

**OVERVIEW AND SCRUTINY BOARD**

**5 MARCH 2013**

**FINAL REPORT OF THE CHILDREN AND  
LEARNING SCRUTINY PANEL -  
FUTURE LOCAL AUTHORITY  
INVOLVEMENT IN ACADEMIES**

**PURPOSE OF THE REPORT**

1. To present the Children and Learning Scrutiny Panel's findings, conclusions and recommendations following its investigation of future local authority involvement in academies.

**BACKGROUND**

2. Since 2010, the Government's academies programme has made it possible for any school to become an academy - ie a state-funded but independently run school.
3. The Government's initial focus was on conversion of secondary schools to academies. However, since early 2012 there have been moves towards increased conversion of primary schools to academy status - such as by <sup>1</sup>announcing that around 400 primary schools that failed to reach Department for Education <sup>2</sup>Floor Targets would be forced to become academies.
4. Accordingly, at national level, the creation of academies at both primary and secondary levels is now well advanced. The number of academies <sup>3</sup>grew from 203 in May 2010 to 1807 by May 2012. By November 2012 there <sup>4</sup>were 2456 academies, with a further 823 in the process of being established.
5. In this context, the panel's investigation was not intended to look at the merits, or otherwise, of academy status. Neither was it to examine the conversion process but the issues and implications of an increase in the number of academies locally in relation to the Council's statutory education responsibilities and associated functions.

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<sup>1</sup> The Guardian - 12 November 2012: <http://www.guardian.co.uk/education/2012/nov/12/400-primary-schools-academies>

<sup>2</sup> Floor Targets: At Key Stage 2, a school is under performing if fewer than 60% of pupils achieve level 4+ in English and maths.

<sup>3</sup> BBC Education website - <http://www.bbc.co.uk/news/education-13274090>

<sup>4</sup> The Guardian - 12 November 2012: <http://www.guardian.co.uk/education/2012/nov/12/400-primary-schools-academies>

6. The panel investigated this topic over the course of six meetings held between 25 July 2012 and 10 January 2013. A final panel meeting, on 29 January 2013, considered a draft final report. A Scrutiny Support Officer from Legal and Democratic Services co-ordinated and arranged the submission of written and oral evidence and arranged witnesses for the investigation. Meetings administration, including preparation of agenda and minutes, was undertaken by a Governance Officer from Legal and Democratic Services.
7. A record of discussions at panel meetings, including agenda, minutes and reports, is available from the Council's Egenda committee management system, which can be accessed via the Council's website at [www.middlesbrough.gov.uk](http://www.middlesbrough.gov.uk).
8. This report has been compiled on the basis of information submitted to the scrutiny panel by officers from the Council's Wellbeing, Care and Learning Department.
9. The membership of the scrutiny panel was as follows:
 

Councillors J Walker (Chair), J Sharrocks (Vice-Chair); and Councillors, Harvey, Hussain, Mrs Pearson OBE, G Purvis, Taylor and Williams.  
Plus the following Co-optee: Father G Holland.

## TERMS OF REFERENCE

10. The terms of reference of the scrutiny investigation were as follows:
  - a) To examine current local authority roles and responsibilities in respect of education.
  - b) To consider issues and challenges associated with conversion to academies.
  - c) To examine the implications for support for vulnerable pupils.
  - d) To consider the implications for the local authority of changes in funding arrangements.
  - e) To consider the impact on local authority services and staff.
  - f) To ascertain whether academies will be under any obligation to retain all or some of their playing fields.
  - g) To determine the position concerning achievement/raising attainment, including schools, which under perform or fail.

## THE SCRUTINY PANEL'S FINDINGS

11. The scrutiny panel's findings in respect of the future local authority involvement in academies are set out below in respect of each of the agreed terms of reference.

