

# GOVERNANCE OF THE ENGLISH EDUCATION SYSTEM

**A collection of papers written between 2017 and 2022**


## PETER LACEY



**October 2026**

## INTRODUCTION

By 2017, I had been away from my employment as a deputy director of education for over ten years, In my consultancy, set up in 2005, I had been close to schools who were setting up single academy trusts. Worries about the future of local authorities had caused some governing bodies of "good" schools to secure their long run futures by taking direct control of them and anchoring them to the aspirations of their local communities.

This process was accelerated for a different reason. The political megaphone was encouraging schools to "break free from local authority control". Then came the invitation for some of these single trusts to expand into multi academy trusts. The landscape changed.

Headteachers who had become Principals then became CEOs; the Headteacher's office became the boardroom. The language changed too: teaching became delivery; achievement became performance.

Around this time, I served a six-year period as a governor of a local NHS Foundation Trust.

It was like living in two universes. Their governance arrangements were completely different.

An NHS trust which met certain standards could apply to become a Foundation trust. This meant that their direct accountability to the Secretary of State was replaced with accountability to the community they served. The model was a "public benefit corporation".

At the same time, and conversely, schools which met certain standards could apply to become an Academy trust. This meant that their accountability to the community they served was replaced with direct accountability to the Secretary of State. The model was a "charitable company run by guarantee".

The same government had created different governance models for two of its public services.

Alongside this remain two different associated inspection regimes.

These papers are a record of what I was thinking because of what I was noticing. If you think they are political, that is because the design of a system of schooling is the outcome of political decision making. Because I was living in those two universes, I wanted to bring what I was noticing in my NHS role as comparisons to what I was noticing in my education role.

My writing about how a MAT inspection might look if processes were taken from the NHS is only referenced towards the end of the fifth paper.

My consultancy work, 10 years on, continues to give me a close-up view of the governance arrangements of MATs. As a trustee, of a subject association on and off, throughout the last 25 years (on at the moment), I have the privilege of hearing first hand the voice of teachers.

Would I change the views expressed in these papers between 2017 and 2022? Not really. In my opinion, the journey since 2022 has actually weakened the influence of parents and diminished the agency of teachers. Performance indicators used for "accountability" purposes have certainly distorted inclusive practice.

In my view, the purposes of education have never been so out of alignment with the design and operation of the English school system. And, at the heart of this, is governance that is not fit for purpose.

PL October 2026

ECARDA

# 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?

**Peter Lacey**
**October 2017**

## 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:<br>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:<br>Any qualifying member of the public may apply to become a member (notional "owners") – typically thousands |
| Members appoint the majority of governors also known as non-executive directors or trustees<br>A minority may be elected eg parents, staff.<br>*The interests of the small number of members are assured* | Members elect the majority of governors<br>A minority may be appointed eg nominated from police, university, local authority<br>*The interests of the large number of members are assured* |
| 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<br>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<br>Chair is a NED | Non-executive directors + Chief Executive + all other Executive directors normally comprise the board<br>Chair is a NED |

| | |
|---|---|
| IN SUMMARY<br><br>Through the constitution of academy and multi academy trusts, there are some lines of accountability:<br><br>• from service provision<br>• through service management<br>• through its mostly internally appointed board of governors<br>• to a small number of self-appointed members of the Trust.<br><br>Hence: A variable education service not overtly accountable to its users and their families. | IN SUMMARY<br><br>Through the constitution of NHS Foundation Trusts there is a clear line of accountability:<br><br>• from service provision<br>• through service management<br>• through its mostly externally elected council of governors<br>• to the wider community of its members.<br><br>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 leaners 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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October 2017

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December 4, 2018

# A National Education Service - identifying and overcoming barriers

## A short article on the barriers to establishing a National Education Service

This second paper follows the paper “A National Education Service?” published on the ECARDA website in October 2017. It starts by identifying possible inhibitors to a National Education Service, taking the view that past legislation has brought improved educational opportunities for some but never all learners. The paper continues with some observations on how changed governance arrangements for multi-academy trusts could bring local schools to account directly to the local communities they serve. By design and necessity, this paper is unfinished. The reader is invited to continue the projection into the future.

Download the paper

# RETURNING SCHOOLS TO THEIR COMMUNITIES

## A FIRST STEP TO ACHIEVING EDUCATIONAL EQUITY

*This second paper follows the paper "A National Education Service?" published on the ECARDA website in October 2017. It starts by identifying possible inhibitors to a National Education Service, taking the view that past legislation has brought improved educational opportunities for some but never all learners. The paper continues with some observations on how changed governance arrangements for multi-academy trusts could bring local schools to account directly to the local communities they serve.*

*By design and necessity, this paper is unfinished. The reader is invited to continue the projection into the future. A link to a related PowerPoint presentation is included at the end.*

If we are to transform the state-funded educational landscape in England, there may be a need for some preliminary site clearance. Three barriers to a quick and complete rebuild are Choice, Church and Charity.

'Choice' was the political orthodoxy underpinning the 1988 Education Reform Act. The creation of Ofsted, with its reports, and the publication of primary and secondary schools' national curriculum assessments were intended to assist parents in making informed choices. Local management of schools motivated schools to maximise their income by maximising their pupil intake. Thus, the market drivers were in place to foster competition in the belief that that this would raise standards.

Whilst market competition may benefit private-sector commercial operations, it does not, in an overall sense, benefit a state-funded public service. A picture of winners and losers does not befit a public service. Choice is distorted on the supply side because a so-called good and popular school will not expand to meet demand. It caps its intake to become a *de facto* selector. Choice is distorted on the demand side because those who can afford to will travel further to fulfil their choices. This leads to significant negative social and educational consequences.

'Church' as a provider of state-funded education is a historical legacy. Campaigning for free, compulsory and non-religious education, the National Education League attempted to influence the 1870 Education Act, arguing that state-funding for the growing number of voluntary schools was wrong. Partly successful, school boards were established to set up and manage schools in areas where they were needed with the power to levy a local precept. However, state funding for voluntary schools continued to grow and the church had influence on many of the school boards to protect and nurture their own interests. For similar reasons, John Clifford's National Passive Resistance Committee attempted to influence the 1902 Education Act. They had little

success, competing with the Church Party, a conservative party faction which, with its intention to stop the spread of secularism in education, significantly influenced the 1902 Act, replacing School Boards with Local Education Authorities which ensured voluntary schools received funding at levels comparable with the former board schools. The 1944 Act further embedded state funding of voluntary church schools, albeit in two forms.

The question of whether tax-payers money should continue to fund church schools is even more relevant today. Their unique admissions criteria and governance arrangements set them apart, and their congregation into multi academy trusts brings the possibility of further embedding a bipartite, rather than universal system.

'Charity' is a virtue, but in the sense of it being an incorporated organisation that runs academy and multi academy trusts, perhaps less so. The 2005 DfES White Paper "Higher Standards, Better Schools for All – More Choice for Parents and Pupils", preceded the Education and Inspections Act of 2006 which established Trust Schools. Over 90 Labour MPs and peers expressed their concern in an alternative white paper which included the following prescient statement:

> Our central concern is the proposed development of a body of self-regulating schools without an effective system of accountability or measures to ensure that the interests of all pupils are protected and advanced. Without the measures proposed in this paper there is a serious risk of delivering enhanced choice only for some, and reduced or restricted choice for others. Disadvantaged pupils may be losers rather than gainers from the new policy.

The amended legislation made no reference to new Trust schools, but the model was adopted by a number of Church Schools and Foundation Schools. The model for academies was now in place.

Extending the City Technology Initiative brought in under the 1988 Act, the Labour Government used the Learning and Skills Act of 2000 to introduce sponsored City Academies, later shortened to Academies, to tackle low achievement levels in areas of deprivation. Sponsors established a Trust to run these groups of academies and, in the early days, were expected to contribute to capital costs, but this requirement was quickly dropped. The Trust entered into a funding agreement with the Secretary of State whereby direct funding was contingent on meeting specific conditions. The Academies Act of 2010 allowed all 'good' schools to convert into an academy, without the need for a sponsor, by establishing their own charitable trust. As the scheme expanded, sponsors, who now could include academies themselves, formed multi academy trusts. Unlike local authority maintained schools whose accountability is to the community, through its elected members, the line of accountability of academy and multi academy trust is directly to the Secretary of State.

