



IECARDA

A National Education Service?

Restoring Good Governance & Accountability in Schools

I have combined my learning from working with Academy and Multi Academy Trusts with my experience as an NHS Foundation Trust governor to compare models of governance. With a nationally funded and locally provided service there must be ways in which that service is locally responsive and accountable. The NHS Foundation Trust model appears to do this. Are there lessons here for Multi Academy Trusts?

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PART 1: HISTORICAL CONTEXT

In 2005, one of my final pieces of work, before leaving my post as deputy director of education in a local authority, was to initiate the establishment of two sponsor-led academies to replace two local secondary schools that for years had been struggling to break through the barriers causing long-standing and endemic low achievement. The idea of importing significant additional resource, not least new buildings, new energy and new ideas seemed both worthy and logical. After all, I, with the local authority had singularly failed in helping two of our schools improve the leaving qualifications and life-chances of their students.

From 2006, now working in an independent education consultancy, I was involved with supporting the “transitioning” of struggling schools into sponsor-led multi academy trusts. We also supported the set-up of academy sponsor companies whose aim was to rescue schools failing their students. The worthiness and logic of these pieces of work remained evident. Students were being let down: Now they would have a better chance.

The introduction of converter academies in 2010 altered the landscape beyond recognition. The intention was to offer outstanding schools (it later included those judged as good by Ofsted) the same “freedoms” that were being offered to the hitherto sponsor-led academies.

Typically, in these cases, a small number of existing governors nominated themselves as “members” of an academy trust through being the signatories to the Memorandum of Association. To comply with their Articles of Association, the members then **appointed the majority of governors** and arranged for the election of parent governors. They could appoint staff governors by a process of their own choosing and they could invite the local authority to appoint a representative. Many did not. The Principal was treated as an ex officio governor. Limits to the number governors employed by the trust and those who had a relationship with the local authority ensured that the members had total control.

“the business of the Academy Trust shall be managed by the Governors who may exercise all the powers of the Academy Trust” (extract from an early version of the Articles of Association of an academy trust)

At a stroke, governors found themselves “elevated” to the status of directors, albeit, non-executive directors (NEDs). They were also the trustees of their academy trust. For the majority of them, they were the appointees of a very small number of members. In most converter academies, the members appointed themselves as governors/NEDs.

At a stroke, control of the school had shifted away from an elected local council into the hands of typically three or five self-appointed members. Accountability of a local school to its local community was now restricted. Parent governors may be lobbied, but, by design they were a small minority on the governing body or board. Staff were now employed by

the trust. That said, these early converters were outstanding schools, popular and mostly over-subscribed, so few concerns were raised by their local communities.

At a stroke, a new sector for professional legal and accountancy firms opened up, with many absorbing in full the government academy-conversion grants.

What was the motivation for conversion? In the most convincing cases, it was a view of the governing body that the future of local authorities was now uncertain and taking control would assure the long run future of their school. In more worrying cases, it was the view of a headteacher who may have persuaded his/her governing body that there would be a financial gain and less local authority or other outside “interference”.

Explaining to governing bodies that entering into a very long-run commitment when headteacher appointments were time limited was almost a lost cause. It became increasingly obvious that though the governing bodies were the *de jure* decision makers it was headteachers who were the *de facto* decision makers – and the motivation was not always obviously the long-run interests of the school.

The so-called “new freedoms” were interpreted in intriguing ways.

Pay for teachers was, in the vast majority of trusts, pegged to the scales and ranges published each year in the school teachers’ pay and conditions document. Not always the case for leadership though, where freedoms to pay above group size ranges were often enthusiastically seized upon. Groups of converter academies began to associate and an internal market, particularly related to the school improvement function, ensured that funding flowed within the group rather than through the market-tested procurement of external expertise. Some academy leaders began to see lucrative careers ahead.

In 2012 academy trusts were given permission to form multi-academy trusts (MATs) and work in ways similar to the original sponsors. The intention was that high performing academies could sponsor or adopt those who were still struggling.