### **TERM OF REFERENCE: "*To examine current local authority roles and responsibilities in respect of education.*"**

12. In examining this term of reference the scrutiny panel heard that local authorities currently have a number of statutory duties in respect of *maintained schools*, which are schools that are funded by local authorities from central government funding. In the case of such schools, Middlesbrough Council:
  - Provides a light-touch framework of accountability and support.
  - Co-ordinates education provision across the Borough, particularly in respect of sufficiency of school places, funding and admissions.

- Provides a wide range of support services for schools - including school improvement; services for children with special educational needs; governor support; curriculum support; and buildings maintenance.

13. The panel heard that, in Middlesbrough, it is accepted that an increase in the number of academies is inevitable and that a positive approach is needed in respect of the changes ahead. It is acknowledged that these changes will increase schools' autonomy and that the role of the local authority, as a primary source of support and expertise, will be subject to change.

**TERM OF REFERENCE: “To consider issues and challenges associated with conversion to academies” AND:**

**“To examine the implications for support for vulnerable pupils.”**

14. As schools move to academy status, the role of local authorities changes fundamentally. However, at the time of the scrutiny panel's investigation, authorities will still continue to have a number of statutory duties, as follows:

- Ensuring that every child has a school place and that there are sufficient schools.
- Responsibility for vulnerable children.
- Promoting high standards in education and tackling under performance, through school improvement provision.

15. The future challenge is to establish a mechanism for the authority to work with schools and partners in order to continue to fulfil its statutory obligations. Given the increased autonomy of schools, this will depend on the ability of the authority to persuade, influence and develop common goals.

16. Reference was made to particular areas that have been identified nationally as potential issues in respect of local authorities' statutory responsibilities, such as ensuring sufficiency of school places and school improvement.

17. In terms of ensuring sufficient school places, although authorities rarely make use of the power to direct schools to increase/decrease or maintain admissions numbers, the fact that authorities no longer have the power to direct schools will change the authority's position and involvement. Where all schools are not academies, school reorganisations will need to be managed where an academy (or free school) expansion makes another school unviable. Also, there could well be a need to consider how academies can ensure a sufficiency of places/expand if demand for places is increased.

18. The panel heard that some authorities have been involved in convening partnerships of schools and supporting them to make collective decisions about how to meet increasing demand. Capacity has also been developed to provide objective and detailed information to support schools' collective planning. Authorities have also been closely involved in working with academies and free school promoters to encourage good quality proposals for new schools in areas where there is demand for places.

19. In addition, nationally, work has been undertaken in some cases with the Government's Department for Education (DfE), academy sponsors and local heads to develop solutions where schools become no longer viable in terms of pupil numbers.

20. In terms of special educational provision, there is evidence locally and nationally of a rise in levels of vulnerable children. This is in terms of an increase in numbers of looked after children to an increase in statements of special educational needs (SEN). Ensuring appropriate support services for the most vulnerable children may therefore represent a significant challenge. A further issue relates to the fact that mainstream schools can often have pupils that would benefit from a specialist placement. This can prove to be very demanding for both the school and pupil concerned. There will be a need to ensure that all schools and academies are able to provide the necessary support. In 2013/2014 there were 41 new placements in specialist schools in Middlesbrough.
21. The scrutiny panel expressed concerns about the need to ensure that fair access arrangements are continued as more schools become academies, for example in respect of excluded pupils. Local authorities, whose budgets for supporting vulnerable children are already under pressure, may find these pressures increased as a result of devolution of budgets to academies.
22. In response to a query on whether Pupil Referral Units (PRUs) would still exist in the future, it was explained that an Exclusions Trial is currently ongoing in Middlesbrough. Under the terms of the agreed protocol, this involves the Council providing funding where schools guarantee not to permanently exclude a pupil but, instead, keep them on roll and organise their own alternative provision. After one year of the trial, the total number of permanent exclusions has been reduced from 30 two years ago to 14 at the present time.
23. The future of the PRUs will depend on the success of this model and whether all schools and academies are willing to continue with this, or a similar, model. In that case, the need for the type of PRU currently in place could be reduced. There is also the potential for any future PRUs to become academies linked to schools.
24. Following a query from the scrutiny panel in respect of admission criteria, it was explained that these would be set by each academy. Although, in theory, an academy could operate a selective education policy, it is hoped that this will not be the case in Middlesbrough. At the time of the panel's investigation in late 2012, it was hoped that collective agreement on model admission policies for all of Middlesbrough's seven secondary schools/academies could be agreed via the Secondary Headteachers' Conference. At that time (late 2012), admissions to primary schools had not been discussed. However, some issues were anticipated because of performance targets and numbers of special educational needs (SEN) and complex needs children in Middlesbrough. Schools will still be required to meet floor standards in Year 6 regardless of the number of vulnerable pupils who need additional support.
25. Details of anticipated revised funding arrangements are shown against the next term of reference in this report. However, it is of particular note that SEN and disability-related funding is to change radically. Although indications are that in such cases the Government will provide £10,000 per pupil place, any additional funding required will need to be in the form of a top-up from the Local Authority. There are serious concerns that this may lead to a shortfall in funding in Middlesbrough.

