



## Children and Young People Overview and Scrutiny Panel

12<sup>th</sup> July 2011

Report from  
Director of Children & Families

For Action

Wards Affected:  
ALL

### Report Title: The Implications of the Government's policy on Academies and Free Schools

#### 1.0 Summary

- 1.1 This report considers the implications of the Government's policy with regard to expanding the number of academies and free schools as set out within the White Paper 'The Importance of Teaching' published in November 2010 and the subsequent Education Bill 2011 published on 26<sup>th</sup> January 2011.
- 1.2 The report covers the following issues:-
- The changes contained within the Education Bill 2011 and their impact on the current statutory responsibilities of local authorities with regard to the education and wellbeing of children.
  - The impact of the Education Bill 2011 on the council's ability to deliver its wider responsibilities with regard to the health, safety and long-term wellbeing of local children.
  - The financial implications arising from changes to the funding of schools as a result of the government's Academies and Free School programme and the Education Bill 2011.
- 1.3 The Education Bill 2011 was introduced into the House of Commons on 26<sup>th</sup> January 2011. It received its second reading in the House of Commons on 8<sup>th</sup> February 2011 and was passed on a vote. It is now at the public committee stage of its passage. No date has yet been set for the Bill to receive assent. The committee will be taking written evidence on the impact and implications of the Education Bill.
- 1.3 This report does not cover in detail the proposals contained within the Education Bill 2011 which are concerned with changes to teaching practice, curriculum or behaviour management.

#### 2.0 Recommendations

Members of the Overview and Scrutiny Committee are recommended to:-

- 2.1 endorse the council's collaborative and inclusive approach to working with local schools within a mixed economy of provision to meet the needs of local children.
- 2.2 Support the Local Government Association in its lobbying during the committee stage of the Education Bill with regard to:-
  - the central importance of local authorities in the strategic planning of school places and the regulation of fair admissions procedures.
  - the vital role of elected members as representative on schools governing bodies what ever their status.
  - the need for a fair funding allocation for all schools which does not disadvantage maintained schools in favour of academies and free schools.
- 2.3 note the work of the One Council SEN project to develop a strategic and affordable approach to the provision and commissioning of appropriate SEN places.
- 2.4 note the need to develop a more commercially viable approach to the future provision of school improvement services in the light of the provisions contained within the Education Bill which will significantly increase competition in this market.

### **3.0 Detailed Considerations**

- 3.1 In November 2010 the Government published its White Paper on proposed reforms to the education system and teaching, including the intention to enable more schools to apply for Academy Status and provisions to enable groups to establish free schools. The Education Bill 2011 is founded on the principles and proposals set out within the White Paper 'The Importance of Teaching'. Both the White Paper and the accompanying 'Case for Change' document are rooted in the belief that creating a more diverse range of education providers, free from central or local government control will drive up education standards, provide greater parental choice and increase accountability for educational achievement. As evidence to support this analysis the government references a range of international studies where a state funded 'free market' in education provision has resulted in higher education outcomes being achieved and a narrowing of the attainment gap between disadvantaged children and the national average.
- 3.2 The White Paper argues that increasing central and local government prescription and target setting has actually constrained the ability of schools to respond innovatively to the needs of their pupils and limited rather than improved education and teaching standards. The overriding aim of the proposals are stated as '*our direction of travel is towards schools as autonomous institutions collaborating with each other on terms set by teachers, not bureaucrats*'. In order to achieve this objective the Education Bill 2011 sets out the following proposals.

#### *New Schools System*

- The Bill removes the duty on maintained and non-maintained schools to cooperate with local authorities to improve the wellbeing of local children and the duty to be represented within children's trusts or partnerships.
- Increases freedom and autonomy for all schools by removing unnecessary duties and burdens, and allowing all schools to choose for themselves how best to develop.