Former principals of converter academies became elevated to chief executives of multi academy trusts, some of whose salaries became equally elevated. Articles of Association of MATs preserved the very small number of members and the method of appointing a board of non-remunerated governors/trustees/NEDs. This meant that, in law, a handful of members had direct control over groups of schools. As before, many of these members appointed themselves as governors/NEDs so the imperative of members holding governors/NEDs to account was a nonsense. There was no attempt, at this time, to re-establish accountability of MATs directly back to the communities that their constituent academies served. So-called ‘local governing bodies’ or ‘local committees’ had and still have little power. In some cases, MAT members sit on these local governing bodies. There is an in-built fault line in governance that is at odds with the running of a public service.

Behind the establishment of MATs as charitable companies, a new set of private limited companies emerged offering services to the education sector. In more than a few cases there were direct or indirect links between the charitable and limited companies, for example between non-executive directors of the MAT and directors of the limited

companies. In more blatant cases there were links between the chief executive and the directors of the limited companies. In some cases, little was done to disguise such arrangements and Companies House would list, say, “Shardic Multi Academy Trust” just below “Shardic Education Services”. The naming of other MAT service companies was subtler, and perhaps purposefully obfuscatory.

With schools found by Ofsted to be less than good being levered into academy adoption, and with local authorities bound by the presumption rule for the establishment of additional places, the supply of academies seeking a home in a MAT remains high.

Some academy and MAT boards appear to have abrogated, neglected or forgotten their strategic role, often preoccupied with the operational imperative of rubber-stamping the chief executive’s decisions. I have yet to find a five-year strategic plan. I have yet to see the long-run sustainability of a MAT being prioritised. Some MATs are no more than associations of hitherto good schools who see an interest in preserving the status quo. Others appear to have adopted the vacuum cleaner approach to incorporating all-comers in a quest for growth. Others decline the more challenging schools as it may risk the development of others in their MAT. In all these cases, the internal “school improvement” market has flourished. Help and advice from one academy to another or from the MAT “central team” to a constituent academy is fully costed and charged. MAT internal HR, finance and IT services are now part of the extended business.

These conditions bring risks to the improvement of state education: a service accountable and responsive to those being served.

The demonstrable lack of accountability back to the tax payer whose payments are funding these quasi-independent trusts is worrying.

Their track record of success is unremarkable.

- A piece of small-scale research I undertook two years ago showed no relationship between the educational progress made by pupils in a sample of local authority areas and the proportion of schools that were academies in those areas. This was true for both [primary](#) and [secondary](#) phases.
- Some of the larger multi academy trusts are so large that many of their constituent academies are now more remote from their lead personnel and service providers than when they were inside a local authority.
- There is an increasing pool of unwanted and struggling schools that no MAT will take on.
- There is a litany of evidence of malpractice where those in the employ of a MAT are also being paid as consultants to other schools inside or outside the MAT.
- There is evidence that some governors/NEDs are financially benefitting from the MAT’s procurement of assets, goods or services.
- Some less successful MATs have been taken over by other MATs.

- An increasing number of struggling academies are being transferred from one MAT into another.
- A Multi-Academy Trust may “throw in the towel” – and one has.

It is argued that Regional Commissioners (as organisers), ESFA – the Education & Skills Funding Agency - (as regulators) and Ofsted (as inspectors) together ensure that the scale, nature and quality of educational provision is fit for purpose. Arguably, they do not, and the assurance of good governance befitting a public service appears lacking. There is a declining sense of education as a service, and an increasing sense of education as a business, where a proportion of public money is now bypassing those being served and ending up in private hands.

PART 2: COMPARISONS WITH THE NATIONAL HEALTH SERVICE (NHS)

I am privileged to have been elected as a public governor to an NHS Foundation Trust (NHSFT) where I have served for the past five years.

Typically, an NHSFT runs a number of services, which may include hospitals, in a geographic locality. In one sense, it may be compared with a multi academy trust.

That said, its model of governance is almost the inside-out version of that seen in MATs. Critically, instead of a small number of self-appointed members, any eligible member of the public may apply to be a member of an NHSFT – and thousands do.