Thus, educational legislation intended to ensure excellence for all, is by its design and implementation falling short of its intention. Not all learners benefit fully from the current

educational offer. Children and students from disadvantaged backgrounds continue to achieve less than their peers and thereby have limited life-chances. If legislation had been a success, all schools would be outstanding (to coin an Ofsted term), but they are not. Provision is variable so educational experience is variable – by geographic region, by socio-economic area and by proximity of other schools.

We have a lexicon that appears remote from the nature and purpose of education: 'System' rather than 'service'; lessons and the curriculum that are 'delivered' not 'taught'; pupil 'performance' rather than pupil 'achievement'. Schools are 'academized'. Academies may be 're-brokered'.

Other terms have been hijacked. Accountability is no longer a responsiveness to funders and users, but the publication of data to show how they compare with certain government 'expectations'. The terms good and outstanding are now associated with Ofsted judgements. Performance management is now singularly associated with staff appraisal. Local governing bodies are no longer governing bodies. Consultation means being informed rather than involved.

Much needs to be done. The issue is where to start. The logical starting point is, perhaps, to establish a consensus vision for educational provision written in a down-to-earth language rather than meaningless catch phrases. Translating the vision into practice will be incremental. The translation would necessarily start from where we are now.

As a starter, I propose that the vision should include the intention that a local school must reflect the needs and aspirations of its local community. This means that the community must have a say and influence.

If the school is part of a multi academy trust (MAT) then it is likely to have a local governing body (LGB), alternatively known as an advisory group. Under the current arrangements this local governing body is a *de jure* subcommittee of the Board of the MAT who may decide its constitution and purpose. For the most part, these LGBs are constituted with little or no power. The Board itself will have a majority of seat-holders appointed by the Members of the Trust. The Members of the Trust are usually the signatories to the Trust's memorandum of understanding and other members appointed by agreement of the founding members. This small number of Members who control the Trust are non-elected, and in many cases, self-selected.

My proposal is that, as in a public benefit corporation[1], any community member may "sign up" as a Member of the Trust who runs its neighbourhood school. Those community Members would then elect a number of the Members to become a governor on the Local Governing Body. In turn, Governors from each Local Governing Body across the MAT would appoint, from external applicants with the necessary skills and expertise, non-executive directors (NEDs) onto the MAT Board. I would envisage the number of NEDs to equate to the number of executive directors,

such as Chief Executive Officer (CEO), Chief Operating Officer (COO), Chief Finance Officer (CFO), Director of Human Resources, Phase Leads and, where necessary, Regional Leads. Amongst the non-executive directors appointed by Governors would be one to act as Chair of the Trust Board.

NEDs would be appointed by governors for a fixed period and would be remunerated for working with the MAT for a given number of days each month. NEDs would not be employees of the MAT, but governor appointments onto the Board. Their role of NEDs would be not to interfere with the operational management of the Executive Directors, but to offer advice and to hold them to account. In turn, the NEDs would be accountable to governors. This model is similar to that found in NHS Foundation Trusts. In short, Governors have the power to appoint and dismiss NEDs.

In the first instance, the Trust Board would sign a revised funding agreement with the Secretary of State, Ofsted would remain as the Inspection agency and the Education and Skills Funding Agency (ESFA) would remain the regulatory body. Local authorities would retain their responsibility for ensuring sufficient school places and be given powers to deliver this responsibility. Over the short run, regional groups of local authorities would assume the responsibilities of regional commissioners in order to eradicate the current conflict of interests.

This proposal turns inside out the current arrangements and reverses the flow of accountability to those who fund and use the service.

If these proposals were implemented as a first step towards creating a National Education Service, it is a matter of conjecture how the arrangements would evolve, but I believe the shifts would be to the advantage of a better service to all. I would guess that academies in widely dispersed MATS would seek to move to one with a "centre" geographically closer. Perhaps, over the longer run, local governing bodies would urge trusts themselves to focus on provision over a distinct locality.

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Peter Lacey, December 2018

March 12, 2019

# National Education Service - Governance of MATs - Presentation

## A presentation on reversing the flow of accountability in MATs

This presentation draws on earlier writing and tweets related to the MAT governance model in general and accountability in particular. It suggests moving away from the charitable trust model and adopting the public benefit corporation model and describes what this looks like.

Download the presentation

# A National Education Service

accountable to the many not the few

Strand 2:  Governance

# Who do schools belong to?

Well, they are funded by the taxpayer to the tune of £40bn last year, so I suppose they belong to us.

But, I can tell you this: they are full of children – and they are most certainly ours.

# Stakeholder assurance and influence

Parents, in particular, need to be assured that their school is:

- A safe, stimulating and happy environment
- Enabling personal development and learning
- Preparing children for their next stage

The community should be able to influence the direction of the school so that it meets its aspirations and needs

These matters are related to the governance of the organisation

# Components of governance

**ACCOUNTABILITY**

Two golden threads: (1) from the organisation to its users; (2) from the organisation to its funders

Communication: reporting, listening and responding - transparency

Relevance, validity and reliability of information reported

Clear internal lines of accountability that reflect the lines of delegation below: silver threads

**DIRECTION**

Clarity of vision (future position) reflecting needs and aspirations of users and funders – inclusive stakeholder authorship

Strategy – the long-run road-map to achieving the vision – inclusive organisational authorship

Top-level annual operational plan with key deliverables that translates strategy into practice

Annual delivery plans with performance measures that together achieve the key deliverables above

**ENABLEMENT**

Stated values and a culture that translates values into behaviours and practices

Clarity of purpose

An organisational structure with clear roles and a line of delegation from Members to Directors to Top Level Executive to Constituent Academies

Policies and procedures that ensure compliance and performance and reflect values

# Governing bodies

There is more to governance than governorship but governors have a key role in promoting good governance across the organisation.

The structure and role of governing bodies should enable and ensure good governance.

# Governing body of local authority maintained schools

- At least 2 parent governors
- The headteacher
- One staff governor
- One local authority governor
- Any co-opted governors
- Additions for foundation and church schools

**The constitution of governing bodies of maintained schools - Statutory guidance for governing bodies of maintained schools and local authorities in England, August 2017**

# Governing body of local authority maintained schools

## PART 2

### Roles of the Governing Body and Head Teacher

**6.**—(1) The functions of the governing body include the following core functions —

(a) ensuring that the vision, ethos and strategic direction of the school are clearly defined;

(b) ensuring that the head teacher performs his or her responsibilities for the educational performance of the school; and

(c) ensuring the sound, proper and effective use of the school's financial resources.

(2) In exercising their functions the governing body shall—

(a) act with integrity, objectivity and honesty and in the best interests of the school; and

(b) be open about the decisions they make and the actions they take and in particular shall be prepared to explain their decisions and actions to interested parties.

(3) The governing body must appoint a clerk with a view to ensuring their efficient functioning and must have regard to advice from the clerk as to the nature of the governing body's functions.

(4) The head teacher's responsibilities include—

(a) the internal organisation, management and control of the school; and

(b) the educational performance of the school.

(5) The head teacher is accountable to the governing body for the performance of all his or her responsibilities.

(6) The head teacher must comply with any reasonable direction of the governing body.

**The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013**

# Governing bodies of local authority maintained schools

11. Meaningful and effective engagement with parents, staff and the wider community is vital, but this is not the same thing as governance and is not achieved by having various categories of governor on the governing body. Through both appointments and informed elections the focus should be on constructing a governing body with the right skills. Community engagement, including with parents, should be seen as an important but distinct activity for which governing bodies will need to assure themselves that appropriate structures and arrangements are in place.

