

LOCAL AUTHORITY and ACADEMY TRUST PROTOCOL

FOREWORD

This document has been commissioned by the South East Sector Led Improvement Programme (full details from www.seslip.co.uk) as a response to the need for Children's Services to work in cooperation with academy chains, multi-academy trusts and standalone academies in an increasingly diverse educational landscape.

Many authorities have already produced local agreements often with a particular focus on data sharing; this document is not intended to replace these agreements but to provide a basis for discussion with academies.

In addition several academy chains have schools in a number of authorities in the south east region and this document may assist in benchmarking ways of working between local authorities and multi academy trusts.

There are three sections:

- Working in Cooperation** – which sets out the general principles
- Local Dialogue Template** – which can be tailored to suit individual discussions
- Respective Responsibilities** – which sets out the legislative background and refers to current departmental guidance

I would like to thank those local authorities who I visited or who responded in detail during the consultation; Kent, Hampshire, East Sussex, Portsmouth, Buckinghamshire, Medway, Reading and Brighton and Hove.

The draft was also circulated to a number of Academy chains, the Department for Education and the LGA for comment during the consultation process.

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The South East Sector Led Improvement Programme is supported by 19 Children's Services Authorities in the South East:

Bracknell Forest; Brighton and Hove; Buckinghamshire; East Sussex; Hampshire; Isle of Wight; Kent; Medway; Milton Keynes; Oxfordshire; Portsmouth; Reading; Slough; Southampton; Surrey; West Berkshire; West Sussex; Windsor and Maidenhead; Wokingham

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WORKING IN COOPERATION

Academy Trusts and their staff are working to improve the performance and life chances of children and young people in the schools for which they are responsible.

Local Authorities and their staff are working to ensure that all children and young people educated and cared for to the highest standards.

It is vital that Academy Trusts and Local Authorities share an understanding of their respective roles in enabling the children and young people achieve their potential and manage their boundaries constructively. The recent creation of Regional School Commissioners and Headteacher Boards from September 2014 has added another set of responsibilities locally, however the origins of this protocol are based on the relationships between individual Local Authorities and the Academy Trusts which operate within their geographical boundaries and this document will focus here.

This protocol outlines the ways in which both parties should work together positively. Both parties should recognise their responsibilities to deliver the best educational provision possible for their children and young people. To support this joint endeavour the parties agree to:

- Work in a productive alliance to jointly understand and acknowledge the complementary roles of the academy and the Local Authority so that it is clear and agreed what actions are required from each;
- Appreciate that the Local Authority has a strategic responsibility for ensuring that there is good quality education and that Ofsted expects the Local Authority to “know its schools well” and that this includes academies;
- Raise issues and concerns about any aspect of Academy performance or Local Authority procedure in an open and transparent manner;
- Ensure that children are protected, and risk from harm is minimised;
- Maximise local intelligence (including from Academy sponsors, free school providers and the Local Authority) and develop and sustain a dialogue related to future school places and provision;
- Work together positively on all matters relating to the education and welfare of young people;
- Act fairly and in the interests of all children and young people with at all times and show mutual respect;
- Show an awareness of the impact of any action on other providers;
- Actively participate in local partnerships and other forums related to developing local provision;
- Share data that both parties agree is relevant to their respective responsibilities.

Signed on behalf of the [insert name of Academy Trust]

Signed on behalf of the [insert name of Local Authority]

LOCAL DIALOGUE TEMPLATE

1. Name of Academy Trust and contact details

2. Name of Local Authority and contact details

3. Area/ Issue to be discussed:

- Information/ Actions so the LA knows the school well
- Data and case for school provision expansion in an academy locality
- Representation from an academy on the local safeguarding children board
- Detail of placing arrangements for children with special educational needs
- Local communication arrangements with academy heads and Trust Chief Executives

4. Actions agreed:

Date:

Review date:

RESPECTIVE RESPONSIBILITIES

1. SCHOOL PERFORMANCE

An academy is responsible for its own performance and will be inspected by Ofsted. If the academy is part of a Multi-Academy Trust (MAT), Ofsted may inspect a group of schools within the Trust. Academies are then accountable to the Secretary of State for Education. However the Local Authority is responsible at a strategic level for the performance of all providers in its area and is now inspected by Ofsted in relation to this function. The detail of these responsibilities is important and in particular the agreed working practices that Academy Trusts and Local Authorities need to use when there are potential or actual issues of underperformance.

