

Regulation and Commissioning Review

Response by Baker Dearing Educational Trust on behalf of University Technical Colleges

Introduction

The Department for Education (“DfE”) and Baker Dearing Educational Trust (“Baker Dearing”) share the belief that in most cases, membership of a strong Multi Academy Trust (“MAT”) is an important way to help University Technical Colleges (“UTCs”) succeed¹. Therefore, over the past four years, 18 UTCs have transferred to MATs, and others are close to joining one. Baker Dearing has taken an active role in each of these MAT transfers through regular dialogue with, and advice to, all key stakeholders. Through this support, the charity has enjoyed an almost unique position within the school system of on-going engagement with all Regional School Commissioners, as well as the staff at the ESFA, DfE policy makers, local politicians, MAT CEOs, and the governing bodies of UTCs. The following is feedback based upon our in-depth experience of regulation and commissioning.

Regulation

- To encourage creativity, innovation, and better pupil outcomes within the school system, the ambition of regulation must be the success of a ‘market-led’ (MAT) system, with central DfE intervention kept to a minimum.
- However, the transition from local authority control of schools to the academies model has necessitated higher central involvement in the running of schools today than might be necessary once this change has been fully adopted.
- The move away from local authority control has placed many academies in regional or national trusts. This has diminished the role geography plays in school accountability, support, and third-party relationships. Schools collectively serve their local area, and protections for this should be contained within the Schools Bill.
- This heightened central government engagement has created a problem: DfE officials have limited experience or understanding of how schools operate, often leading to poor decision-making. In the long-term, this operating model is also impractical, given the size of the school system and the number of personnel the taxpayer can afford.
- The desire, articulated within the Schools Bill, to introduce new stringent powers to intervene does not suggest an appetite to move to a more lightly regulated system, especially in the absence of full transparency over how these powers will be used, or without proper consultation with key stakeholders within the school system.
- UTCs are an excellent example of innovation within the school system. Yet for most of the past ten years, they have been the subjects of a ‘one-size fits all’ regulatory framework, which has impaired the perception of their performance and harmed their reputations. For example, exemptions for certain accountability measures which are inappropriate for UTCs, e.g., EBacc, took far too long to introduce. This example is

¹ [Memorandum of Understanding between Baker Dearing and DfE](#)

one of many which highlight the overly rigid approach to regulation, as well as the cultural unease to support innovation, which pervade. These factors need to change for the benefit of all schools, not just for UTCs.

- If our education system is to improve, the recruitment and retention of high-quality teaching staff is paramount. Amongst other requirements, there is a pressing need to minimise the regulatory burdens placed on school leaders to ease their workload. At present, the balance between the level of regulation needed to protect against undesired outcomes and trust in schools to 'do the right thing' is out of line: the vast majority of schools are penalised because of a small recalcitrant minority. Today, the risk of losing high-quality teaching staff due to excessive workload outweighs the risk of more unwanted 'harms' due to lighter regulation.
- The recognition by the new Education Inspection Framework of the need to reduce bureaucratic data gathering is encouraging, but more can be done in this regard across other agencies such as the ESFA. For example, UTC experience shows that a vast amount of financial information is required from our schools, taking up significant senior leadership time, yet it is unclear if this data is fully scrutinised or used for productive purposes. This burdensome level of financial oversight does not appear to be justified; there are undoubtedly more effective and efficient ways of preventing 'harms'.
- Whilst the definition of a 'strong' trust is open to debate, nonetheless this cannot be a static classification, as a strong trust today may not remain so into the future. Therefore, the current rationale for an academy to join a MAT may no longer apply at some later date. In this case, there must be a mechanism for an academy to move to another MAT. At present, this is possible only in exceptional circumstances. The legal status of an academy should remain once it joins a MAT, to better facilitate a future transfer to another trust, if required. The analogy in the corporate world would be for the MAT to be the parent/holding company and schools individual, wholly owned subsidiaries, each with its own corporate identity. Transfers of companies which are subsidiaries of different parents take place as a normal course of business in the corporate world. This should certainly also be allowed within the school system if it has the potential to improve educational outcomes.
- In order to determine whether a MAT is strong, it is necessary to introduce a MAT inspection framework, as opposed to the current system of summary evaluations, with oversight from Ofsted. This approach is a pre-requisite for the introduction of greater intervention powers by the DfE, should a MAT fall short of acceptable standards.
- While the MAT structure brings significant benefits, it is vital that the distinctive characteristics of individual schools (faith, grammar, UTCs etc.) within MATs are protected. At present, it is challenging for an academy itself to protect against dilution of its unique attributes. The need to preserve these characteristics must be written into the articles of association of any MAT and should be externally monitored and enforced.
- Another important component of school protection within a MAT is the local governing body. The ambitions set out within the Schools White Paper that all trusts should have local governance arrangements for their schools are reassuring. However, the local governing body must be given appropriate powers, particularly if the school has a different curriculum intent and characteristics from others in the