12. The governing body as a whole should take responsibility for understanding what parents think, while acknowledging that being parents themselves, parent governors have valuable knowledge and perspectives about the school to bring to bear in discussions and decisions and guarantee that there is always a link between governance and the parent community.

**The constitution of governing bodies of maintained schools - Statutory guidance for governing bodies of maintained schools and local authorities in England, August 2017**

# Local governing bodies of academies in a multi academy trust

100a. Subject to these Articles, the Trustees may appoint committees to be known as Local Governing Bodies for each Academy and the same Local Governing Body may be appointed for more than one Academy.

101. Subject to these Articles, the constitution, membership and proceedings of any committee shall be determined by the Trustees.

101A. The Trustees shall ensure that any Local Governing Body shall include at least 2 Parent Local Governors.

53. In circumstances where the Trustees have not appointed Local Governing Bodies in respect of the Academies as envisaged in Article 100a or if no provision is made for at least 2 Parent Local Governors on each established Local Governing Body pursuant to Article 101A there shall be a minimum of two Parent Trustees and otherwise such number as the Members shall decide who shall be appointed or elected in accordance with Articles 54 - 56.

54. ……. The elected or appointed Parent Trustees must be a parent, or an individual exercising parental responsibility, of a registered pupil at one or more of the Academies at the time when he is elected or appointed.

**Extracts from Model Articles of Association**

# Risks to good governance in the MAT model

MAT LGBs vanish or are rendered powerless thereby diminishing academy accountability to parents and the local community.

MAT LGBs vanish or are rendered powerless thereby diminishing the ability of parents and the local community to influence the future direction of their academy.

MAT LGBs associated with more than one academy blur the focus of accountability of a single academy to its parents and local community.

Where there are no LGBs, the parent representation on the board as trustees may be unrepresentative of the majority of individual academies, particularly in a large MAT.

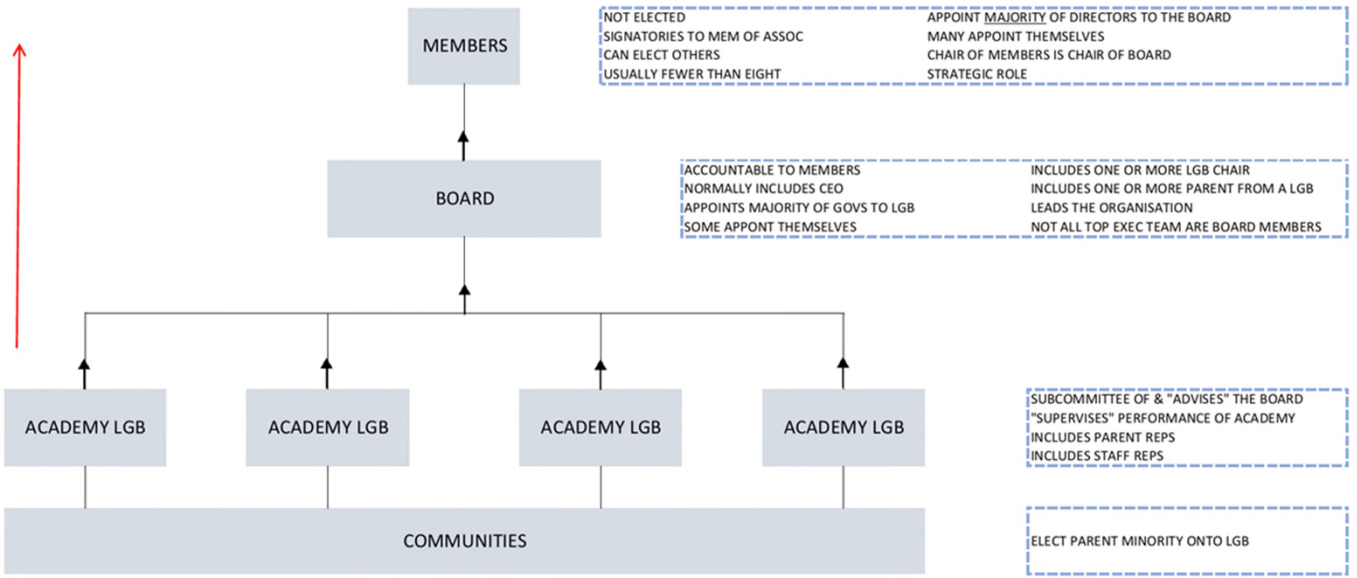
The direction of flow of accountability may be away from those served and towards a small number of unrepresentative members.

There are many MATS that script out parental involvement in governorship in order to "get the job done" in turning schools round and raising standards.

However, there are notable exceptions of MATS realising significant school improvement through their deep governorship involvement with parents and communities.

# THE CHARITABLE TRUST

Current picture



# An alternative model of governance

The current model, articulated in its articles of association, is based on a charitable trust. With “upline accountability” to its small number of members, it risks remoteness from parents of pupils in individual academies.

A reversely orientated accountability model called the public benefit corporation is adopted by NHS Foundation Trusts.

The line of accountability runs from its board of directors through governors to its members, who are the community.

Any member of the community, including staff and parents may subscribe as a member of the trust.

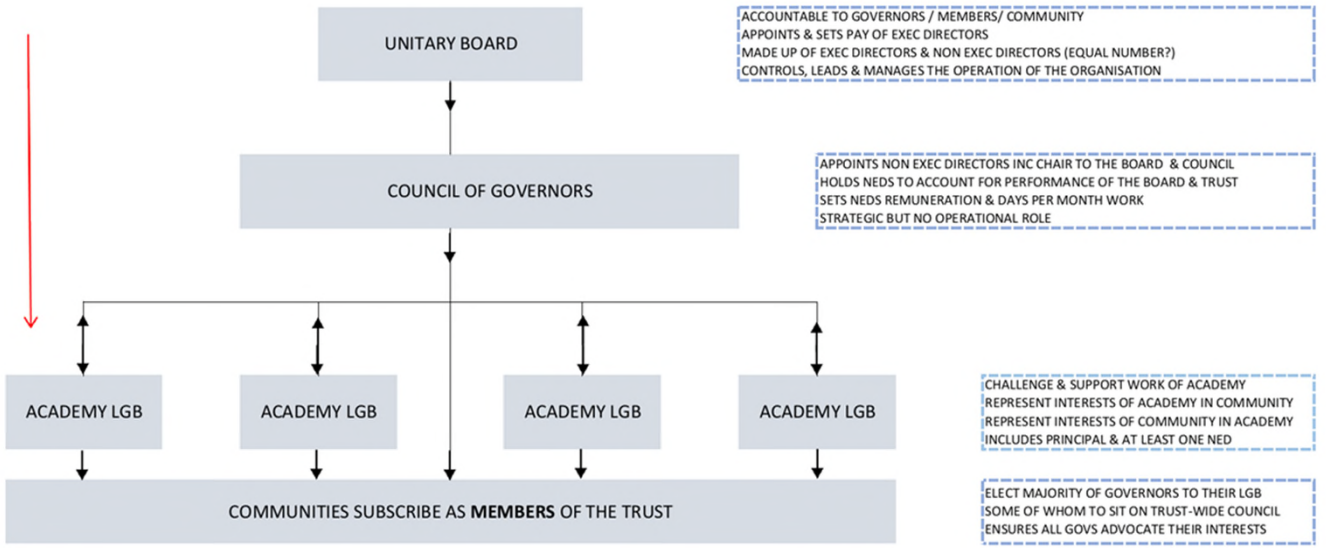
Members nominate and elect non-remunerated governors from the membership to represent and advocate their interests, aspirations and needs.

Governors sit on the trust council of governors with powers to appoint, dismiss and hold to account remunerated non-executive directors, including a chair, to the board.

The board of directors is made up of non-executive directors and the executive directors of the trust, who hold a corporate responsibility for the performance of the trust.  The board appoints executive directors who lead and manage the organisation.

# THE PUBLIC BENEFIT CORPORATION

Different picture?



# Advantages of a public benefit organisation

The switch from charitable trust to public benefit corporation aligns the accountability of MATs and their constituent academies to those who use and fund the service.