- Restores for all academies the freedoms they originally had while continuing to ensure a level playing field on admissions particularly in relation to children with special educational needs.
- Ensures that the lowest performing schools, attaining poorly and in an Ofsted category of not improving are considered for conversion to become Academies to effect educational transformation.
- Dramatically extends the academies programme, opening it up to all schools both secondary and primary as well as providers of alternative out of school services (Pupil referral units) and 16-19 establishments.
- Provides schools with increased freedom to collaborate through academy chains and multi-schools trusts and federations.
- Enables teachers and parents to set up new Free Schools to meet parental demand, especially in areas of deprivation.
- Gives local authorities a strong strategic role as champions for parents, families and vulnerable pupils. They will promote educational excellence by ensuring a good supply of high quality schools places, co-ordinating fair admissions and developing their own school improvement strategies to support local schools.

#### *School Improvement*

- Ends the requirement for every school to have a local authority school improvement partner (SIP) and ends the current centralised target setting process.
- Increases the number of head teachers of excellent schools who are able to support other schools and develops 'Teaching Schools' to make sure that every school has access to highly effective professional development support.
- Encouraging schools to learn from the best performing through the publication of local schools performance data.
- Frees local authorities to provide whatever forms of improvement support they choose.
- Enables poorly performing schools to convert to academy status.
- Encourages local authorities and schools to bring forward applications to the new Education Endowment Fund for funding innovative projects to raise the attainment of deprived children in underperforming schools.
- Introduces a new collaboration incentive, which financially rewards schools which effectively support a weaker school to demonstrably improve their performance.

3.3 The proposals contained within the Education Bill 2011 are intended to significantly curtail any statutory right of local authorities to influence or intervene in the managerial operation of their local schools. Local authorities have not had direct managerial control of schools since the introduction of local management of schools in 1988. The Council's education responsibilities are strategic in nature and are focused on meeting the needs of local children by ensuring they are able to fulfil their educational potential within a local education system that produces the right outcome for all children. Councils do not run schools; they advise and support them and work collaboratively to provide a local education system. The Council's key strategic functions with regard to schools and education are to:-

- Ensure that every child has access to a suitable education and plan the supply of school places within the borough to achieve this outcome.
- Make sure that admissions processes are fair and that parents have a right of appeal

- Monitor standards and challenge and intervene where a maintained school is failing.
- In partnership with schools, allocate the DSG which is ring-fenced for education.
- In partnership with schools agree the proportion of the DSG which will be retained by the local authority for the provision of central services such as school improvement, SEN and out of school provision.
- Ensure that children with special educational needs are provided with appropriate education provision and support.
- Employ experts to provide additional support and challenge to schools
- Develop and oversee the overall capital and infrastructure development programme including closure of schools where they are no longer needed or opening a new school where there is a need.
- Assist schools in the management of buildings, resources and procurement.
- Provide support to governing bodies and provide elected member representation on maintained schools governing bodies.

3.4 The Schools White Paper reiterates these local authority responsibilities and states the Government intends to:-

*‘Give local authorities a strong strategic role as champions for parents, families and vulnerable pupils. They will promote educational excellence by ensuring a good supply of high quality school places; co-ordinating fair admissions and developing their own school improvement strategies to support local schools’.*

3.5 Within this framework maintained schools are managerially autonomous within the nationally prescribed education legislation. The freedom being offered to schools who choose to convert to academy status is freedom from the national curriculum, national pay and conditions for teachers and the national inspection regime. Academies are not maintained by local authorities and will receive funding directly from Government via the new Education Funding Agency (EFA).