**TERM OF REFERENCE: “To consider the implications for the local authority of changes in funding arrangements” AND:  
“To consider the impact on local authority services and staff.”**

26. In early January 2013, the scrutiny panel was advised of the updated funding position as set out below.
27. The aim of the Department for Education (DfE) funding reforms is to simplify the funding formula for schools and make it easier for the <sup>5</sup>Education Funding Agency to replicate this for academies. It also aims to bring funding on a per-pupil basis closer together for schools with similar characteristics in different local authority areas. It was explained that each authority currently uses its own formula funding, as agreed with its own Schools Management Forum (SMF).
28. From April 2013, academies will receive their budget shares on exactly the same basis as Local Authority maintained schools. Although there are currently 37 factors that can be taken into account when developing the funding formula, these are to be reduced to 12. Of these, three will not apply in Middlesbrough as they relate to the London weighting, Private Finance Initiatives (PFI) and split sites. The formula changes are being implemented without any change to the distribution of Dedicated Schools Grant between local authorities.
29. The DfE intends that, for funding purposes, a greater emphasis will be placed on pupil numbers than is currently the case. This means that small schools and those that currently receive extra funding for the highest levels of deprivation are likely to receive less funding. Only a flat-rate deprivation allowance per pupil will be permitted.
30. In addition, Middlesbrough was initially advised that the authority would not be permitted to fund schools with high pupil mobility. This is a significant issue for some primary schools in the town, particularly in areas of transient populations. For example, between September and December 2012, one school had 50 pupils joining the school and 30 leaving. Situations such as these place significant demands on school resources.
31. As a result of Middlesbrough and other Local Authorities lobbying the DfE on this issue, it has been agreed that it will be addressed by the new funding arrangements. However, a difficulty that has been identified is that any lump sum allocated - for example to assist small schools - has to be the same value for every primary and secondary school and the total lump sum cannot exceed £150,000 per school.
32. Other funding, such as Trust and Voluntary Aided school admissions responsibilities, caretakers' houses, insurance and the extra cost of teachers who are on the upper pay scale or leadership scales can no longer be targeted, as has been the case in the past. Grants were previously transferred into budget shares - such as Excellence in Cities and National Strategies - and then aggregated into a lump sum, which varied by school, to maintain roughly the same level of funding as when they were separate grants. This is also no longer permitted and such examples will in future need to be funded using the permitted standard factors.

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<sup>5</sup> The Education Funding Agency (EFA) is the national (Department for Education) delivery agency for funding and compliance. The EFA provides revenue and capital funding for education between the ages of 3 and 19 (up to age 25 for those with learning difficulties and disabilities). It also supports the delivery of building and maintenance programmes for schools, academies, free schools and sixth-form colleges.