Executive teams are strengthened by the addition of non-executive directors, appointed for their experience and expertise.

Unitary boards of directors expedite business rather than act as a reporting mechanism from executive to non executive directors.

Accountability to members moderates the board's determination of top executive remuneration.

Governors would act as conduits of information and views between community/parent members and, via NEDs, to and from the board.

Through these mechanisms the community is able to influence the future direction of its local academy.

**We get closer to answering the question: who do schools belong to?**

**We take a significant step towards establishing a national education service.**

September 13, 2020

# An alternative model of accountability for MATs

## Re-engineering the model of MAT governance

Multi Academy Trusts (MATs) are established as charitable trusts, with a governance model defined by their articles of association and funding agreements with the Secretary of State for Education. The Board of Directors / Trustees is accountable to a small number of Members who typically and initially may be the signatories to the Memorandum of Association of the Trust. Direct accountability to those who use and fund the service (parents and taxpayers) is limited and opaque, and arguably does not befit a public service. This short paper considers adopting and modifying the governance model adopted by NHS Foundation Trusts: the Public Benefit Corporation, where the flow of accountability has been redirected from the Secretary of State to the wider base of community Members.

MAT Accountability

# PROPOSALS FOR STRENGTHENING LOCAL ACCOUNTABILITY OF STATE SCHOOLS IN ENGLAND

There is little to contradict the view that the current government intends that all state schools should operate as academies, preferably inside multi-academy trusts (MATs).

We take the view that the provision of education should be a public service, accountable to those who fund and use it. We see current government policies and practices as not serving this interest.

**The current governance model**

The governance model of multi-academy trusts is determined by their articles of association as charitable trusts and by their funding agreements with central government. The object of each charitable trust is *establishing, maintaining, carrying on, managing and developing schools offering a broad and balanced curriculum.* (Extract from current model Articles of Association, DfE)

At the core of a MAT are its Members. Usually a group of no more than five, these persons include the signatories to the memorandum of association of the charitable trust and any other persons that by majority vote, they choose to include. They are not elected and, initially, they are normally self-selected. Their role is analogous to the shareholders of the company. They appoint non-executive directors onto the Board whose responsibilities accord with company law. The Board establishes committees which may include "local governing bodies", whose composition and constitution is determined by the Board. For multi-academy trusts, there is only little reference in the articles of association and funding agreement to the inclusion of parents or staff on the Board or its committees. Lines of accountability are clearly "upstream": from academies to the Board to the Members.

**Broadening the definition of accountability and reversing its direction**

DfE argues that public accountability is demonstrated through the publication of school information and performance statistics, an inspection body, the Office for Standards in Education (Ofsted), and the regulatory body, the Education and Skills Funding Agency (ESFA). We argue, as above, that the accountability of schools and the wider education service, should be to those who use and fund them. For schools and academies, this means accountability to local stakeholders, who include parents and carers, employed staff and local community members. In other words, we argue for the flow of accountability to be "downstream". In addition to making schools answerable to the local community, the community should have the authority to influence the values and strategic direction of its schools.

**A different governance model**

To achieve this, the current model of governance should change. Charitable Trusts should be replaced with Public Benefit Corporations (PBC). This model has been used to good effect in the governance of NHS Foundation Trusts. NHS Trusts that met certain conditions could become Foundation Trusts, at which point direct accountability to the Secretary of State was redirected to direct accountability to the community being served by that Foundation Trust

Translating the model from Health into Education would bring about the necessary changes in governance. Instead of a self-selected small group of Members, any community citizen may choose to register as a Member of the Trust that runs its local school or academy. Employed staff of the Trust would become a Member on appointment, with the right to opt out. Members would elect non-remunerated governors to sit on their local academy Local Governing Body (LGB), at least one of whom would sit on the MAT Council of Governors (CoG). See below for more on this. Local Governing Bodies, associated with each academy, would include the Principal of the academy, *ex officio,* and up to two other members of staff employed at the academy. Elected Local Governors would be in the majority, and they might invite particular expertise or

further parent representation should they feel that these are insufficiently represented in their own number. The local authority should nominate one councillor to sit on each LGB. The role of the LGB would be to hold the academy to account for the safety, welfare, and outcomes of all learners. They would represent the needs and aspirations of the local community and act as a bridge between academy and its locality. Their representation on the wider MAT CoG would ensure their voice is heard by the MAT Board.

**A Multi-Academy Trust Council of Governors**

The MAT CoG would be made up of those elected by the local community Members from each constituent academy. The role of the MAT CoG would be to hold the MAT to account by supporting and challenging its work, by influencing its direction, and by ensuring that it strives to meet the needs and aspirations of all the communities served by its constituent academies. The MAT Board would be composed of the Executive Directors of the MAT – (for example, CEO, COO, CFO, HR, Primary Phase Lead, Secondary Phase Lead, IT & Communications), as well as a roughly equal number of remunerated non-executive directors (NEDs), appointed, after open advertisement and competition, by the Council of Governors. The Chair of the Board would be a NED appointed in a similar fashion. The Chair of the Board would act as the Chair of the CoG. The terms and conditions of NEDs, and their performance review, would be determined within nationally benchmarked parameters by the CoG. The appointment of the CEO would be made by the Board, subject to the approval of the CoG. Other executive director appointments would be made by the Board. The role of NEDs would be to add value to the business of the Board through both supporting and challenging the work of Executive Directors. Thus, committees of the Board would normally include both executive and non-executive directors.

Together, this Unitary Board (Executive and Non-Executive Directors) would act as the MAT decision making body, and would be accountable to the CoG, Trust Members, service users and the wider community.

**Inspection and Regulation**

As in any service that is spending tax-payers' money with the intention of benefiting societal objectives, there is a need for inspection and regulation.

Ofsted, as an inspection organisation, may well be best placed to continue in this role. However, we would wish to see changes to its focus and ways of working. Simplistic categorisation into Outstanding, Good, Requires Improvement, or Inadequate, may not be encouraging schools to research and innovate, in order to best meet the needs and aspirations of their pupils. Interpretations of the Ofsted "grade" criteria risk becoming the scope and ceiling of the performance ambitions of schools. Shifting the emphasis from an inspection being a process done to a school to a process being conducted with a school, including a role for local governors on the team, opens the possibility of an inspection being viewed as a time to learn more about the school, and to re-focus its continued development.

ESFA, as the regulatory body, clearly has a continued role. Beyond its function of ensuring proper financial management we would wish to see more interventions where the wider spectrum of control measures, including those related to accountability to local communities, may not be fully in place.

We note that in the independent sector, there are two layers of inspection, one related to compliance and the other to quality. In the public Health Sector, we note the complementary roles of NHS Improvement (NHSI) and the Care Quality Commission (CCG). There may be lessons to learn from these models.

**Commissioning**

Under its school place planning duties (s13-14 Education Act 1996) a Council, as an education authority, has a duty to promote high standards of education and fair access to education. It also has a general duty to secure sufficient school places in their area, and to consider the need to secure provision for children with

Special Educational Needs (SEN). This includes a duty to respond to parents' representations about school provision. These are referred to as the school place planning duties.

Regional School Commissioners (RSC) have a role in, *inter alia,* intervening in and supporting underperforming schools or academies, commissioning new schools (typically free schools), and advising on schools joining or moving between multi-academy trusts. We notice a role that increasing overlaps that of Ofsted and aspects of ESFA, and a role that may conflict directly with the local authority, in terms of ensuring the supply of necessary and sufficient school places. We would propose the abolition of RSC, recoupling the local authorities' responsibilities for planning with commissioning, and returning RSC funding to local authorities so that they have the capacity to undertake the full range of their statutory educational responsibilities, especially to those most vulnerable children and young people in their communities.

**Relationships**

With responsibilities for the education and welfare of all children and young people in their area, local authorities have a wider, and arguably more demanding, role than schools, in meeting those responsibilities. In this regard, the relationship between a local authority and all the schools in its area is critical in meeting those wider responsibilities.