3.6 The key issues arising from the Education Bill are not related to a loss of local authority operational control over local schools but the degree to which if a large number of Brent schools become academies, how this will impede our ability to effectively discharge our continued strategic responsibility to provide all children with access to a suitable school place and meet the needs of the most vulnerable children within the borough. Specifically the concerns raised by the Education Bill are:-

- What influence will local authorities continue to have over academies and Free Schools to increase and manage the supply and distribution of local school places across the borough?
- The removal of the duty to cooperate with local partners and the authority to improve the well being of local children could lead to a fragmented, inconsistent and unequal pattern of school provision and associated services with those most vulnerable children being excluded from opportunities.
- In a free market of schools provision how will issues of over capacity or failure of a provider be dealt with to ensure efficient use of education resources across the whole sector. If there is no local coordinating role overseeing the development of provision resources could be inappropriate or inefficiently used. Past experience has shown that failure of an autonomous school is still considered to be within the responsibility of the local authority.
- What financial impact will an increase in academies directly funded from central government have on the residual dedicated schools grant?

- Is it realistic to continue to provide school improvement services when high performing academies will have a financial incentive to provide these services to other schools?
- Academies are not required to have local Member representation on their governing bodies which represents a loss of legitimate democratic input to the decision-making of schools and a wider perspective on the needs of the local community and area.
- With a growing demand for a broad range of SEN provision within the borough what influence will local authorities retain with regard to academies to develop and provide suitable SEN places?
- Aside from the managerial and curriculum freedoms available to schools who become academies the primary incentive is clearly financial. Academy schools will receive a higher per pupil funding allocation directly from the Government without paying a contribution to the centrally provided LA services (school improvement, out of schools provision, SEN and early intervention). If a critical number of schools elect to become academies and this central portion of the dedicated schools grant is diminished as a result the financial viability of retaining these vital services for the remaining maintained schools will be seriously undermined. This will undoubtedly encourage other schools to opt for academy status and limit the ability of the local authority to deliver its wider statutory responsibilities.
- The Council provides, in collaboration with local schools a range of additional services to support the development and well being of local children. These include extended schools services, health care, the common assessment process and children's centres. These are vital to enabling the most disadvantaged children to thrive and benefit educationally. Withdrawal of schools support to these services would seriously impact on our preventative approach to children with additional needs, undermine our ability to address child poverty and actually widen the gap in educational attainment.

*The Brent Context.*

- 3.7 Over the past ten years Brent has enjoyed a positive, collaborative relationship with local schools which has produced a dramatic improvement in local educational achievement. The borough performs well above national average at GCSE level despite the social and economic deprivation experienced by many local children. We are accustomed to working in a mixed economy of education provision, with a broad family of schools which include Foundation Schools, Academies and maintained schools. The services provided by the School Improvement Service are well used and valued. The Schools Forum which advises on the allocation of DSG for centrally provided items has worked constructively on the collective funding of early intervention services, out of schools provision and SEN. The 14-19 Partnership ensures that there is co-ordination of the curriculum across local schools to reflect diversity and choice within provision.
- 3.8 Wider partnership arrangements have embedded a consistent approach to early intervention and the common assessment framework with lead professionals funded by schools supporting our approach to safeguarding and child protection. The five locality boards draw together professionals from teaching, health care and social care to ensure that services to children are relevant to the needs of their area. These collaborative arrangements have made more effective use of our joint resources, provided integrated services for children with complex needs and reduce the need for more expensive interventions later in a young person's life.

- 3.9 This collaborative approach regardless of the status of a school is a strength in Brent and while the statutory basis for such joint working is undermined by the Education Bill it should not automatically prevent its continuation. Since the passing of the Academies Bill in July 2010 there has not been a marked increase in the number of Brent schools expressing an interest in becoming academies. To date two schools have been approved for Academy conversion – JFS and Claremont High – and 2 others are considering the possibility of conversion. It is likely that many schools are still awaiting final clarification on the financial implications of not becoming an academy prior to making a decision. It is more likely that secondary schools will consider it financially necessary to convert to academy status rather than primary schools.
- 3.10 Our inclusive partnership approach is a strength on which we should build. It is a reality that some schools will decide to become academies and that growth in future provision will be through the creation of new academies. Maintaining an open dialogue with head teachers and governors will be vital in establishing a shared set of priorities and objectives for the borough, which can be achieved regardless of the status of individual schools. A pragmatic approach that seeks to balance the aspirations of schools with the local needs of children and parental preferences will be more productive than active dissuasion. Such dialogue will depend on the perceived and actual value of working collaboratively with the council, the quality of school improvement services available and engaging schools on issues affecting the wider community and borough.