33. This has caused significant turbulence in allocations at individual school level. The existing Minimum Funding Guarantee (MFG) will be continued and will limit any school's drop in funding to a maximum reduction of 1.5% per pupil per year for two years. It is likely that the MFG will continue after that period, although the DfE is unable to confirm future levels at this stage.
34. As a result of the new formula, Middlesbrough Council is likely to require around £1m in total for MFG, compared to £88,000 at the moment. In order to fund this, schools that gain from the new funding regime will have their gains capped and will not receive the full benefit of the additional funding immediately. Over time, the funding cap will be lifted as schools in receipt of MFG have the grant reduced by 1.5% per pupil per year.
35. Initial modeling of the new formula based on existing data for Middlesbrough - and before the MFG protection or capping is applied - shows that the maximum funding loss will be 12% at primary and 1% at secondary level. The maximum gain will be 13% in primary and 8% at secondary level. In cash terms, the range will be -£121,000 to + £193,000 in primary schools and -£49,000 to +£55,000 in secondaries.
36. The panel queried the implications of the Pupil Premium on the new funding arrangements. In response, it was explained that this is additional funding to assist schools with disadvantaged pupils. The funding is provided directly to schools, for them to determine how best it should be used. The Pupil Premium is aimed at addressing inequalities between children eligible for free school meals and their peers by ensuring that funding to tackle disadvantage reaches the pupils who need it most.
37. The Pupil Premium has been increased to £900 per pupil for 2013-2014 but cannot be taken into account when deciding formula funding. Although schools are free to determine how the Pupil Premium is used, it is noted that a Middlesbrough school has recently been visited by OFSTED specifically to monitor the use of the premium. In future, any school eligible for Pupil Premium will have details of its pupils' progress shown separately in national performance tables.
38. The new funding formula is essentially a competitive model with a focus on pupil-led funding. One result of this is that smaller schools could be penalised as funding is re-directed to larger schools. While the Government does not want small schools to close, it is envisaged that such schools will need to make efficiency savings. This could be by achieving economies of scale such as sharing leadership and joining with other schools to procure goods and services.
39. In Middlesbrough, following an £800,000 cut, there is currently insufficient capital funding available for any major-build projects. Any future projects such as new school builds would therefore require alternative funding, such as use of Private Finance Initiatives (PFI).
40. It is noted that Middlesbrough schools' balances had risen to £7m at 31 March 2012 but that these cannot be taken into account when allocating budget shares. The Council requires schools to complete a return, which is used to assess schools' balances and determine whether anticipated spending is carried out. Local Authorities are not, however, permitted to claw back any unused funds from schools.

41. The scrutiny panel was advised that the Dedicated Schools Grant (DSG) settlement for 2013-14 would be split into three blocks, as follows:
- Schools Block (covering Reception to Year 11).
  - Early Years (nursery provision).
  - High Needs (for pupils with special educational needs (SEN) and disability where individual provision costs more than £10,000 per year).
42. Schools will therefore receive several different allocations instead of one budget share amount, with each of the blocks being calculated differently - the Schools Block is based on October census data, whereas the Early Years block is based on a January count.
43. The panel was advised that the Wellbeing, Care and Learning (WCL) budget is separate from the Dedicated Schools Grant. The overall budget comprises local authority money from formula grant and council tax and is used for services such as school improvement, asset management, educational psychology, recruitment of school governors and the finance, human resources, legal and ICT services in respect of the WCL Department. However, as some of these responsibilities will transfer to academies, the authority will lose some of this funding.
44. The DfE is to produce a national average-per-pupil cost for services that are academy responsibilities and will then deduct the relevant amount in full from the Local Authority's formula grant. This funding will be managed and distributed by the DfE between Academies and Local Authority schools in the form of the Education Support Grant (ESG).
45. It is envisaged that the per-pupil cost will be based on a national average and not the amount Middlesbrough currently spends. The implication of this system is that if the number of academy pupils increases and the amount put into the ESG is higher than the amount Middlesbrough currently spends, overall funding for local authority maintained schools will be reduced.
46. In the event that a local authority does not have sufficient money for providing school services, it will need to either reduce the level of statutory services to a minimum or transfer funding from elsewhere within the Council to fund them.
47. After several years of reducing roll numbers in Middlesbrough, there has been a recent increase of around 135 pupils. This reflects an increase in the number of primary school pupils, which has resulted in particular pressures for schools in central Middlesbrough. While this increase might help to ease the impact of the funding changes for growing primary schools, this will be offset by the fact that there are more pupils to educate and a reduction in secondary school pupil numbers.
48. A further major change for schools is a significant increase in delegation of functions that have previously been managed centrally. These now have to be passed to schools along with responsibility for commissioning these services. The total funding involved was around £760,000 in 2013/2014. The Schools Management Forum (SMF) can decide whether to hand back or 'de-delegate' this funding on behalf of maintained schools, who are then bound by this decision. However, academies could only agree individually to pool their funding.