Whilst schools maintained by the local authority have governance structures that allow for productive cooperation, standalone academies and those inside MATS do not. Past rhetoric of "breaking free from local authority control" has not helped. The proposals above are not about returning academies to local authority control, but reengineering MAT Charitable Trusts as Public Benefit Corporations, in the way described above, which would ensure that each party could co-operate as mutual enablers to ensure the best outcomes for all children and young people.

**Conclusion**

This proposal is principled and progressive. It moves things forward rather than backward. It deals with changing the system from within rather that costly cosmetic name changing. There is no reason why the terminology of academy and multi-academy trust should not remain. At its heart, the Membership of a trust or multi-academy trust has moved from a small number of unelected Members to open community Membership, with local citizens scripted into, rather than out of, decisions regarding the nature and direction of their school provision.

**Peter Lacey** is an independent education consultant who has been a governor of an NHS Foundation Trust.

See also:

| | |
|---|---|
| http://bit.ly/NES0001 | A National Education Service?<br>Restoring Good Governance & Accountability in Schools (2017)<br>*A personal and polemic reflection* |
| http://bit.ly/NES0003 | Returning Schools to Their Communities<br>A First Step to Achieving Educational Equity (2018)<br>A historic perspective |
| http://bit.ly/NESMATgov | A National Education Service<br>Accountable to the many not the few (2019)<br>*A PowerPoint presentation explaining re-engineered governance, related to this article* |

February 6, 2023

# A critique of the MAT Governance Model

## A critique of the governance model for MATs

This is another blog in the series about the governance of multi academy trusts. Concerns raised in my blogs over the last five years remain. The push towards total academisation of the school system in England magnifies those concerns. With academies being transferred from one trust to another and with forced academisation of so-called failing schools, the notion of schools belonging to, serving, representing, and being accountable to their local communities is vanishing off the horizon. This blog restates and explains my position that the charitable trust model of governance for academy trusts is unfit for purpose. This blog was written as a podcast and has links to the slides to be used.

MAT Governance critique

## Peter Lacey on a critique of the charitable trust model for academy trusts [S1]

## A podcast text

### Part 1: Naming of parts

The language of most aspects of education is riddled with ambiguity, no more so that when talking about the structure of the system itself.

So, I start this presentation in 2022, as Henry Reed did, 80 Years ago, in his poem called "Naming of Parts".

Firstly, inside an academy Trust there are two strands of leadership: [S2]

1. There are those with executive responsibilities, who run the organisation on a daily basis. I'm thinking here of the CEO, the CFO, Principals, Heads of HR, Communications etc.
   I'm calling these people the **executive directors**.

2. Then, there are those with non-executive responsibilities. I'm thinking here of the Members, the Trustees, the Board and their appointees onto committees, including the governors of academy Local Governing Bodies.
   I'm calling these people the **non-executive directors**.

The directors and the non-executive directors comprise the **senior leadership of the Trust**.

It is clear from these definitions that executive directors, unlike their non-executive counterparts, also have a **management role.**

As I have stated on many an occasion**, good governors, as non-executive directors, are defined by their proximity to leadership AND their distance from management.**

Secondly, I want to make the distinction between governorship and governance.

1. **Governorship is about people**. [S3] It is to do with the qualities and expertise of all those practising their non-executive role. I'm thinking here: of their knowledge of the organisation; their knowledge of the communities served by the academies in the Trust; their understanding of the legal basis and requirements of academy trusts; their diligence; their willingness to give time to the role: and an adherence to the Nolan principles of public life.
   A big ask from non-remunerated volunteers.
2. **Governance is about the organisation, and how it functions**. [S4] It is about the Trust's relationships, externally with the DfE, internally with its academies, and, both internally and externally with the different communities each academy serves.
   One way of looking at governance is through its three inter-related components.

   (a) The first component is about accountability. Academy trusts receive taxpayers' money (ours) to run schools for the benefit of children (ours). Demonstrating that

accountability, daily, befits any publicly funded and publicly used service. Look at the other manifestations of accountability: schemes of delegation and terms of reference for all committees give an insight into the accountability of the Trust.

(b) The second component is about direction. Where the Trust is heading; where it will be in five years, and how it's going to get there, are key indicators of the direction of travel of the Trust.

(c) And thirdly, the component of enablement translates intentions into practices in a manner that befits the values and culture of the organisation.

**Directors and non-executive directors share a role in ensuring good governance**, where all those components are visible and functioning.

**Governance is not the sole domain of governors.**

Good governorship is at the heart of good governance, but it does not define it. [S5]

Governance may well be fit for purpose (it isn't always) but when it is energised by good governorship then the Trust may be described as well led. I'll mention some tools for assessing that towards the end of the presentation.

Well, that concludes the first section of this presentation which I called "Naming of Parts". With these definitions and understandings, I would like to move to part 2 which is about how the current arrangements for academy trusts embed risks to good governance and stakeholder confidence.

**Part 2: Two strands of governance**

In this second part of my presentation, I want to look at the governance of academy trusts. As the school system across England is a publicly used and publicly funded service, then its governance should befit this. In short, it should show how the system is accountable to, and may be influenced by, its users and funders.

I have identified where I believe there are risks to this proper governance.

I am starting with looking at the non-executive governance arrangements, after which I will consider the executive governance arrangements.

Academy trusts in England are established as charitable trusts, with a memorandum and articles of association which describe the outline of their required governance arrangements. The academies are independent schools funded by the state. Their funding agreement sets out a list of conditions which trusts must meet in order for their academies to receive funding. The two parties to this agreement are the Trust, and the secretary of state for education. A multi academy Trust, by definition, will sponsor or control a number of academies.

**Risk area 1**

Membership

A small number of unelected, usually self-appointed, persons who initially and normally are the signatories to the memorandum of association of the Trust are the **Members**. They are often described as having a similar role to the shareholders of a company. In this sense their relationship with the Trust is closer to its ownership than to its management. Their duties may be found in other documentation: critically, they are responsible for upholding the objects of the Trust, assuring the governance of the organisation, appointing the Board of trustees who are accountable to them, and appointing the external auditor. By common agreement they may appoint additional Members. They serve an important, though non-executive function.

There is little said about to whom Members themselves are accountable. As a party to the funding agreement with the secretary of state for education, they have a contractual relationship with the government, and, by inference, an accountability to it.

It is noteworthy that the Members have **no formally required accountability to stakeholders** involved with and served by the Trust.

There is a risk that Members, in putting the interest of the Trust as an organisation first, **overlook the interests and concerns of the different communities served** by the academies in the Trust.

Members **appoint trustees and others to the Trust Board** who have oversight of the running of the Trust and responsibility for its success. Referring back to my earlier definitions, Board Members are the non-executive directors of the Trust, whose responsibilities are well documented in other places. The Trust Board appoints the chief executive officer as the accountable officer for the Trust and they may be involved with other senior appointments on the executive side: the executive directors.

Beyond the requirement to appoint an audit and risk committee, the Board may form other committees as they feel necessary to discharge their functions and responsibilities.

**Risk area 2**

Local accountability

Though not required by the articles, the Board **may** appoint committees to serve as "Local Governing Bodies" for each academy.

**Many do but some don't**. Some of those who do, have constitutions and terms of reference that lead to close working and accountability links to parents and the community. Others of those who do, have terms of reference which are little more than putting the presence and controlling influence of the Board at academy level. There are cases of the chair of the Board, who indeed may be a Member, sitting on every Local Governing Body. Some have staff representation, others do not.

In the worst cases, there is **a significant disconnect between the academy and its local community**. In these worst cases parents feel they have no say in the running of the academy to which they send they children, and **they perceive the Trust and its Board as remote entities**.

I am now going to consider governance through the executive side of the organisation.

