
Academy Conversion: a view from the governing body

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ABSTRACT The case for conversion to academy status is being made in a number of arenas, not least on the Department for Education website. As a matter of balance, school governors considering conversion need to take into account a range of factors. How does this fundamental shift in the ownership of schools fit into a discernible historical pattern?

Introduction

The threat to the traditional locally-administered, centrally-funded model of state education outlined by Clyde Chitty in *FORUM* [1] has materialised this year. Normally, massive earthquakes are followed by smaller aftershocks. In education, the reverse appears to be true. Following the tentative steps towards the creation of state-funded schools independent of local government taken by the City Technology Colleges and Grant-Maintained Schools of the 1990s, the Labour Government's sponsored academies, spawn of David Blunkett in 2000, introduced a new creature to the education scene – independent state-funded schools, sponsored by business, replacing schools deemed to have 'failed' (often because they were unable to achieve minimum government standards of attainment as they served communities characterised by poverty, low aspirations, post-industrial decay and ethnic diversity). In 2007, with the best of intentions at the time, I accepted an invitation by the then Department for Children, Schools and Families to serve as their representative governor in one of these oddities. A modernistic temple to education as business, sited in the middle of one of the country's most blighted areas, with an ethnic minority population of around 80%, the academy's governing body comprised 16 governors, all relentlessly white, all with one exception male, with one Lord, one Dame and one Sir. The academy stuck to the letter of the law, and there was just one (white) parent governor.

Under the very recently established Coalition Government, the 2010 Academies Act gave existing maintained and foundation schools the opportunity to convert to academy status, threatening the very existence of local authorities as bodies responsible for the provision of education.

State-funded locally-administered education has been around since 1839, and enjoyed a brief period of representative democracy between 1870 and 1902, in the form of the directly-elected school boards, where even (property-owning) women were eligible to vote. As today, the debate about establishing state provision

was not predominantly an educational one about the need to extend the existing provision of elementary schooling ... it was a political one about how this extension should be made, the extent to which the schools should be under popular control, and how they should be financed. Essentially it was a conflict between protagonists of differing visions of society, for whosoever controlled the schools could influence the education of the rising generations in a state that was moving, albeit unwittingly, towards parliamentary democracy.[2]

The resultant school boards were considered by some to be 'breeding grounds for radical agitators', especially in urban areas – Brian Simon extolled their virtues in 1965.[3] The questions raised by their establishment foreshadowed many of the issues around lay participation in educational decision-making today:

- How much centralized control of education should there be?
- What should be the relationship between Church and State, and what place is there for religious worship and instruction in schools?
- Is the purpose of education to serve the needs of the State, or to meet the needs of young people? Are these different, or mutually exclusive?
- Are special qualities needed for the lay management of education? Is it an untenable risk to leave it to 'the least intelligent class' (in the words of Sir James Kay-Shuttleworth)?
- Which elements of the school should be under the control of lay people, and which under the head teacher?[4]

Throughout most of the twentieth century, local authorities appointed governors (and, in primary schools, managers) from among the great and the good. But the reintroduction of stakeholder governance under the 1986 Education Act (No. 2) showed that the idea that local people should have a say in the management of organisations that serve their community has a certain resilience. And the 1988 Act, bringing in local management of schools, made the influence of such governors real and wide-ranging. However, it came almost immediately under threat from both Conservative and Labour governments, whose Secretaries of State seemed anxious that there be places for 'business

governors' – lay people with business experience whose presence would bring the wisdom of the boardroom into the classroom and the head teacher's office.

Back from the Future

Conversion from a local authority maintained school to academy status – as a publicly funded independent school – is a complex legal process with profound implications for governors, head teachers and schools. It entails severing links with the local authorities who have been responsible for providing education in the community since 1902, and becoming accountable directly to the Secretary of State for Education through the Young People's Learning Agency (soon to be the Education Funding Agency).

The National College online seminar for governors suggests that 'The Governing Body (also known as the Board of Directors) has greater autonomy although the principles of governance are the same as in maintained schools'. It goes on to say, 'Governance – different but at a more subtle level than many might think'. It does not elaborate, so it may be useful to explore these points in more detail. Meanwhile, the Department for Education (DfE) website points out that 'Academies are publicly funded independent schools, *free from local authority and national government control*', which may beg a few questions.