49. In the event that the SMF decides not to de-delegate funding, it will be up to individual schools to decide whether to buy back services from Middlesbrough Council. To date, the only funding to be de-delegated is the Free School Meals Entitlement Checking Service. Decisions on whether to de-delegate ICT licences and trade union facility time were due to be taken on <sup>6</sup>17 January 2013. Schools will therefore keep funding for services such as behaviour support, attendance, and support for ethnic minorities and vulnerable children.
50. The Middlesbrough Achievement Partnership is likely to be the vehicle by which schools group together to agree new specifications for the services they wish to commission. One of the main priorities of the Middlesbrough Achievement Partnership at the present time is place planning. The Partnership is also looking at how to use data more effectively to determine which services to commission and is providing assistance to schools to commission services together in order to reduce costs.
51. It was highlighted that this will impact on the Council's strategy of reducing school costs by sharing facilities and expertise - academies will be able to obtain services from anywhere they choose. This fact - and the potentially uncertain future budget position will impact on the services delivered to schools/academies in the future.
52. Reference was made to an officer working group that has been established to examine this issue. The remit of the working group, which comprises key strategic officers from across the Authority, is to consider the implications of the Government's funding settlement, the removal of the Local Authority Central Spend Equivalent Grant (LACSEG) and the increased number of schools becoming academies in Middlesbrough.
53. The working group, which includes representatives from Legal, Human Resources, Information Technology and Central Services, as well as Wellbeing, Care and Learning, is undertaking an analysis of each service area. This will determine how Government funding proposals and an increase in the number of academies might affect each service's budget. The working group has also been involved in determining where local authority staff may be at risk from any reductions in service provision.
54. One of the working group's proposals is that, if the Council wishes to continue to provide its services to academies (on a buy-back basis) the authority needs to begin work well in advance of the conversion to academy status. Accordingly, an action plan has been produced to progress this issue and work is ongoing to finalise a list of services that the Council could provide to schools in the future.
55. In the first instance, it is envisaged that the Council will ascertain whether any school that wishes to become an academy wishes to continue with services that it currently receives from the local authority.
56. It is hoped that this process will lead to the establishment of a secure funding framework for Council services to academies/schools. However, it is recognised that these services will need to operate in a competitive trading environment, where price and quality will be key factors. A further issue is existing service level agreements (SLAs), which tend to be agreed with schools on an annual basis. It is envisaged that, in order for the authority's services to be provided on a more commercially-orientated basis, the duration of SLAs will need to be two to three years.

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<sup>6</sup> These issues were subsequently agreed by the Schools Management Forum.