The Trust Board is the decision-making body of the academy trust. As I mentioned earlier, the chief accounting officer or CEO is appointed by the Board, who normally delegate to that person all the necessary powers to run the organisation. A "first-level" scheme of delegation will specify which decisions of the Board are delegated to the CEO, and where the CEO is required to seek permission or approval from the Board. The CEO will, in turn, establish a central team for running the Trust and will determine a "second level" scheme of delegation and terms of reference which will determine the relationship, powers and responsibilities that are either retained at the centre or delegated to the principals of academies.

**Risk area 3**

Head teacher autonomy

An academy within an academy Trust will follow all the policies and procedures determined by the Trust. The extent to which the academy has a delegated budget and the power to select and deploy staff varies across trusts, and, in some cases, within trusts.

In many cases the curriculum model, schemes of work, and methods of teaching and assessment are common across the Trust. Where trusts include academies which serve different communities with their own particular aspirations and needs, the matter of conformity of **provision may contradict the imperative of designing provision around these aspirations and needs**. This may be brought to light where concerns are expressed by a Local Governing Body.

Given that principals are held to account for the pupil outcomes in their academies, there may be a tension where principals may wish to flex or adjust the curriculum and its teaching but are unable to do so because it does not fit within the Trust's template. This might extend to cases where a principal may have a view on a better deployment of resources within the academy but is unable to put this into practice.

This risk of conformity can reach through to the classroom where teachers may be aware of how things might be done differently to effect learning but they do not have the permission to exercise these professional judgements.

**Risk area 4**

Headteacher/ Principal accountability

The principal is employed by the Trust and is accountable to the Trust for, amongst other things, the welfare and educational outcomes of pupils in the academy.

How this accountability is demonstrated varies across and within trusts. Where a Trust has decided that an academy should have a strong, locally accountable governing body, the principal may be accountable to that body, signalling the principal's accountability to the community served by that academy.

In other trusts, the principal is directly accountable to the Board, whilst in others, the principal is accountable to the CEO, or another executive director with a phase or cluster responsibility.

A risk exists where a principal's accountability to the non-executive side, such as a Local Governing Body, does not fully align with that same principal's accountability to the executive side, such as a primary-phase director. [S2] See slide 2 again and draw in your mind the lines of accountability up each strand and across the strands from right to left.

**Part 3: An alternative model**

Following the Academies Act 2010, all outstanding schools were invited to apply to become academy trusts, and later, grow to become multi academy trusts (MATs). In doing so, they **left their elected local councils** and became directly accountable to the Secretary of State for Education.

Peculiarly, as a consequence of the National Health Service Act 2006, NHS trusts, which met given quality standards could apply to become NHS foundation trusts (NHSFTs), no longer directly accountable to the Secretary of State for Health, but **directly accountable to those they served**.

Structured as public benefit corporations they had governance arrangements that are fundamentally different from NHS trusts.

The Board of directors is a unitary Board. This means that within the Board of directors, **the non-executive directors and executive directors make decisions as a single group** and share the same responsibility and liability. All directors, executive and non-executive, have responsibility to constructively challenge during Board discussions and help develop proposals on priorities, risk mitigation, values, standards and strategy.

A stark difference between MATs and NHSFTs is that in the former, the Members are a small group of self-appointed persons, but in the latter **any person from the community** being served can subscribe as a Member. Membership can run into thousands.

In an NHSFT, **Members elect governors** to a Trust Council of Governors (CoG). NHSFT governors are responsible as a council for **holding the non-executive directors, individually and collectively, responsible for the performance of this unitary Board**. In turn, NHS foundation Trust governors are accountable to the Members who elect or appoint them and must represent their interests and those of the public.

Governors have real power: **they appoint (and may dismiss) the non-executive directors** who sit on the Board, amongst whom is the Chair, who chairs both the Board and the Council of Governors. Governors determine the rates and conditions of remuneration for non-executive directors. **Non-executive directors appoint the executive directors** to the Board, normally after seeking approval from the Council of Governors.

A summary of the comparison between a MAT and an NHSFT may be found on Slide 6. [S6]

Arguably, because of its direct accountability to, and indirect control by the community who use and fund it, the model of public benefit corporation better befits that of a public service than the model of a charitable Trust.

Replacing the charitable Trust model for MATs with this public benefit corporation could look as follows:

Any citizen with an interest in their local academy may choose to register as a Member of the Trust that runs that local school or academy. Employed staff of the Trust would become a Member on appointment, with the right to opt out. Members would elect from the membership non-remunerated governors to sit on their local academy Local Governing Body (LGB), at least one of

whom would sit on the MAT Council of Governors (CoG). Local Governing Bodies, associated with each academy, would include the Principal of the academy, *ex officio,* and up to two other members of staff employed at the academy. Elected Local Governors would be in the majority, and they might invite particular expertise or further parent representation should they feel that these are insufficiently represented in their own number. The local authority should nominate one councillor to sit on each LGB. The role of the LGB would be to hold the academy to account for the safety, welfare, and outcomes of all learners. They would represent the needs and aspirations of the local community and act as a bridge between academy and its locality. Their representation on the wider MAT CoG would ensure their voice is heard by the MAT Board.

The role of the MAT CoG would be to hold the MAT to account by supporting and challenging its work, by influencing its direction, and by ensuring that it strives to meet the needs and aspirations of all the communities served by its constituent academies.

The MAT Board would be composed of the Executive Directors of the MAT – (for example, CEO, COO, CFO, HR, Primary Phase Lead, Secondary Phase Lead, IT & Communications), as well as a roughly equal number of remunerated non-executive directors (NEDs), appointed, after open advertisement and competition, by the Council of Governors. The Chair of the Board would be a NED appointed in a similar fashion. The Chair of the Board would act as the Chair of the CoG. The terms and conditions of NEDs, and their performance review, would be determined within nationally benchmarked parameters by the CoG. The appointment of the CEO would be made by the Board, subject to the approval of the CoG. Other executive director appointments would be made by the Board. The role of NEDs would be to add value to the business of the Board through both supporting and challenging the work of Executive Directors. Thus, committees of the Board would normally include both executive and non-executive directors.

Together, this Unitary Board (Executive and Non-Executive Directors) would act as the MAT decision making body, and would be accountable to the CoG, Trust Members, service users and the wider community.

This model is the “inside out” version of the current charitable Trust model with accountability being downline to the community served rather than upline to that small number of unelected Members. (see slide 7) [S7]

Not all the four risk areas of the charitable Trust model are mitigated, but, from a broad-based stakeholder membership, through the elected governors and to their appointed non-executive directors, there is a stronger accountability and voice given to the communities served by the Trust. In this sense, the public benefit corporation model more befits the governance of a publicly funded and publicly used service.

**Part 4: Transformation or evolution**

Changing the MAT charitable Trust model into a MAT public benefit corporation, however desirable, may not prove straightforward because this model is embedded in the primary legislation of the 1996 Education Act. That said, with a strong enough political will, new legislation can be made.

Whichever model is used, the organisation would function under a similar regulatory framework, and a contract with terms and conditions to draw down funding from the Department for Education.

But, in the meantime, perhaps some of the arrangements of the public benefit corporation seen in NHSFTs can be transposed into the current MAT arrangements. Here are some ideas:

1. Extend the number of Members to include some non-employed-by-the-Trust stakeholders.
2. Extend the number on the Trust Board to include more non-employed-by-the-Trust stakeholders, perhaps proposed by Local Governing Bodies.
3. Ensure Local Governing Bodies include fuller representation of the community being served and with terms of reference that allow them to hold their school to account and to have their views taken into account at Trust Board level.
4. In a larger Trust, consider establishing a Council of Governors that includes an elected person from each Local Governing Body. Give this Council of Governors a voice on the Trust Board.

These measures are likely to improve the governance of academy trusts and, in doing so, improve its leadership. The notion of **good governance being at the heart of good leadership** is well established in NHSFTs. I have transcribed one of their self-evaluation tools called The Well Led Review. Though still at an experimental stage, with no permissions yet sought, I have given you a link should you think it useful. The meat of the review starts on page 10, which summarises the approach. [S8] Have a look; see what you think.

Well that wraps up my podcast.