*School Improvement Service*

- 3.11 Our school improvement service is well regarded by local schools and through successful collaboration has significantly raised the standard of local education provision and the achievement of Brent children. The service is funded from an element of the DSG and a trading basis with schools, although the full costs of the service are not completely recouped by the current fees. In addition the council provides a number of support functions such as finance, HR and legal advice which are not fully charged for as part of the collaborative partnership established with local schools.
- 3.12 The Education Bill removes the requirement for local schools, either maintained or academies to be part of the local schools improvement partnership. Increasingly local schools will be encouraged to form improvement chains or federations with outstanding schools financially incentivised to provide support services to other schools. While local authorities can chose to provide a school improvement service it will in future be on a completely commercial basis within a free market of provision which will include other schools, private provides and charitable institutions.
- 3.13 The continued viability of local authority school improvement functions will depend on our ability to provide a competitive, excellent range of support services. Work is currently taking place to review the package of services provided, which will include not only traditional educational improvement but added value activities such as joint procurement opportunities, legal advice, utilities, facilities management, HR and capital project management. The council is well placed to provide these high value professional services in a more cost effective way than the private sector but it will require us to develop a more commercial relationship with local schools than has been the case in the past.
- 3.14 The requirement for a LEA governor to serve on maintained schools governing bodies has been removed. The LEA governor provides a link between each individual school and the local authority which allows them to spot early warning

signs of failure or other difficulties. LEA governors are not employees of the local authority but are often parents or elected members and represent the local community. The LGA will be calling on the government during the Committee Stage of the Bill to reintroduce the requirement for such representation on governing bodies.

*Ensuring a sufficient supply of school places*

- 3.15 The Education Bill poses a particular challenge to our ability to deliver a sufficient number of school places. There is a growing shortage of school places within the borough with the demand for places forecast to increase at both primary and secondary ages. At present the local authority has the power to instruct existing maintained schools to expand provision, although this is rarely used. Our approach to-date has been to collaborate with schools to manage expansion of places in line with the forecast demand and in a manner consistent with the wider development framework for the borough. Local authorities are well-placed to take a strategic view of place planning with access to relevant demographic data within the context of the broader regeneration and development plans for the area.
- 3.16 With an increase in the number of existing schools becoming academies and new Free Schools it is unclear how this strategic place planning function will be delivered consistently. During the consultation period on the White Paper the Local Government Association lobbied the Government to formally provide Councils with a commissioning responsibility for local school provision within a mixed economy of providers. This would have meant the local authority retaining its role of distributing education funding locally but still enabling more schools to convert to academies. However this is not the case and funding for free schools and academies will be allocated by the newly created central Education Funding Agency (EFA) under the control of the Secretary of State.
- 3.17 The Education Bill does not enable the council to control the creation, distribution or range of school places available within the borough and is unclear how issues of over capacity in a particular institution will be dealt with to ensure a balanced supply of provision across the area and the efficient use of resources. This has wider implications for the overall planning and infrastructure of the borough and the linking of schools provision to designated growth areas with suitable transport services.
- 3.18 The Education Bill states that where a local authority identifies the need for a new school they must first seek to establish this school as an academy and ask for Secretary of State approval for the establishment of a new school. Such approval is required prior to the local authority seeking competitive bids for the establishment of the school. Further to this the bids from providers seeking to establish an academy will be considered by the Secretary of State and only where none of these are considered suitable will bids for community or foundation schools be considered by the local authority. This provision creates a presumption that in the future all new schools will be established as academies, regardless of the local preferences of parents or the need to retain a diversity of provision within an area. It is at odds with the government's stance on localism and restricts the ability of local communities to decide what type of school is established in their area.