57. The scrutiny panel was advised that it is envisaged that an offer of all available local authority services to schools and academies will be finalised during early 2013. It is noted that this will not include services directly related to supporting education but will also include areas such as building cleaning and grounds maintenance.
58. Increased autonomy for schools will clearly have staffing implications for the local authority, particularly for services that are currently provided directly to schools. As has been mentioned earlier in this report, academies will be free to purchase services from wherever they choose.
59. The panel heard that the Department of Wellbeing, Care and Learning has already begun to address this issue. Services identified at risk of staff redundancies, in areas of work where future funding streams cannot be guaranteed, include Behaviour Support, Learning Options, Ethnic Minority Support and Museums and Libraries.
60. A proposed revised staffing structure (as at November 2012) has been drawn up for the Achievement Service and a process of consultation regarding potential redundancy of up to 43 employees has been commenced. It is hoped to minimise any compulsory redundancies - for example some posts may transfer directly to schools. It is hoped that schools/academies will recognise the specialist nature and benefits of local authority support services, such as by grouping together for collective purchasing of the services.
61. There is therefore a need to progress this issue through discussions with schools and, where appropriate, develop commercially orientated services to be made available to schools/academies in Middlesbrough and the wider area. The scrutiny panel was advised that there has been some progress in this area - for example the Governor Support Service now operates on an almost fully traded basis, supported by income from schools.

**TERM OF REFERENCE: *“To ascertain whether academies will be under any obligation to retain all or some of their playing fields.”***

62. The scrutiny panel had identified the above as an issue following recent press and media coverage regarding school playing fields. This indicated that, nationally, large areas of school playing field have been lost to development in recent years. The panel wished to investigate the position concerning academies, particularly whether school playing fields could be vulnerable to disposal. Two Members of the panel and the scrutiny support officer met with an officer from Wellbeing, Care and Learning on this issue, with the Members' findings being reported to the panel as follows.
63. The scrutiny panel was informed that (as at September 2012) there are seven academies in Middlesbrough - three primary and four secondary. In the majority of cases, the school premises and land have been leased to the academies. The expectation is that land for future academy conversions will also be dealt with on this basis. There are two exceptions:
- Macmillan Academy - Where site ownership is split between the Council and the academy. The local authority owns the playing fields.

- Oakfields Academy - Where the freehold has been transferred to the school under arrangements for foundation schools. Permission for any future disposal of playing fields would be required from the Secretary of State for Education. The panel was also advised that some Hustler Trust land is used as playing fields by Oakfields Academy. However, the exact position concerning the Trust's involvement (and any restrictive covenants) is subject to clarification.

64. The length of each lease is 125 years, based on a standard lease contract provided by the Department for Education (DfE). This prohibits academies from sub-letting the whole or any part of the site without the permission of the local authority and the Secretary of State. However, the lease does allow the change of use of academy land, as long as it continues to be used for educational or recreational purposes.

65. In addition to the lease arrangements, there are three relevant pieces of legislation and regulation, as follows:

- a) Section 77 of the School Standards and Framework Act: Local authority-owned school land (including land leased to academies) is protected from disposal or change of use where it has been used as playing field by a maintained school in the last 10 years.
- b) Schedule 1 to the Academies Act 2010: Requires that academies wishing to dispose of publicly funded land for which they own the freehold must only do so with the consent of the Secretary of State. This is also a requirement of the individual academies' funding agreements.
- c) The Schools Premises Regulations 2012: These came into effect in October 2012 and remove the current minimum playing field area that schools must provide. Whereas this previously depended on the number of pupils, schools are now only required to provide 'suitable outdoor space.' The same standard is applicable to academies from January 2013.

**TERM OF REFERENCE: *"To determine the position concerning achievement/raising attainment, including schools which under-perform or fail."***

66. As outlined at paragraph 13, at the present time local authorities still have a statutory responsibility in terms of monitoring and challenging schools in respect of their performance. In the case of academies, future local authority involvement with school improvement is an issue that has been highlighted nationally as requiring detailed consideration. Areas that have been highlighted include:

- a) Shared intelligence will be needed to identify declining performance.
- b) There may be an issue of capacity of primary schools to act as effective commissioners of external support.
- c) There will be a need to ensure that school-to-school support is provided on a comprehensive and not piecemeal basis.
- d) A mechanism will be needed to hold school-to-school support partnerships to account in order to maximise their effectiveness.
- e) Challenge (and support) for stand-alone academies may be an issue - who will provide such challenge if performance drops and the governing body cannot respond?

