the Council's strategic approach toward academies and free schools; Service delivery; the powers of the Council to influence academies' decisions regarding the running of the schools (e.g. admissions criteria, delivery of curriculum, make up of governing bodies); the role of academies in the community and what would be the role of the Council should an academy begin to show signs of declining performance in line with the Council's statutory responsibilities.



20 Scrutiny Working Group - commissioned by the Education Scrutiny Sub Committee, The impact of new academies and free schools on Schooling in Croydon, April 2012

The report recognised that the Council still had a crucial role to play in education in light of the Children's Act 1989 which gives local authorities a statutory responsibility to ensure an appropriate and effective education for all children within its boundaries. The report favoured the Council engaging academies in an 'equal and respectful dialogue that promotes positive working relationships based on partnership and trust' (Croydon 2012). Such an approach seems particularly important when considering the council's duty to make educational provision, if a free school should fail. As such, systems will need to be put in place to ensure that early warning signs of failure can be identified and discussed locally (not just between the free school, its sponsors and DfE).

Due to the Academies Act 2010 making provisions for free schools to be set up without the need for groups to consult with local authorities, any engagement over the relationship between the local authority and the school will need to be conducted on a case by case basis to suit local need. Members[21] of the group investigating this in Croydon were concerned that without the requirement to consult with the council, 'a free school in Croydon would have the potential to undermine all local planning for capital investment and pupil places' (Croydon 2012, pg 7). The report therefore suggested that groups planning to establish a free school should be encouraged to share their concerns about local school needs with the Council to explore whether the provision in existing schools can be adapted. This approach could be seen as an attempt to ensure that provision across the area meets local need in a more holistic way, or as an attempt to thwart the Government's policies and to thwart the rights of parents to take responsibility for their own children's education without the council acting as a gatekeeper to education, depending on one's point of view.

That all parties to these discussions should recognise the risks of such engagement is clear, and highlights the need that they should be properly evidence based. This suggests that free schools should have regard to demographic data and population trends to ensure that any new school has a sustainable demand for places to avoid a surplus of places in parts of the borough where demand is low. A lack of demand has been cited as part of the reason for the failure of several free schools immediately prior to the start of autumn term 2012.

21 Councillors

Information sharing – a relationship of mutual trust and respect – will not happen automatically, or overnight. As neither free schools nor academies are obliged under law to share such information as attainment, it is recognised by the report that in order to foster a positive relationship the Council should allocate resources to provide a consulting advisor for schools going through the conversion process and a designated officer to work with each new school[22]. Naturally, there will be resource implications for councils who consider that this is the best way to fulfil their statutory duties.

It seems likely that proactive publication by free schools of official management information will become the norm. Quite apart from anything else, in order to inform parents, and prospective parents, about school performance, this will be necessary. It may be possible that this will offset some of the more common information requests, but Freedom of Information (FOI) will need to become a fact of life for free schools and academies, providing an element of transparency around their use of public money to fund their activities.

Standard management information, shared as a matter of course with other agencies and made available to parents, might include:

- Data made available by law – attainment at Key Stage 2, 3 and 4, authorised and unauthorised absences, information prepared relating to Ofsted inspections;
- Wider contextual information (business plans and long-term strategies, high-level spending information, staff turnover and so on).

In practice, it may be that the management information passed to governing bodies can be published without too much difficulty. In the interests of enhancing local accountability, it may be that free schools will seek to give their governing bodies a higher profile and to encourage the local community to engage with those bodies directly.

The alternative is for councils, partners and the wider community to use the FOI Act[23] to try to access information – a prospect which we have been told worries free school professionals, who think that it is likely that the Act will be used by campaigners and ideological opponents of free schools to go on "fishing trips" to try to identify information that might present those schools in a poor light. It therefore seems more likely than not that schools should attempt to be proactive in considering what information the public, and partners, would be most interested in seeing, and aiming to build the publication of that information into standard management systems.

22 Supra, n20

23 Further to the Academies Act 2010, academies and free schools are subject to the FOIA.

Oversight by councillors - we canvassed the opinions of a number of scrutiny officers from around the country on the involvement of local authorities in the work of free schools. These officers were particularly concerned about the public accountability of free schools, given the lack of formal powers for overview and scrutiny to have some kind of oversight over the way they work with each other and with other agencies in the locality. Wider democratic accountability – through the local authority, and local councillors – could be seen as a way to bolster the more limited responsibilities that free schools have towards parents of pupils at those schools. Of course, the point has been made by Government policymakers that such independence of local authority oversight is in the nature of the freedoms which academies and free schools have been given.