Academy

An Academy Trust, whether stand-alone or a Trust Board covering a number of schools is responsible for challenging and monitoring the performance of the Academy school – areas of challenge will include curriculum, assessment and attainment, behaviour and attendance, view of the school and the community, staffing and budget. As part of recent Ofsted inspections the questions below indicate the focus of the responsibilities of the Trust:

- How well does the Trust understand the academy's strengths and weaknesses, performance and the standards that the pupils achieve?
- What measures has the Trust put in place to support and challenge the academy, and how well do these meet the needs of the academy?
- What has been the impact of the Trust's support and challenge over time to bring about academy improvement?

An Academy is accountable to the Secretary of State for Education and this is exercised through the Department for Education. However the Academy Trust must also be aware of the responsibilities of the Local Authority in which the individual Academy school is located and establish appropriate links with those in the Local Authority who are leading on its Education responsibilities. This will generally be the statutory Director of Children's Services or their nominee.

Local Authority

Local Authorities have a statutory duty as set out in section 13a of the 1996 Education Act "to promote high standards and fulfilment of potential in maintained schools and other education and training providers, so that all children and young people benefit from a good education."

The revised statutory guidance on schools causing concern¹, published in May 2014, clarifies the role of Local Authorities in relation to academies and provides that **Local Authorities should seek to work constructively with academies and alert the Department for Education when they have concerns about standards or leadership in an academy.**²

¹ Available from <https://www.gov.uk/government/publications/schools-causing-concern--2>

² "Schools causing concern - statutory guidance for local authorities" DfE May 2014 Reference: [DFE-00391-2014](#) p 7

“Academies are accountable to the Secretary of State for Education. Therefore, Local Authorities should focus their school improvement activity on the schools they maintain. Local Authorities should raise any concerns they have about an academy’s performance directly with the Department for Education. “(DfE)³

It is important that both Academy Trusts and Local Authorities are aware of their powers in relation to maintained schools as this gives an indicator of the circumstances in which an Academy Trust may need to be in close dialogue with the Local Authority.

The Local Authority can issue a “warning notice” to a governing body of a maintained school where issues may be one of more of the following:

- unacceptably low standards of performance of pupils;
- serious breakdown in the way the school is managed or governed that is prejudicing (or likely to prejudice) standards of performance (this could include where there is evidence of very poor financial management); and/or
- the safety of pupils or staff of the school is threatened.

A new challenge for both Academy Trusts and Local Authorities is whether there is sufficient shared intelligence in this more autonomous school system, in which support and challenge is accessed from a range of different sources, to spot the signs of declining performance in a school before it impacts on results. A related challenge is where evidence of poor performance or declining performance in stand-alone convertor academies becomes apparent. In the first instance it will be for the Academy Trust, which in many cases will essentially be the same as the school’s governing body, to take action. But if they should prove unable or unwilling to turn the school around other mechanisms will be needed to secure improvement.

2. CHILD PROTECTION AND SAFEGUARDING

A crucial area of shared responsibilities between Academy Trusts and Local Authorities is child protection and safeguarding.

Section 175 of the Education Act 2002 required local education authorities and importantly governing bodies of maintained schools and further education institutions to ensure that their functions are carried out with a view to safeguarding and promoting the welfare of children (Section 157 placed similar requirements on independent schools). The safeguarding duty covers not only the protection of individual children but issues such as pupil health, addressing bullying, medical needs, substance misuse and the like, many of which are subject to separate requirements. Local Authorities and governing bodies must also have regard to any guidance issued. Section 175 stated the duty for the first time. The Children Act 2004 built on previous legislation and guidance by establishing a duty:

- on key agencies to safeguard and promote the welfare of children;
- on Local Authorities to set up Local Safeguarding Children Boards (LSCB); and
- on key partners to take part in the LSCB.