These members elect governors onto the Trust to represent them and to advocate their needs and aspirations. Thus, NHSFT governors are representatives of the community and have a key role in holding the Trust to account on the community's behalf.

Unlike MATs, governors of NHSFTs are NOT directors. However, governors appoint Non-Executive Directors and hold them to account for the performance of the Board. NEDs appoint and hold to account the Executive Directors. These separations of roles and functions foster good governance and ensure that there are no ambiguities in lines of accountability from service delivery, through management and to the community being served by the Trust. Governors appoint the Chair who chairs both the Council of Governors and the Trust Executive Board.

Because members, governors and NEDs are often one and the same thing in MATs, lines of accountability are confusing and do not extend back into the community.

A comparison between the two models of governance is shown in the table below on pages 6 and 7.

Multi Academy Trust or Academy Trust	NHS Foundation Trust
Funded directly and indirectly by general taxation	Funded directly and indirectly by general taxation
Members: A very small number of people who are usually the signatories to the memorandum of association of the Trust (notional “owners”) - typically three or five.	Members: Any qualifying member of the public may apply to become a member (notional “owners”) – typically thousands
Members <u>appoint the majority</u> of governors also known as non-executive directors or trustees A <u>minority</u> may be elected eg parents, staff. <i>The interests of the small number of members are assured</i>	Members <u>elect the majority</u> of governors A minority <u>may be appointed</u> eg nominated from police, university, local authority <i>The interests of the large number of members are assured</i>
Governors and NEDs are one and the same thing	Governors and NEDs are not one and the same thing and they serve different functions
	Governors appoint the non-executive directors and hold them to account for the performance of the board
Governors/NEDs are NOT remunerated	Governors are NOT remunerated NEDs are remunerated
NEDs elect the Chair	Governors appoint or remove the Chair
NEDs appoint or remove the Chief Executive	NEDs appoint or remove the Chief Executive
Governors + Chief Executive normally comprise the board Chair is a NED	Non-executive directors + Chief Executive + all other Executive directors normally comprise the board Chair is a NED

IN SUMMARY

Through the constitution of academy and multi academy trusts, there are some lines of accountability:

- from service provision
- through service management
- through its mostly internally appointed board of governors
- to a small number of self-appointed members of the Trust.

Hence: A variable education service not overtly accountable to its users and their families.

IN SUMMARY

Through the constitution of NHS Foundation Trusts there is a clear line of accountability:

- from service provision
- through service management
- through its mostly externally elected council of governors
- to the wider community of its members.

Hence: A national health service overtly accountable to its users and their families.

PART 3: WAYS FORWARD

There is no reason why multi academy trusts should not be subjected to inspection. To date, Ofsted has inspected schools within a MAT and reported MAT-wide inferences. To date EFSA has scrutinised certain MAT practices and reported findings.

In the NHS, CQC (The Care Quality Commission) directly inspects NHS Foundation Trusts and reports findings.

My view is that the inspection of MATs should have three strands:

1. Performance (of its constituent academies)
2. Compliance (with its Articles, Funding Agreements, Regulations and Statutes)
3. Governance (and leadership)

I would recommend that the third strand, governance, could be evaluated using a modified version of a similar framework used in the NHS and developed by NHSI (NHS Improvement, formerly Monitor), called “Developmental reviews of leadership and governance using the well-led framework”, June 2017. For the purpose of research, I have posted an experimental modification of this framework on the [ECARDA](#) website.

My hunch is that using such a framework to evaluate governance would reveal some of the key shortcomings in the governance arrangements of MATs, not least, the paucity of long-run strategic planning for sustainability and the lack of internal and external accountability. How these matters may then be addressed would require a political decision.

A start may be to redefine the members of a multi academy trust to align with membership of NHS Foundation Trusts and move to elected governors. Why not go further and separate the governor and non-executive director function? Perhaps, the whole governance model of NHS Foundation Trusts could be adopted by Multi-Academy Trusts.

With good governance, the Chief Executive should have the mandate and authority to deploy his or her skills to manage the executive team(s) to the benefit of learners across all constituent academies in the Multi Academy Trust

In this way we could have a locally accountable national education service made up of effective Multi Academy Trusts.

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