The Politics

The public, and perhaps especially school governors, generally prefer not to see party politics as an issue in the provision of education. Inevitably, however, the offering of academy status to maintained schools has become a political matter, because it is about the relationship of the individual and the community to the central state. Michael Gove's first year as Secretary of State was marked by a series of political reversals over the decision to scrap Building Schools for the Future, the axing of the Education Maintenance Allowance, and the funding of school sport partnerships.

Visitors to the Secretary of State's office in the spring of 2011 reported seeing three maps on his wall: one showed the applications for opening free schools, the second showed existing academies, and the third applications for academy status. 'Freeing' schools from their local authorities clearly had a high priority. Immediately after Michael Gove took office in 2010, the legislation enabling every school to convert to academy status was driven through parliament using procedures normally reserved for anti-terrorism laws, receiving royal assent in July.

Interestingly, there is no hard research evidence that conversion to academy status does improve schools. This is a position of faith, rather than evidence-based policy making. However, the Academies Act enabled some 'outstanding' and 'good with outstanding features' schools to convert that September. In February 2011 the DfE widened applications to satisfactory schools who could nominate good or outstanding partners, and in April

removed the need for such partnerships for satisfactory schools with good or better leadership and management, and capacity to improve. Simultaneously, it provided a substantial financial incentive – but only for those schools prepared to complete the process before July. The outcome, as with health and social care, is that the state will continue to fund education, but the services needed to support it will be delivered largely by private sector providers. This market has been estimated at £2 billion per year. Private providers in public services look for a return of some 30% on their activities. At the present rate, local authorities will not be able to compete with the private sector, which may pay staff less and contract out administration, for example, payroll, to cheaper providers abroad. Schools will buy from them because the publicly funded option is likely to disappear. The 30% profits will come out of schools' finances provided by the DfE.

The academisation of England's schools, then, offers significant opportunities to business-minded head teachers and to the market. That is why it is happening. Here is Michael Gove in an interview with *The Times* (18 June 2011): 'Gove would welcome school heads taking a lesson from business: "We now have great headteachers who will become educational entrepreneurs. They will build a brand and create chains." He said he would have no "ideological objection to profit-making institutions" in education'. School governors and staff may want to consider whether they would be comfortable with their school as part of an entrepreneurial chain – as a representative of a brand – rather than as a school whose significant relationship is with their community.

These moves also represent a very different approach to the politics of representation. The stakeholder model of governance introduced in the 1986 Education (No. 2) Act could be represented as a blow for participatory democracy. People from all sorts of backgrounds were enabled, even encouraged, to get involved with their local schools. But very soon, governments were back-peddalling – some of these people were really just *too* ordinary, and they might not have the necessary skills to hold head teachers and their staff to account. What was really needed was the application of business skills as exercised in the flourishing private sector to the ailing world of education. This betrayed a somewhat blinkered view of reality. The most ineffective governing body I ever worked with was a group of businessmen (yes, men) governors of a then grant-maintained secondary school in the North who thought it adequate to meet three times each year for an hour at a time – and with no committees exercising closer oversight of areas of the school's work. After all, they reasoned, they'd appointed the head, so let him (yes, him) get on with it. Plenty of school scandals have blossomed from less *laissez-faire* regimes. By contrast, one of the most effective governing bodies comprised a group of women from both social and private housing at a Southwark primary school in a semi-'regenerated' area, who demonstrated a genuine sense of shared accountability with a thoughtful and responsive head teacher.

It seems that free-standing schools such as the original grant-maintained schools and now academies are more likely to have head teachers who see

themselves as hero leaders hacking their way unassisted through the thickets of educational expectations and compliance. A grant-maintained school head teacher, asked what committees his governing body operated, replied, 'Oh, I did away with the committees last year. They were taking up too much of my time'. This suggests that he saw his governing body as a source of support and assistance, not as a group of people whose primary responsibilities were to lead the school strategically and to hold the head teacher accountable for its performance. In similar vein, a high-profile head teacher from the South-West wrote to the *Times Educational Supplement* in September 2010 that 'in the new Coalition world, the headteacher will be king and schools their own masters' (17 September 2010).

With this last in mind, it is possible – though perhaps a tad idealistic – to see the stakeholder model of the 1990s as a quite radical model of public ownership of a service designed to serve the public, in contrast to what came before and what rather looks like coming after. We can construct two very different models of the aims and conduct of school governance, based on two very different views of what a capitalist post-industrial society might look like. Regardless of claims to the contrary in the 'big society' construct, the conservative model is essentially a consumerist, or businessist, model of society, in which the public is seen as:

- free from responsibility for the quality of the service, except by complaining when it falls below an acceptable standard, or taking their business elsewhere;
- acting out of self-interest, rather than as a member of a potentially forceful society;
- reactive to services, rather than proactive in formulating them;
- having a one-dimensional, purchaser–provider relationship with services;
- likely to be a member of one or another constituency or interest group;
- unlikely to have his/her relationship with the surrounding world altered by the provision of services.