The latest statutory guidance, “**Keeping Children Safe in Education**”⁴ was issued by the DfE in April 2014 under Section 175, Education Act 2002, the Education (Independent School Standards) (England) Regulations 2010 as amended by SI 2012/2962 and the Education (Non-Maintained Special Schools) (England) Regulations 2011. Schools and colleges must have regard to it when carrying out their duties to safeguard and promote the welfare of children.

³ Ibid p 5

⁴ Available from <https://www.gov.uk/government/publications/keeping-children-safe-in-education>

Unless otherwise specified, 'school' means all schools whether maintained, non-maintained or independent schools, **including academies and free schools, alternative provision academies** and pupil referral units. 'School' does not include maintained nursery schools. 'College' means further education colleges and sixth-form colleges, and relates to children under the age of 18, but excludes 16-19 academies and free schools (which are required to comply with relevant safeguarding legislation by virtue of their funding agreement). The document contains information on what schools and colleges should do and sets out the legal duties with which schools and colleges must comply. It should be read alongside Working Together to Safeguard Children 2013⁵ which applies to all the schools referred to above, including maintained nursery schools.

Children who are looked after by the Local Authority are a specific group of children and young people where the interface between the Academy Trust and the Local Authority Children's Services needs to be positive and reflect the particular challenges that this group of children face.

Academy

Academies are subject to Part 3 of Schedule 1 of the Education (Independent School Standards) (England) Regulations 2010, which include a duty placed on the proprietor or trust to ensure that arrangements are made to safeguard and promote the welfare of pupils at the school. The statutory guidance "Keeping Children in Education Safe" (April 2014) makes explicit the inclusion of all Academies in these arrangements.

These responsibilities are exactly the same as those within the maintained sector and importantly are shared responsibilities between schools and the Local Authority. At a strategic level an Academy Trust should be part of the Local Safeguarding Children Board arrangements and it may be appropriate for a Principal of an Academy school to be a headteacher representative on the LSCB.

At an operational level the Trust will need to work directly with Local Authority Children's Services in relation to individual child protection issues in a way which directly mirrors the systems for maintained schools.

In a Multi-Academy Trust where the schools are in different Local Authorities it will be necessary for the individual Academy school to work with the practices of the Local Authority in which it is situated.

Local Authority

Section 175 of the Education Act 2002 places a duty on Local Authorities (LAs) in relation to their education functions to ensure that these functions are exercised with a view to safeguarding and promoting the welfare of children. It must be noted that the duties set out in the Act are shared duties – both the Local Authority and the governing body of a maintained school are responsible for meeting them. The statutory guidance "Keeping Children in Education Safe (April 2014) clarifies the role:

- Ensure schools are aware of their responsibilities for safeguarding children and Academy Trusts are represented on the LSCB
- Through the LSCB, monitor all schools safeguarding performance, through annual audit;
- Bring any deficiencies to the attention of Academy Trust and advise the action needed to remedy them;
- Make available appropriate LSCB training, model policies and procedures;
- Through the Local Authority Designated Officer (LADO) involvement in dealing with allegations against staff and volunteers;

⁵ Available from <https://www.gov.uk/government/publications/working-together-to-safeguard-children>

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- Ensuring arrangements are in place to prevent unsuitable staff and volunteers from working with children;
- Ensure all children who either go missing from education or who are electively home educated are safeguarded.

The Local Authority will also be working as a “Corporate Parent” on behalf of all looked after children including those attending Academy schools.