One officer commented academies may appear before Member committees; however they appear to be 'answerable, but not accountable' – that is to say, willing to come before boards of elected members to explain their policies and actions, but under no compunction to accept direction from those members.

Scrutiny officers expressed concern with the idea that authorities are still liable for the quality of education within their boundaries without effective statutory controls on independent schools. The recurring question being how can authorities effectively play the role of champions for parents and children when free schools and academies are not obliged to share vital information such as exclusion or absence data, or bound to the advice of authorities. It is the sharing of information, and willingness to engage in dialogue, that is a crucial and recurring concern. Effective data sharing would make it easier for local authorities to link the work of free schools in with their wider children's services duties, and would make it easier for overview and scrutiny to engage with schools as part of wider work around children and young people.

A specific scrutiny role is not one that free schools are keen to see. Professionals in the schools we have spoken to view authorities as having a broad role of oversight, but certainly not a focus on individual cases. This raises the prospect that a lot of the reticence on the free school/academy sector about engaging with authorities, and specifically with overview and scrutiny, hinges on the assumption that such scrutiny will be antagonistic and adversarial, with councillors seeking to reprise the micromanaging approach which was seen in the activity of some authorities' Schools Organisation Committees. Shared trust and mutual understanding may help to overcome these perceptions.

Officers were also concerned about local authority representation on governing bodies with limits on local authority representation and with the definition of LA representative extending from members to include officers. This limits who can be governors of free schools as well as excluding vital expertise and scrutiny that local authority officers may be able to bring to the governance of free schools.

Free schools in England: national accountability

Funding agreements[24]

Free schools are funded from the public education budget, like other state schools, on a per pupil basis. Free schools approved to open in 2012 will enter into a funding agreement with the Secretary of State. The Funding Agreement provides the framework within which the free school will operate[25].

The funding agreement entails the legal agreement, the characteristics of the academy and when it is due to open. Conditions of the grant are set out with requirements on governance, Criminal Records Bureau checks, teachers and other staff, curriculum development and delivery pupil premium and conduct.

The agreements also sets out grants to be paid by the Secretary of State, including a capital grant, general annual grant and additional funding. There are financial and accounting requirements regarding borrowing powers and disposal of assets. It is within the agreement that the terms of terminating an academy trust is outlined.

Financial and accounting requirements

The DfE expects free schools to follow the same model as academies on finance and accounting, but are currently reviewing this.[26] Free schools like other charities and limited companies have to follow certain standard financial requirements, such as preparing annual financial statements. It is the responsibility of the Education Funding Agency (EFA) to keep track of the funding provided to free schools and that the funding is spent appropriately through periodic financial management review visits.

The academy trust of free schools must appoint an Accounting Officer and shall notify the Secretary of State of that appointment. The formal budget must be approved each academy financial year by the governing body of the academy trust.

24 Model funding agreement- Education.gov.uk

25 Education.gov.uk

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

Academy trusts must send to the Secretary of State a statement of the accounting policies along with a statement from an Auditors opinion on the state of the academy's affairs. Auditors must be approved under arrangements confirmed by the Secretary of State; the academy must also prepare files with Companies Registry such as annual accounts as required by the Companies Act 2006. The academy trust is obliged to publish on its website its annual Accounts, Annual report, Memorandum and Articles of Association, its Funding Agreement and a list of the names of the Governors of the trust.

How free schools are funded

The annual revenue funding for free schools will be based on the average funding received by maintained schools and academies in the same local authority using the following key elements[27]:

- A basic local funding unit for each pupil attending the school;
- An additional local funding unit for each pupil attending the school who qualifies for free school meals;
- A grant which compensates for services that maintained schools receive free of charge from their local authority - known as local authority central spend equivalent grant (LACSEG);
- Separately calculated funding for sixth form pupils;
- A fixed sum of £95,000 for each primary, or all-through school;
- A grant to cover the cost of insurance and rates;
- Additional funding from the local authority, for pupils with statements of special educational needs.

Along with these come the capital costs in setting up the school in the first place, which for the schools opening in September 2011 were in the region of £110-£130 million[28].

Around the same time the government announced a further £600 million to be set aside for 100 new free schools[29].

27 Education.gov.uk

28 http://www.educationinvestor.co.uk/ShowArticle.aspx?ID=2581

29 http://www.bbc.co.uk/news/education-15901118

There is no direct relationship between the money made available by DfE for free schools, and the amount made available through the grant from the local education authority to a maintained school, other than the notional link to “average” funding described above, despite the contention from some campaigners that money is being ‘taken away’ from maintained schools to pay for free schools.