A *radical* model proposes a more complex provider–client relationship. Here the member of the community is seen as:

- responsible for the direction, content and quality of services;
- committed long-term to the community, and having a complex set of relationships within it;
- acting in the interests of others as well as the self;
- proactive, that is, initiating change;
- likely to develop an understanding of a relationship with the world that allows a measure of control and a capacity for individual growth.[5]

Relationships with Other Schools

Today, local authorities are responsible for families of schools and, whether in urban or rural settings, secondary schools tend to cooperate with other

secondary schools, and primary schools with other primary schools, over admissions, delivery of the curriculum and other issues. Many schools intending to convert propose to set up such cooperative arrangements to last into the academy era. However, such arrangements cannot be guaranteed to survive a culture where students bring money, and where competition for teaching and other posts, freed from the need to observe national terms and conditions, are likely to bring about inequities. Observers agree that the schools that are able to benefit most from academy status will be those that are full and over-subscribed, and have good, new or refurbished buildings. For schools without this profile, it may be more problematic. Who, for example, will step in at a moment's notice to help when the roof blows off or a building is burnt down?

The Roles and Responsibilities of Governors

The Academy Trust responsible for running the academy and holding the governing body to account for its performance is formed by a minimum of three members. The responsibilities of governors in the academy regime do change significantly. Governors run the academy trust on a day-to-day basis on behalf of the members. In addition to being governors, they are also trustees and directors. As *trustees*, they have three core duties, of compliance with charity law, of prudence, in the control and use of assets, and of care, using reasonable skill and care, personal knowledge and experience to ensure that the academy is well run.

As *directors* of a company, governors have statutory duties and responsibilities within the Companies Act 2006, bound by a code of practice and case law; they must promote the success of the company and act in its best interests, even after resigning or the end of their term of office. They are required to have regard to six factors: long-term impact; the interests of employees; relationships with customers and suppliers; impact on the community and the environment; high standards of business conduct; and they must act fairly between members.

The Trust and the Governing Body have the capacity to change significantly the composition of the governing body within parameters set by the DfE; for example, that there be a minimum of two parent governors.

These changes in duties and responsibilities have been characterised by commentators such as the General Secretary of the National Association of Head Teachers as 'the professionalization of governance'. This is reinforced by one of the first requirements laid on governors of schools converting to academy status – to record their names and the skills they bring to the governing body as part of the application process.

The Benefits

Most governors have been made aware of the advantages of conversion. The benefit most commonly mentioned is the extra money available. This was

quoted as something more than 50% above actual costs in the time up until 31 August 2011, but significantly less after that. Of course, the sustainability of this funding is not guaranteed. Already (in early June 2011) under a challenge from 23 local authorities, the Government announced that the central pool of money collected from local government was to be reviewed. The councils claimed that this cut had been calculated by deducting the amount it will cost individual academies to run those services themselves, rather than by the amount that councils will save by not providing them. It is clear that the provision of a generous early conversion premium will be at the cost of other local authority services, most likely to the services provided to remaining schools. Governors of converting schools will need to consider whether, perhaps as parents or grandparents of children in primary or special schools, the benefits to the converting school outweigh the costs to remaining schools. Since then, the situation has been further confused by mistakes by the DfE which led to some schools being offered £300 per pupil too much. So it is important to be clear about: how much is the school *actually* getting in funding, and for how long; what costs will the school incur; and given that conversion is irreversible, what is the long-term business case?

Schools are also told that ‘freedom’ from their local authority’s management, from the requirement to deliver the National Curriculum, and from national terms and conditions of employment will provide significant benefits. It is unclear what these have to offer. The curriculum is determined by ministerial diktat (for example, the unexpected ‘baccalaureate’ target introduced in 2010), the exam system and the composition of school league tables; national terms and conditions are unlikely to survive the current term of government. Local authorities have not ‘run’ or dictated to schools since 1988. The support they provide, particularly in the case of emergency, should not be underestimated. Schools with ageing buildings, ageing and expensive staff approaching retirement, spare places, challenging pupil or parental behaviour, and nearby schools able to ‘poach’ students, may conclude there is a fine balance between benefits and risks.