67. Despite ongoing discussions with the DfE, as at January 2013 local authority responsibility for attainment/performance of academies in the future is still uncertain. The position is that definitive clarification is required in respect of authorities' *absolute* role. In the meantime, Wellbeing, Care and Learning are to examine the possibility of putting in place an analysis/monitoring system for academies. This would give early warning of any areas of concern in respect of performance.
68. The scrutiny panel also heard that, nationally, some local authorities are working closely with schools to develop multi-academy partnerships and to continue a 'family of schools' approach, co-ordinated by the local authority. Authorities have also been involved in developing clear roles for school partnerships, including academies. Also, in some areas, work has been undertaken with academies to promote a 'children's champion' role and the scrutiny role of Members.

## CONCLUSIONS

69. Having considered the submitted information, the Environment Scrutiny Panel reached the following conclusions:

1. Although an increase in the number of academies in Middlesbrough will result in greater autonomy for schools, Middlesbrough Council will still have a number of statutory responsibilities in respect of local education. It will therefore be important to continue to work in partnership with the local 'family of schools' and to build on existing good working relationships for the educational benefit of all of Middlesbrough's children and young people. This will include working with both maintained schools and academies to ensure a fair admissions process, equitable access to education and to continue to improve standards/attainment. Academies will also need to be made aware of the Council's statutory responsibilities and how they can assist in ensuring that these are fulfilled. Raising standards across the whole of Middlesbrough should be viewed as everyone's collective responsibility. Every effort should be made to ensure that all academies fulfil this role.
2. The position regarding the Council's statutory responsibility for attainment in academies is uncertain. Clarification is needed in this area. Irrespective of any statutory role, it would be beneficial for the authority to continue to gather and collate information and data on schools' and academies' performance. This can then be monitored and any issues raised, as necessary, with the school or academy concerned.
3. The Local Authority retains a duty to ensure that there are sufficient school places for every pupil and to support vulnerable pupils. While it is recognised that academies have their own admission arrangements and criteria, a town-wide agreement on future policy, agreed with all schools and academies would be the preferred option. This would help to continue to ensure fair access to education for all pupils, particularly in view of the increasing numbers of vulnerable pupils, such as those with statements of special educational needs and children looked after. As academies can determine their own admission policies and numbers, pupil numbers and school viability could become a future issue that is outside of the local authority's control. Although pressures could also be caused by increases in pupil numbers, it is uncertain how any future school or academy expansions would be funded.

4. The number of permanently excluded pupils has been much reduced in recent years through the existing Exclusions Trial. It is hoped that this trend can be maintained through dialogue with academies and agreement of a written protocol.
5. Whether schools are maintained or academies, they will still require a wide range of support services. Academies can purchase these from wherever they choose. Middlesbrough Council has the necessary expertise and experience to deliver many of these services successfully. However, a policy decision will be required in respect of what services the local authority can or should provide in the future. If the local authority's services are to be continued, schools and academies will need to be encouraged to use them. This will require a focus on marketing and commercial competitiveness, as well as presenting a well thought out business case. Any related systems and processes that are established will need to be sufficiently flexible to respond and adapt to future change. In addition, the duration of current Service Level Agreements (typically 12 months) will need to be examined to make them more commercially orientated and to enable the authority to make efficient and effective use of financial and staffing resources. The complex and constantly changing position regarding future funding arrangements and formulae has created great uncertainty. Clarification and finalisation of the 2013-14 budget position is needed as soon as possible to enable the Council to plan ahead and to ensure that its statutory obligations can be funded in the future.
6. In the main, processes are in place (such as Middlesbrough Council leasing land used for playing fields to academies) to ensure that academy playing fields are not vulnerable to future disposal. However, under the arrangements for foundation schools, the freehold of the Oakfields Academy site has been transferred to the academy. As some of the Oakfields land is in the ownership of the Hustler Trust, it would be beneficial to clarify the Trust's position and involvement in this issue.