I just wanted to assist you in some thinking about **your** academy trust.

i. The difference between governance and governorship
ii. The non-executive and executive strands of leadership
iii. Good governorship at the heart of good governance
iv. Good governance at the heart of good leadership
v. The risks of the charitable trust model not befitting the proper governance of a public service
vi. An alternative public benefit corporation model and how it might look in an educational context
vii. Taking advantages within the flexibilities of the current model
viii. And finally, applying a self-evaluation tool designed for a public benefit corporation to an academies charitable trust.

Thank you.



A CRITIQUE OF THE CHARITABLE TRUST MODEL
USED BY ACADEMY & MULTI ACADEMY TRUSTS


PETER LACEY

DIRECTOR OF ECARDA
an education consultancy


www.ecarda.co.uk

*slides to accompany a planned podcast*
*September 2022*

## SENIOR LEADERSHIP IN AN ACADEMY TRUST

### TWO STRANDS OF LEADERSHIP: TWO STRANDS OF GOVERNANCE

*Delegated responsibilities down each strand; Lines of accountability up each strand*

*Delegated responsibilities from left to right; Lines of accountability from right to left*

| **The non-executive "directors" strand** | **The executive "directors" strand** |
|---|---|
| [Members]<br><br>**The Board**<br>Trustees<br>Directors<br>Governors<br><br>Appointees to committees of the board, including<br>Local governing bodies | Chief Executive Officer (as the accountable officer)<br>And sometimes appointed as a trustee to the Board<br>Chief Finance Officer<br><br>And typically<br>A chief operating officer or Director of corporate affairs<br>Director of human resources<br>Director of schools/academies<br>Director of ICT<br>Director of Estates<br><br>And sometimes including<br>Academy Principals |

## COMPONENTS OF GOVERNORSHIP

### PERSONAL QUALITIES

To give up time to serve the trust and its stakeholders

A boldness to ask questions and pursue answers

Diligence and confidentiality

Willingness to uphold the Nolan principles of public life

### KNOWLEDGE

About the organisation

About the different communities served by the organisation

About the legal basis and requirements of academy trusts

About national and regional educational development

### SKILLS

To represent the interests of the communities served by the academies to the trust

To represent the ambitions and values of the trust in the community

To evaluate the strengths and weaknesses across the trust

To influence the continuous improvement of the trust

## COMPONENTS OF GOVERNANCE

### ACCOUNTABILITY

Two golden threads: (1) from the organisation to its users; (2) from the organisation to its funders

Communication: reporting, listening and responding - transparency

Relevance, validity and reliability of information reported

Clear internal lines of accountability that reflect the lines of delegation below: silver threads

### DIRECTION

Clarity of vision (future position) reflecting needs and aspirations of users and funders – inclusive stakeholder authorship

Strategy – the long-run roadmap to achieving the vision – inclusive organisational authorship

Top-level annual operational plan with key deliverables and costed actions that translates strategy into practice

Annual costed service delivery plans with performance measures that together achieve the key deliverables above

### ENABLEMENT

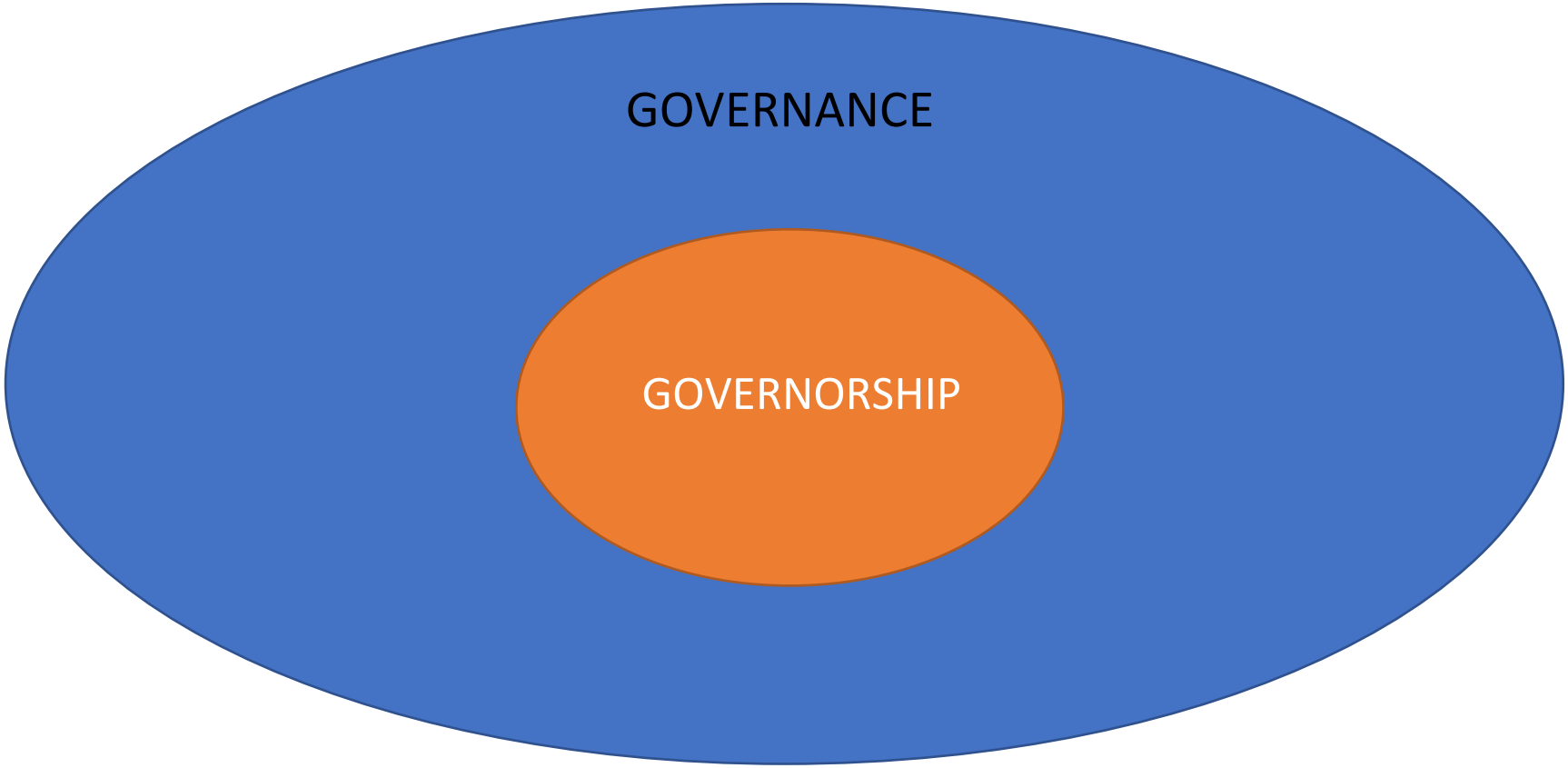
Stated values and a culture that translates values into behaviours and practices

Clarity of purpose

An organisational structure with clear roles and a line of delegation from Members to Directors to Top Level Executive to Operational Teams

Policies and procedures that ensure compliance and performance and reflect values