3. School Places and Admissions

The changes in the Government’s approach to education provision in recent years has resulted in a change to the Local Authority’s statutory role from provider of school places to commissioner of school places. The presumption is that Academies/Free Schools will contribute to the overall capacity of the schools’ estate, thus contributing to ensuring sufficient school places are provided in the local area. Close liaison through individual schools and local communities is, therefore, critical to ensure that sufficient places exist and are planned for, which will include Academies and Free Schools sharing accurate and timely information regarding their school capacity.

It is now a significant strategic challenge for Local Authorities to ensure that school places match demand in a system in which many more schools are free to set their own admissions numbers. Two specific issues illustrate the challenge: the first is how to increase the supply of places when demand rises; and the second is how to manage the consequences of oversupply. Another complex aspect of the place planning is in determining the pattern of post-16 provision. The particular challenges post-16 relate to the need to plan place provision across a very diverse partnership of providers, in a context where the autonomy of many of these providers is well established. Local post-16 partnerships are also contending with changes in the profile of demand created by the raising of the participation age, rising youth unemployment, shifting demographics and significant changes to qualifications. In summary, the strategic responsibilities for ensuring a local supply of good quality places can only be exercised in close working relationships with all academies in a local area.

Admissions is an equally complex area but the **School Admissions Code** provides a clear set of guidance for both Academies and Local Authorities.

Academy

An Academy Trust has no statutory responsibility to engage in local discussion about the expansion or contraction of school places in a local area. However voluntary participation in local forward planning may be beneficial to the Academy Trust as well as the Local Authority.

In relation to Admissions an Academy Trust can:

- Determine its own Admissions Policy and arrangements in line with the School Admissions Code and associated legislation;
- Participate in the Local Authority co-ordinated scheme;
- Administer their own School Admissions Appeals in line with the Schools Admissions Appeals Code;
- Promote community cohesion and share facilities with other schools and the wider community.

Local Authority

At a strategic level Local Authorities have a statutory responsibility to ensure that every child has a good quality school place and to increase opportunities for parental choice. The Local Authority also has a more detailed set of statutory responsibilities in these areas:

- Consult on and set co-ordinated admissions schemes;

- Consult on and set admissions arrangements for maintained schools in line with the School Admissions Code and associated legislation;
- Prepare and defend admission appeals for maintained schools;
- Manage requests for admission 'in-year';
- Champion the rights of children to access schools of preference, particularly vulnerable children;
- Destination tracking of all 16-18 and 16-25 SEN;
- Provision of Pupil Referral Places or Educational Provision for a pupil who is no longer registered at an Academy;

4. Special Educational Needs and Vulnerable Children

This is an area where the need for close and positive working between the Academy Trust and the Local Authority is especially relevant. The responsibilities of Local Authorities in relation to children with special educational needs and vulnerable children are considerable. These responsibilities remain regardless of the education provider. The role and requirements of the education provider is the same regardless of whether the child is placed in a maintained school, an Academy or an independent school. All academies, as state funded schools, have a duty to comply with Special Educational Needs & Disability (SEN&D) legislation (Children & Family Act 2014, Section 3), the SEN&D regulations, the SEN Code of Practice 2014⁶ and Equality Act 2010. Headteachers and governing bodies should have particular regard to Sections 1, 4, 6, 8, 9 and 10 of the current SEN Code of Practice, 2014.

Academy

- Ensure the Academy is fully inclusive including providing for the most vulnerable pupils
- Provide the placing Local Authority with relevant data on progress and achievement for identified pupils
- Participate in local Fair Access protocol arrangements

Local Authority

Special Educational Needs

- Consideration of requests for statutory assessment of children's special educational needs; requesting specified reports if it is agreed that an assessment should be carried out
- On completion of an assessment, consideration as to whether a statement of SEN/Education and Health Care Plan should be issued and whether a mainstream school may require top-up funding to support the child, or whether specialist provision is needed
- Completion of statutory annual review of all statements of SEN/Education and Health Care Plans to determine whether these should be maintained, amended or ceased
- Defending appeals by parents to SENDIST against the Authority as regards refusal to undertake a statutory assessment, refusal to issue a statement of SEN/Education and Health Care Plan, the content of a statement/EHCP, refusal to amend a statement/EHCP and ceasing a statement/EHCP
- Undertaking Learning Difficulties Assessment at 16
- Support all year 9 learners with a statement of special educational needs through their Transition Review in preparation for post 16 options
- Consideration of requests for Learning Difficulty Assessments for those learners who are identified as requiring additional support who are without statements of SEN/Education and Health Care Plans
- On completion of Learning Difficulty Assessments, consideration of appropriate post 16 placements and whether additional top up funding is required