The Future

In deciding to turn a state-maintained local authority school into an ‘independent’ state-funded school accountable to the Secretary of State, the Charity Commission and Companies House, governors will need to think about what confidence they have in the present government to manage competently and efficiently. Local authorities have varied widely in the quality of their management of school provision and support, but they can, of course, be challenged locally and replaced. The accountability of government ministers is of a different and less direct order. Questions have been raised about the Department for Education’s management of issues such as Building Schools for the Future, the Education Maintenance Allowance, the funding of further education and university tuition, and other matters. Its ‘surcharge’ on local

authorities, regardless of the number of academies converting, is already under challenge from authorities seeking judicial review of the surcharge model.

In fact, as we now know, schools are introducing these changes for just one year's input of cash. After that, the future is unpredictable. What we do know from the revelations of 16 June, is that the DfE seems to have miscalculated the funds available, and will be looking to claw money back from schools and local authorities, if not in year one, then in year two (see 'Blunder Gives Academies Extra Cash', *Financial Times*, 16 June 2011, and Michael Gove interviewed later on the BBC *Today* programme). We have learnt since from Peter Downes (see this number of *FORUM*) that the overspend looks to be around £600 million over two years.

The Consultation

The requirement that a school consult before conversion was added to the Academies Bill at the last moment. A consultation prior to a maintained school converting to academy status is required by the Act to be 'appropriate' – that is, once the governing body has agreed who it is appropriate to consult, it must genuinely seek to establish the views of the consultees; the consultees must be given sufficient and accurate information on the subject; and consultees who are chosen because they are representative of certain organisations or bodies must be told why they have been consulted, given time to respond, and given accurate addresses to which to respond. It must, in other words meet the requirements of the general law on public consultations, and must not be perceived in any way as a merely token operation.

The advice from the National Governors' Association is as follows:

1. The NGA firmly believes that governing bodies should keep all those involved with the school (parents, pupils, staff, local authority, local community, neighbouring & feeder schools and diocese (if appropriate)) informed of their plans throughout the process and that consultation should take place before the governing body take formal resolution to apply for Academy status. This is a key Government policy and the option to apply for Academy status is not going to be withdrawn, schools can take their time and ensure that they have carried out the process thoroughly and with due diligence.
2. There has been at least one reported case of a school temporarily withdrawing its application for Academy status following a solicitor's letter which, amongst other things, challenged the way in which the school had sought parental views.
3. It is worth at this point considering the judgement in *R v Northumberland County Council, Ex Parte Parents for Legal Action Ltd* – 18 May 2006 – which revolved about what constituted proper consultation. The Judge commented that:

‘The whole purpose of consultation is to inform the process before the public body formulates and publishes its final processes.’
 Although this judgement refers to statutory proposals in relation to a maintained school, as opposed to an application to convert to Academy status, it is the NGA’s view that governing bodies will not go too far wrong if they bear it in mind when considering Academy status.[6]

Advice from one of the law firms advising converting schools throughout the country is that a consultation should be undertaken when proposals are at a formative stage; provide enough information to those consulted to enable them to comment intelligently on the proposals; allow enough time for those consulted to enable them to properly consider the proposals; and that consultation responses should be specifically considered when deciding whether or not to implement the proposal. Consultation must happen before the funding agreement is signed.

It is recommended that the following groups should be consulted as a minimum: parents/carers of pupils at the school; for secondary, parents/carers of pupils in years 5 and 6 of any primary schools in the area; for primary, parents/carers of pupils offered a place at the school for the following September; staff working at the school and any staff due to be employed at the school from the following September; for secondary, pupils at the school; the wider local community.

In addition, schools will need to consider whether there is any other organisation, person or group who should be consulted about the proposed conversion. This might include parish, town, district and county councils and councillors, feeder and receiving schools (governing bodies and staff) and any church representative, especially where any schools concerned are faith schools.

The consultation should take the form of a letter, which might refer the reader to a website for more information (but it should be recognised that access to the Internet is still available to less than 66% of the country).

Separate meetings for parents and staff allow an exchange of views and clarification where there are queries, and some explanation and possibly consultation should take place with pupils. It is recommended that the consultation period is open for 4-6 weeks.

Responses must be formally considered before the funding agreement is signed, and the DfE requires a ‘report’ on the consultation to be provided prior to the signing of the Funding Agreement by the Secretary of State. This needs to be a simple account of what consultation took place and when.