Accountability for this funding is clearly directed at the Department for Education itself, through the funding agreement, which highlights the potential tension between financial accountability and broader, community accountability, which we will explore in more detail in the conclusion.

Conclusions: tensions between local and national accountability

Free schools will be accountable financially to central government, but in terms of attainment and delivery, their accountabilities will be focused locally, to parents. As we have seen, there will also be a need to share information with some local partners.

There could be a potential tension between these different relationships and accountabilities. The comparative secrecy of funding arrangements between schools, sponsors and DfE suggests a vision of straightforward funder/provider relationships, but it seems inevitable that in order to have confidence in the school and its local governance arrangements, parents will expect to have access to information themselves so that they can use it to hold the school to account – particularly if it flags up conflicting priorities between national requirements (as set out in the funding agreement) and perceived local needs.

Similarly, information sharing with public agencies – which will need to incorporate financial information – has to happen to ensure that free schools, and those agencies, can mutually deliver services that complement each other, and that serve the needs of local children. Free schools cannot carry out their work in isolation.

More formal accountability will have a role to play too. Local government overview and scrutiny does not have a role in holding free schools to account – that is the responsibility of parents and governing bodies. But, inevitably, some of the business transacted by scrutiny committees will impinge on the role of free schools. Overview and scrutiny will need to understand the limitations of its powers and the right way to engage with free schools in a way that will be mutually beneficial. Free schools will need to understand that local overview and scrutiny is about trying to work with local service providers to improve services through exploring solutions to problems, rather than 'holding to account'.

Free schools will have to recognise that they will be sitting within a more complex accountability and governance framework than they might initially have thought. This presents opportunities to influence children's lives beyond the school gates, by influencing and engaging with partners, but it might raise cultural difficulties in schools specifically set up in order to provide a conscious break with local authority control. There is, of course, a balance to be made between control and no engagement at all.

Local authorities, and their partners, will need to understand that free schools are institutions that will need to be engaged with as equals. Over the last few years the relationships between schools (even those in the maintained sector) and councils has changed fundamentally, but our research suggests that there is still a lingering feeling that councils will seek to exert some kind of control over free schools, possibly for ideological reasons but also for managerial reasons.

Sources

The importance of Teaching: The Schools White Paper, November 2010

The London Evening Standard, Anna Davies 11th June 2012

www.education.gov.uk

Stanford University (2009) Multiple Choice: Charter School Performance in 16 States published by Centre for Research on Education Outcomes (CREDO) at http://Credo.stanford.edu

Future Role of LA in School improvement, 2012, p3

Academy governing bodies - A strategic approach to monitoring and evaluation- The Schools Network Trust at www.ssatrust.org.uk/governors

Wiborg,S (2010) Swedish Free Schools: Do they Work? Published by the Centre for Learning and Life Chances in Knowledge Economies and Societies at http://www.llakes.org

http://www.publiccharters.org/About-Charter-Schools/What-are-Charter-Schools003F.aspx

http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/b0061428/free-schools/impact

Case & M Hadfield, NCSL (2006) Community involvement in the Networked Learning Communities programme: http://networkedlearning.ncsl.org.uk/knowledge-base/conference-papers/eera-paper-draft-

http://newschoolsnetwork.org/sites/default/files/media/norwich%20case%20study%20formatted.pdf

Newschoolsnetwork.org: Demonstrating parental demand

http://newschoolsnetwork.org/sites/default/files/media/norwich%20case%20study%20formatted.pdf

Scrutiny & Finish Working Group - commissioned by the Education Scrutiny Sub Committee, The impact of new academies and free schools on Schooling in Croydon, April 2012

http://www.guardian.co.uk/education/2012/jul/09/free-schools-academies-opposition

Funding agreement annex D general duties part 2

http://davidwolfe.org.uk/wordpress/archives/300

NUT Free Schools Cause for concern The Impact of Free School on neighbouring Schools 2012

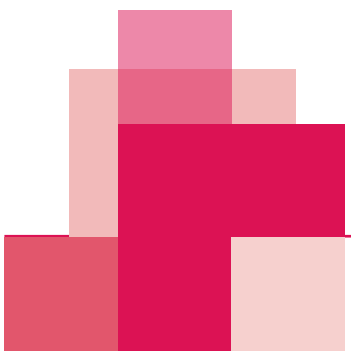
http://www.maxwellgillott.com/news-may2012-sen-academies.htm

http://www.bbc.co.uk/news/education-15901118

http://www.educationinvestor.co.uk/ShowArticle.aspx?ID=2581

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

Academy governing bodies - A strategic approach to monitoring and evaluation- The Schools Network Trust at www.ssatrust.org.uk/governors



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