The scrutiny panel's view is that current proposals represent a potential 'democratic deficit' in that there could be reduced elected member (and therefore democratically accountable and local community) representation on governing bodies. However, there may also be potential for local authorities to hold academies to account, such as by scrutiny panels speaking to headteachers or potential sponsors.

## **RECOMMENDATIONS**

70. Following the submitted evidence, and based on the conclusions above, the scrutiny panel's recommendations for consideration by the Overview and Scrutiny board and the Executive are as follows:

1. That Middlesbrough Council engages prospective and existing academies in early dialogue and close liaison to:
  - a) Ensure that they are aware of the local authority's statutory responsibilities (to provide sufficiency of places, education of vulnerable children and promote high standards/address under performance) and how these can be best fulfilled.

- b) Ensure that, as far as possible, all academies and stakeholder work together - and not in isolation - to ensure a continued, collective commitment to providing first class education in Middlesbrough for the benefit of all children and young people. This should include measures to ensure that current low numbers of exclusions are maintained and that adequate educational provision continues to be made for all vulnerable learners.
  - c) Agree, if possible, a borough-wide policy on admissions and exclusions.
2. That the Government's Department for Education (DfE) is urged to provide clarification as soon as possible on the definitive position regarding local authorities' responsibility for achievement/attainment in academies. Irrespective of any statutory role, a mechanism should be developed by Middlesbrough Council to collectively engage academies in discussions regarding any areas of future concern, including performance. The Children and Learning Scrutiny Panel should be involved in this process.
  3. That the Council determines which of its support services should be made available to schools and academies on a trading basis and ensures that systems and processes are established to ensure that these services:
    - a) Are commercially orientated, flexible and able to respond and adapt to any necessary future change and challenge.
    - b) Are actively marketed to schools and academies to ensure that they are aware of all available services and their benefits.
  4. That following any increase in academy numbers in Middlesbrough, and in order to assist Middlesbrough Council in its duty of ensuring sufficiency of school places, close monitoring of pupil numbers and places is undertaken. Action should then be taken in conjunction/consultation with all education providers, to ensure that the authority's duty is fulfilled, as well as ensuring that any maintained schools continue to be viable. This should also ensure that measures are in place to deal with any future increases in pupil numbers.
  5. That the position is clarified regarding ownership of some of the Oakfields Academy site by the Hustler Trust. In particular, clarification should be sought on the Trust's position concerning possible future disposal of land used for playing fields.
  6. That in order to ensure continue democratically accountable representation, academies are actively encouraged to appoint local Councillors to governing bodies.

## **ACKNOWLEDGEMENTS**

71. The Panel is grateful to the following Middlesbrough Council Officers, who presented evidence during the course of this investigation:
- John Catron - Deputy Director, Achievement - Wellbeing Care and Learning.
  - Julie Cordiner - Partnership Development Leader, Middlesbrough Achievement Partnership.
  - Gary Maddison - Strategic School Planning Manager, Wellbeing Care and Learning.
  - Julie Mogridge - Strategic Accountant, Wellbeing Care and Learning.

72. The panel also wishes to acknowledge the amount of work that has been undertaken, and is ongoing, by officers and Members across the authority in respect of this topic. Particular thanks are extended to staff in Wellbeing, Care and Learning for the work that has been carried out to date in anticipation of the increase in the number of academies in Middlesbrough.

## **BACKGROUND AND REFERENCE MATERIAL**

73. The following sources were consulted or referred to in preparing this report:

- Reports to, and minutes of, the Children and Learning Scrutiny Panel meetings held on 25 July, 22 August, 12 September, 3 October, 24 October and 14 November 2012 and 10 January 2013.
- Isos Partnership Report: The Evolving Role of Local Authorities in Education - June 2012.

**COUNCILLOR JEANETTE WALKER**

**CHAIR OF CHILDREN AND LEARNING SCRUTINY PANEL**

**February 2013**

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