MAT. The scheme of delegation should not be overly restrictive to render the local governing body incapable of protecting distinctive characteristics.

- Finally, whilst the current model of school funding, which is broadly on a per pupil basis, is effective, it is far from perfect. In particular, under the academy system it has created an unhealthy level of competition amongst schools for pupils. School accountability measures, such as Progress 8, have done the same. UTCs have experienced this first-hand: local schools go beyond reasonable measures to discourage young people, against their wishes, from moving to the UTC, for fear of losing funding and/or damaging headline performance figures. While competition between schools can be healthy, it should create better outcomes for students. However, under the present structure, pupils' interests are not always at the forefront of efforts, and this must change.

Commissioning

- Fundamental to the success of any market-based regulatory system must be transparency in decision-making. Our experience from the UTC programme shows that there is rarely clarity on how decisions are reached. In particular, there appears to be no requirement to provide detailed information to all stakeholders regarding decisions that have been made, with the right to appeal severely limited. More generally, decision-making must become more consistent.
- Baker Dearing has witnessed numerous decisions regarding UTCs, made by Regional School Commissioners, which have differed across the country, without clear explanation. An example of this has been the approach to age-range changes. Whilst about one-third of UTCs now start at Year 9, rather than at Year 10, certain UTCs with similar characteristics in different parts of the country have been turned down from making this change, almost always without a clear explanation as to how the decision was reached. Another example is the approach to submitting business cases for UTC transfers into MATs. There is no clarity on the structure of such submissions; the parties who should be consulted; the inputs required; and the timeline for decision-making. This process could be easily tightened.
- Transparency must also extend to the financial arrangements MATs have with their schools. Whilst the need for 'top-slicing' of school incomes to provide services, and the concept of 'GAG pooling' to 'tweak' the distribution of funding across schools, are clear, these processes lack transparency. As a matter of course, this information should be published by MATs, along with explanations of precisely how and why these decisions have been made. Furthermore, there should be a limit to top-slicing set at a maximum (say 5%) percentage of trust-wide income.
- Regulation is implemented by people. Therefore, regulators must have, or have access to, appropriate skills and experience to make the right decisions. Evidence indicates that this is not always the case amongst Regional Directors. For example, it is not clear that a former Primary School Headteacher has the requisite insight and experience to make decisions regarding the future of a technical secondary school in another county, particularly without a visit to this institution.
- Furthermore, Regional Directors are appointed civil servants. They have great power within the education system, although they have no democratic mandate. These individuals are obliged to take advice from Head Teacher Boards which, by virtue of their local composition, often face conflicts of interest when making commissioning

decisions. This has the potential to create a 'closed shop' local educational landscape, rather than allowing in external competition.

- Finally, serious evaluation of governor engagement should form part of this commissioning review. Governors, especially at UTCs, are vital to the success of any school and of a successfully functioning trust-led education system. They are a high-quality, free resource, who, in our experience, always seek to do their best. However, given their volunteer status and the breadth of their responsibilities, the level of accountability, and the pace of systemic change, not all governors may be fully apprised of all aspects of their role. Therefore, officials should always approach governing bodies with support, guidance, and a collaborative approach to problem solving. In practice, though, too often officials have been seen to take an inappropriately tough line. Culturally, civil servants must re-appraise their engagement with governors, who should be treated as one would treat any 'customer'.

Baker Dearing Educational Trust
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