## MORE TO GOVERNANCE THAN GOVERNORSHIP



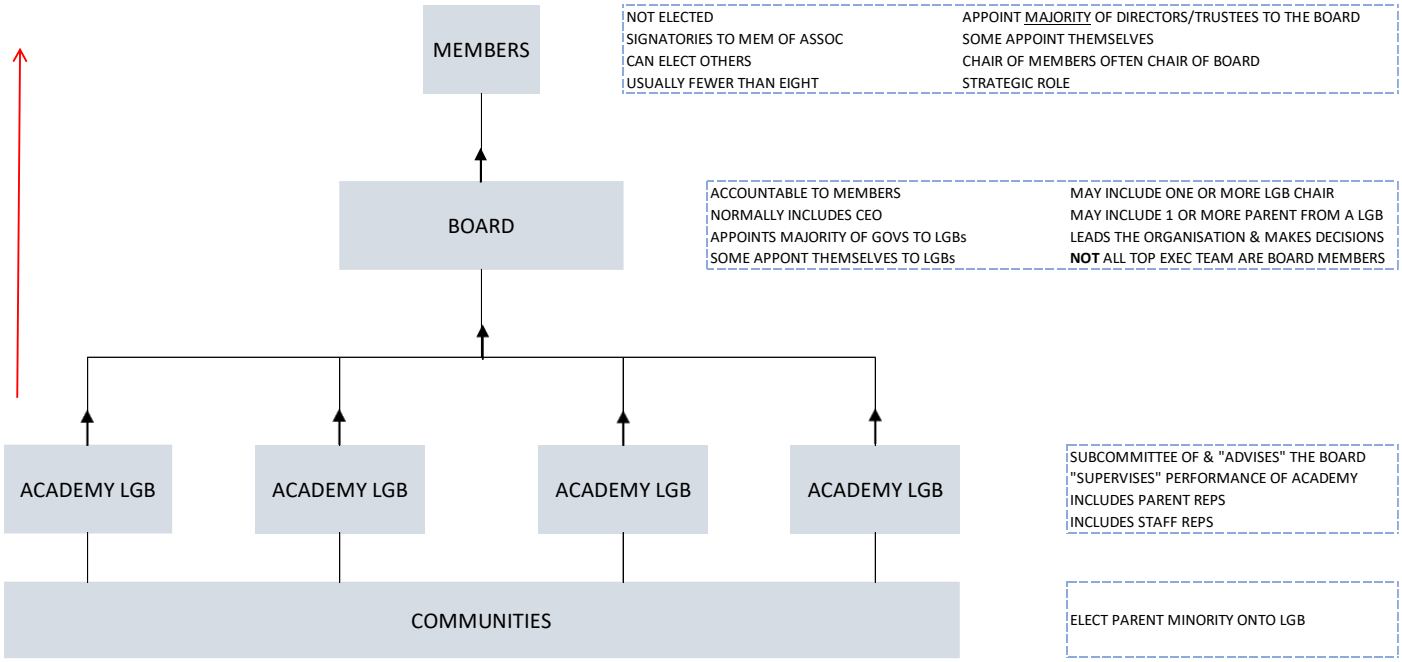
| Multi Academy Trust or Academy Trust | NHS Foundation Trust |
|---|---|
| Funded directly and indirectly by general taxation | Funded directly and indirectly by general taxation |
| Members:<br>A very small number of people who are usually the signatories to the memorandum of association of the Trust (notional "owners") - typically three or five. | Members:<br>Any qualifying Member of the public may apply to become a Member (notional "owners") – typically thousands |
| Members appoint the majority of governors also known as non-executive directors (NEDs) or trustees<br>A minority may be elected eg parents, staff.<br>*The interests of the small number of Members are assured* | Members elect the majority of governors<br>A minority may be appointed eg nominated from police, university, local authority<br>*The interests of the large number of Members are assured* |
| Governors and NEDs are one and the same thing | Governors and NEDs are not one and the same thing and they serve different functions |
| The Board, made up of Governors/Trustees/NEDs, but not executive directors, is the Trust's decision-making body | The Board, made up of Governors/Trustees/NEDs, AND executive directors, is the Trust's decision-making body |
| | 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<br>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 |
| IN SUMMARY<br><br>Through the constitution of academy and multi academy trusts, there are some lines of accountability:<br>• from service provision<br>• through service management<br>• through its mostly internally appointed Board of governors<br>• to a small number self-appointed Member of the Trust.<br><br>Hence: A variable education service not overtly accountable to its users and their families. | IN SUMMARY<br><br>Through the constitution of NHS Foundation Trusts there is a clear line of accountability:<br>• from service provision<br>• through service management<br>• through its mostly externally elected Council of Governors<br>• to the wider community of its Members.<br><br>Hence: A national health service overtly accountable to its users and their families. |

# REVERSING THE FLOW OF ACCOUNTABILITY

## TOWARDS THE USERS AND FUNDERS

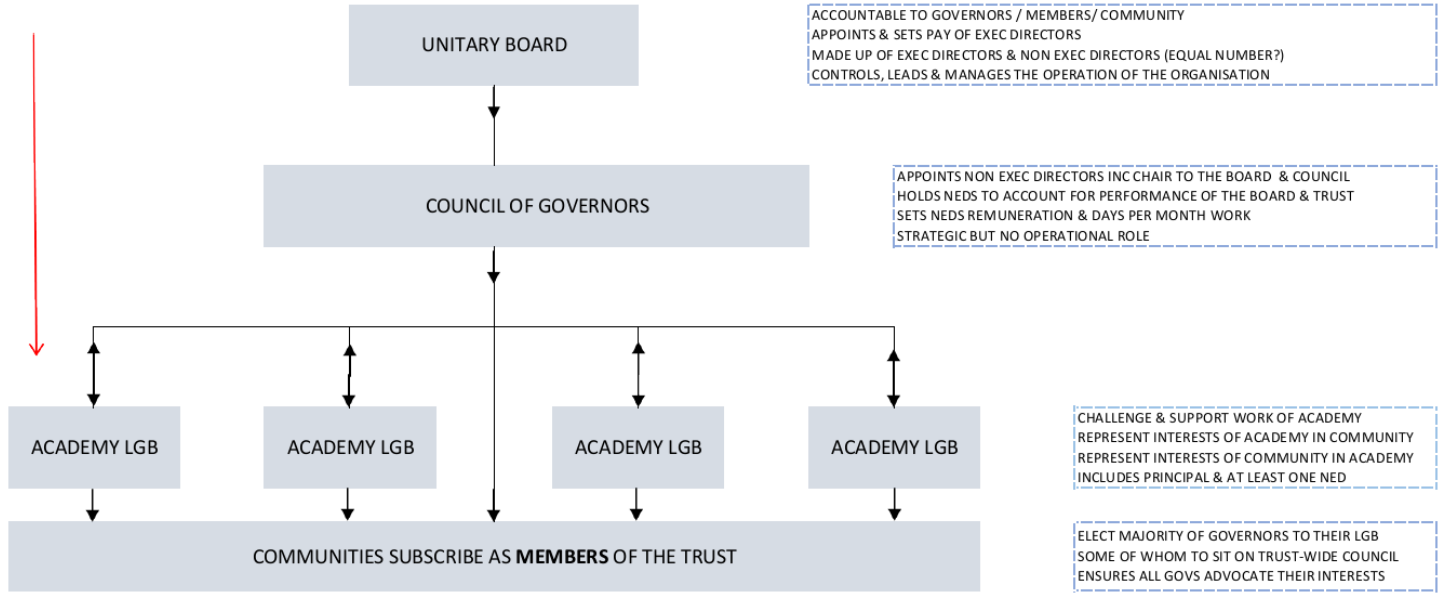
### CURRENT MODEL

### THE CHARITABLE TRUST




### ALTERNATIVE MODEL

### THE PUBLIC BENEFIT CORPORATION (as adopted by NHS Foundation Trusts)



A framework for undertaking developmental reviews of leadership and governance using an experimental adaptation of the NHSI well-led framework

**The well-led evaluation framework is structured around eight ley lines of enquiry (KLOEs)**

| | | |
|---|---|---|
| ❶ Is there the **leadership capacity** and **capability** to deliver high quality sustainable education | ❷ Is there a clear **vision** and credible **strategy** to deliver high quality, sustainable education to students, and robust plans to deliver? | ❸ Is there a **culture** of high quality, sustainable educational provision? |
| ❹ Are there clear **roles** and systems of responsibility to support good governance and management? | Is provision well led? | ❺ Are there clear and effective processes for managing **risks**, issues and **performance**? |
| ❻ Is appropriate and accurate **information** being effectively processed and acted on? | ❼ Are (students), parents, **staff** and **partners engaged** and involved to support high quality sustainable provision? | ❽ Are there robust systems for processes for **learning**, continuous **improvement** and innovation? |

*The pages that follow in the linked document give detailed exemplification for each of these KLOEs*