⁶ Available from <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

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- Collect information that enables the Local Authority to judge the progress of children, the effective use of resources and provide challenge where required
- Ensure that the Local Authority has appropriate provision for children with SEN
- Managing placements in Academy Trust and independent sector providers, including placements jointly funded with Social Care and Health.

Vulnerable children

- Facilitate a Fair Access protocol between all local schools
- Ensure schools are complying with their responsibilities in relation to the attendance registers, as set out in the Pupil Registration regulations, through an annual Registration Audit
- To enforce statutory responsibilities, when appropriate, where parents have failed in their duty to ensure their child receives an education (Section 437 and 444 Education Act 1996, S103 Education & Inspections Act 2006 and The Education (Penalty Notices, England) Regulations 2003.

5. Funding and Data Sharing

An Academy Trust has a series of relationships outside of a Local Authority particularly in the areas of funding and data sharing. The Education Funding Agency is a key body in relation to funding arrangements and many data requirements involve returns to the Department of Education. In these circumstances it is important that individual Local Authorities determine information requirements from these agencies which will assist them in the delivery of their responsibilities. No school wants to be subject to multiple information requests from different agencies. Many Local Authorities are developing detailed data exchange/sharing protocols to assist this process.

Academy

- Approve the Academy formal budget plan each Academy financial year (September-August)
- Comply with (and ensure that Academy Trust complies with) both charity and company law
- Manage and comply with the obligations in the Funding Agreement – upholding admissions arrangements and arrangements for pupils with SEN, provision of free school meals, ensure a broad and balanced curriculum that includes English, Maths, Science and RE
- Manage the Academy Trust's finances and property
- Comply with data requirements from the Education Funding Agency
- Comply with data requirements from the Department for Education.

Local Authority

- To produce a Data Exchange Agreement which is discussed as part of the Academy conversion/sponsorship or Free School process
- To liaise with the Education Funding Agency
- To liaise with the Department for Education

FOR INFORMATION FROM SEPTEMBER 2014

Regional Schools Commissioners (RSCs)⁷

Regional schools commissioners (RSCs) are responsible for making important decisions about the academies and free schools in their area on behalf of the Secretary of State for Education.

Their main responsibilities are to:

- monitor the performance of the academies in their area
- take action when an academy is underperforming
- decide on the creation of new academies
- make recommendations to ministers about free school applications
- encourage organisations to become academy sponsors
- approve changes to open academies, including:
 - changes to age ranges
 - mergers between academies
 - changes to Multi-Academy Trust arrangements

RSCs get support from headteacher boards (HTBs). HTBs are made up of experienced academy headteachers who advise and challenge RSCs.

RSCs are accountable to the Schools Commissioner.

As of December 2014, [Martin Post](#) is the RSC for south-central England and north-west London which includes the South East authorities of Bracknell Forest; Buckinghamshire; Milton Keynes; Oxfordshire; Reading; Slough; West Berkshire; Windsor and Maidenhead; Wokingham

[Dominic Herrington](#) is the RSC for south-east England and south London which includes the South East authorities of Brighton and Hove; East Sussex; Hampshire; Isle of Wight; Kent; Medway; Portsmouth; Southampton; Surrey; West Sussex;

⁷ For more information and details of the current appointments to these posts go to <https://www.gov.uk/government/policies/increasing-the-number-of-academies-and-free-schools-to-create-a-better-and-more-diverse-school-system/supporting-pages/regional-schools-commissioners-rscs>