*SEN Provision*

- 3.19 There is increasing demand for a range of SEN provision within the borough at both primary and secondary ages. While there are a number of high quality special

schools within the borough the ability to expand provision on these sites is limited. Work is currently focused on identifying capacity to increase places through partnership arrangements between special schools and mainstream schools through 'satellite' services but this is clearly dependant on suitable space and capital. The loss of BSF funding had a major impact on our approach to increasing in borough SEN places.

- 3.20 At present a significant proportion of our out of borough SEN placements are in maintained schools in other boroughs. This supply of places may come under pressure from these schools converting to academy status or through increased demand from within their own local authorities' as their available supply of places contracts. The One Council project on SEN is developing a strategic approach to future provision of SEN which will need to be based on a collaborative approach with local schools if we are to avoid becoming dependant on expensive out of borough independent provision and the associated transport costs.
- 3.21 The government is consulting on a Green Paper on special educational needs policy and the future roles and responsibilities of local authorities in this area.

#### **4.0 Financial implications**

- 4.1 The government will be consulting on proposals for a new national education funding formula, this will include a timetable for implementation and any transitional measures required. The Bill proposes the establishment of a new executive agency under the Secretary of State, the Education Funding Agency (EFA) to replace the abolished YPLA. The EFA will be responsible for direct funding of academies and 16-19 education provision. Where the majority of schools within an area are local authority maintained schools this funding will continue to go through the local council. This is a welcome provision although the separation of 16-19 funding which could be included within the DSG without the need for the EFA as an intervening agency could lead to fragmentation.
- 4.2 However prior to the implementation of this national funding formula the Academies Bill Impact Assessment proposes that funding for the next two years will be provided from a top slice of £413m from the formula grant to all local authorities. This is non schools funding. The Impact Assessment further states that each school that becomes an academy should represent a saving to the local authority of £103,000 in support costs. However for many councils the savings will be negligible because economies of scale will mean that a few schools becoming academies will not reduce costs on this scale. For the financial year 2011/12 Brent's mainstream revenue funding was reduced by approximately £1m to contribute towards the national funding of the Academies programme. This figure was not calculated on the basis of the number of schools that actually converted to academy status and therefore the local tax payer has become liable for funding the national programme for academy and free schools regardless of the local status and preferences of Brent schools and parents.
- 4.3 The proposed interim funding formula runs counter to local choice and discretion. The Local Government Association is making representations at the Public Committee regarding this provision and is lobbying for central government to recoup the funding for each new academy on an individual basis. Brent Council, in collaboration with other London authorities, has instigated judicial review proceedings challenging the application of the interim funding formula.



4.4 The above reduction in funding is in addition to the potential impact on the dedicated schools grant. At present the Schools Forum agrees each year to allocate approximate 12% of the DSG for the provision of central items. The dedicated schools grant is £233m of which £28m is allocated to the council for the provision of central services.

4.5 In line with the move to make schools more financially autonomous local authorities will also lose their clawback mechanism from next year. This allows them to recover unspent money from school bank accounts. Guidance on clawback powers and the level of underspend deemed to be excessive is to be reviewed.

## **5.0 Staffing Implications**

5.1 There are no staffing implications arising directly from this report

## **6.0 Diversity Implications**

6.1 The implications arising from the Education Bill for the continued diversity and equality of schools and children's services within Brent are significant. While the stated intent of the Bill is to encourage choice, diversity and equality within education the actual mechanisms available to achieve these objectives are largely left to the pressure of a free market of providers to respond to local demand. The funding formula proposed by central government may incentivise schools to convert to academies, impacting upon the resources available for maintained schools and potentially disadvantaging children with the most complex educational needs.

## **7.0 Legal Implications**

7.1 Colleagues within Legal Services are currently considering the detailed legal implications of the Education Bill 2011.

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