It is probably wise to ensure that governors and staff are not quoted in local media giving views about their own school’s conversion before or during the period of consultation. The decision either way should certainly not be pre-empted by the head teacher or chair of governors. It is best if the consultation is even-handed and represents accurately, if not in fine detail, any points that have been raised on both sides of the argument. Consultees must be given both

appropriate information and time to respond. Arrangements to collect responses must, of course, be accurate and accessible. The list of those to be consulted should probably be drawn up by the governing body. Where church schools are directly or indirectly involved, for example, local diocesan authorities should be consulted.

What Schools are About

Schools are about the quality of teaching and learning. The focus on *structures* of school provision continues to distract school staff, governors and parents from that elemental fact. While teachers will rightly argue that the quality of buildings and class sizes are significant, research always concludes that teacher quality is the ultimate factor in student achievement. Is the governing body clear that conversion will help bring about a significant and sustainable improvement in the quality of learning?

If the School does Convert

If, after consideration, the governing body does vote to convert to academy status, there are ways in which governors might protect some of those elements of the school which may be under threat:

- the school can explore the possibility with the local authority (LA) and other schools of setting up a community trust, maintaining LA and local community interest; this model is being followed in Portsmouth;
- the governing body can embed the current model of stakeholder governance in the Trust's articles;
- governors can ensure that 'knowledge and understanding of the community' is a governance skill, alongside accountancy, legal knowledge and so on;
- governors can ensure that the governing body and trust are properly accountable to parents and students, e.g. on complaints, and be clear about where complainants go once internal procedures are exhausted;
- governors can instruct clerks to ensure that all governing body minutes and agenda are open to parents, staff and the wider community as soon as they are drafted, as is required in maintained schools.

Meanwhile, members of communities dominated by independent state-funded education can try to keep some of the elements of locally administered schools by:

- supporting governing bodies in retaining the stakeholder model of school governance, including parents, staff and the community (academies choose their own governance model and, for example, need only have two parent governors);
- encouraging governing bodies to open up meetings minutes, financial details and other procedures (community school governing bodies are required by law to publish meeting minutes and budgets, but academies don't have to);

- ensuring there is a proper, independent appeals procedure (parents and students with worries about community schools can appeal to the local authority, but academies make their own arrangements);
- ensuring that academies are accountable to the communities they serve (as the local councillors no longer have any rights to intervene);
- resisting moves by any schools to admit any proportion of their students by ability (the Government is allowing the expansion of grammar schools and will permit currently comprehensive schools to select students on attainment).

The Future

Will school governance ever regain the potential for radical engagement of the lay public in educational decision-making that lay behind the school boards of the late nineteenth century or the stakeholder models of the late twentieth century? Having exported this later model around the world – to Canada and New Zealand, even to parts of the new Russia – is the future likely to be more regressive, with governance becoming the province of small groups of middle-class business-minded people? Certainly we seem to be in a period of retrenchment in schools. Grammar schools have been told they can expand admissions without the permission of their local authorities. Local government is increasingly undermined, being left with a rump of school transport, ensuring special needs provision and general oversight of admissions. No doubt, soon enough, ‘outstanding’ and ‘good’ secondary schools will be encouraged to admit a percentage, if not all, of their students by ability. Perhaps we can even see the time when – echoing David Willett’s suggestion for universities – over-subscribed secondary schools will be allowed to make places available for those who can pay top-up fees. What is certain is this – that any such innovations will be done in the name of ‘social mobility’. Cameron’s ‘Big Society’ is looking more like a ‘Big Business Society’ run for the benefit of the feral elite – and we’re not all in it together.

Notes

- [1] C. Chitty (2011) A Massive Power Grab from Local Communities: the real significance of the 2010 White Paper and the 2011 Education Bill, *FORUM*, 53(1), 11-14. <http://dx.doi.org/10.2304/forum.2011.53.1.11>
- [2] J. Hurt (1979) *Elementary Schooling and the Working Classes, 1860-1918*. London: Routledge & Kegan Paul.
- [3] B. Simon (1965) *Education and the Labour Movement, 1870-1920*. London: Lawrence & Wishart.
- [4] N. Gann (1998) *Improving School Governance: how better governors make better schools*. London: Falmer Press.
- [5] N. Gann (1996) *Managing Change in Voluntary Organizations*. Buckingham: Open University Press.

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[6] National Governors' Association (2011) *Guidance for NGA members on the Academies Act v10 180211*. February.

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