Accountability in Academies

David Marriott reflects on Academy governors' accountabilities

What is accountability?

What do we mean by accountability in relation to maintained schools and, specifically, their governing bodies?

Accountability can be said to consist of three liked elements:

- Being accountable for
- Giving an account of
- Taking account of

Governors are accountable for:

- Effectiveness: school performance
- Efficiency: value for money

In preparing for their accountability, they need to take account of:

- Performance data
- Feedback from stakeholders
- Self-evaluation
- Policies, plans, improvement strategies
- School environment
- GB's actions

They then have to give an account

- To parents and the community
- To Ofsted
- To the Diocese, if a Church school

What about governors in Academies?

According to the National Governors' Association (NGA) "Academies are exempt charities and companies limited by guarantee which require different financial accounting and accountability mechanisms. Converting schools need to be clear about the regulatory requirements for Academies and ensure that they have appropriate mechanisms in place to meet them.

The principles of governance are the same at an academy as at a maintained school. However the difference is that all academies are charitable companies and as such have a trust body. The trust body is the over-arching accountable body and may have the ability to appoint the majority of the governing body. The respective responsibilities of the trust body and the governing body will be set out in the Articles of Association. The model DfE Articles of Association assumes that in single converter schools the members of the governing body will also be the directors of the company and the charity trustees. This is not the same for 'old style' sponsored Academies, or in chain Academies.

The Companies Act does not require private companies (which is how Academies are classified in Company law) to have a Company Secretary. There are specific returns relating to companies which have to be submitted annually to Companies House and the Directors will need to ensure that there are systems in place for the submission of these returns. Directors can be held personally liable if these returns are not submitted."

So, the key message is that "the principles of governance are the same at an academy as at a maintained school", which implies that the accountability for maintained schools described above applies equally to Academies. In addition, Academy governors and Trusts have to abide by certain other legal and reporting requirements.

The NGA's definition is borne out, in simpler terms, in the FAQs listed on the website of Rawlins Community College, Leicestershire:

"To whom are the governors of an Academy accountable? In the first instance, governors would remain accountable to our parental body. Governors would also be monitored by Ofsted and parents would still be able to trigger inspections by complaining to Ofsted. The YPLA (Young Peoples Learning Agency) would monitor school finances and the LA (Local Authority) has the right to refer an Academy to the Secretary of State if they have concerns over standards. Parents would also retain the right to complain to relevant ombudsmen depending upon the issue, for instance: admissions."

So far, so good.

In 2008, a report was published for the Sutton Trust called **"The Academies programme: Progress, problems and possibilities"** which reported concerns about a lack of democracy and limited accountability in Academies:

"In many respects the defining characteristic of Academies is their independence from the local authority. The line of accountability is directly to the Secretary of State…Academies are companies limited by guarantee which have charitable status, and the governance of Academies remains a distinctive element of the programme. There is no prescription regarding the number of governors in Academies, but the number is usually around 13, the majority of whom are appointed by the sponsor. Other governors should include at least one parent, a local authority representative and the principal in an ex-officio capacity. It is not a requirement for them to have a staff representative, although many do. Critics assert that the absence of the requirement for staff governors is one of many elements that make Academies undemocratic. PwC found low levels of parent and staff representation on Academies‟ governing bodies in the earlier stages of their evaluation, despite the former being a requirement. However, they have observed an increase in staff representation in their case-study Academies over time."

This was followed in 2009 by the National Audit Office's (NAO) report **"Financial Management in the Department for Children, Schools and Families"** which highlighted concerns over the financial management, governance and accountability of Academies:

"Academies are directly accountable to the Department, but there is currently no reporting of their financial performance to Parliament. The Academies sector is growing at a significant rate, with the number of Academies planned to increase from 132 as at January 2009 to a final number of around 400. Local authorities do not have responsibility for Academies and if they encounter financial difficulties, the risk falls directly on the Department. As part of the Apprenticeships, Skills, Children and Learning Bill, the Department plans to move the funding of Academies to a new agency, the Young Person's Learning Agency. The Department's new agency should prepare an annual report for Parliament on the performance of the Academies sector, including an audited consolidated account for Academies."

On 28 January, 2011 the **Times Education Supplement** reported:

"The Coalition's rapid expansion of the academies programme is at risk of becoming a poor use of public money. The **Public Accounts Committee** raised concerns over the Department for Education's management of the programme and the potential for "financial instability". More than 25 per cent of academies could need support to ensure their "financial health", it emerged. This week's report echoes the NAO's fears, adding that many academies have "inadequate financial controls" to ensure the proper use of public money. "As the programme expands, there are increased risks to value for money and proper use of public money," the report states. It adds: "The Department needs to develop sufficient capacity and adequate arrangements to provide robust accountability and oversight of academies' use of public funds." Committee chair Margaret Hodge called for tighter controls to be put in place to keep academies in line. "The NAO found that over a quarter of academies could need extra financial or managerial help to maintain long-term financial health," she said. "In these circumstances, simply issuing guidance on basic standards of accountability and financial management is not enough."

A DfE spokesman said it recognised the issues raised by the report: "This is one of the reasons that we announced the creation of the Education Funding Agency (EFA) in the white paper published in November last year. The EFA will be dedicated to managing the flow of funding and overseeing the proper use of public funds in academies in a suitably light-touch way. In the meantime, the Young People's Learning Agency is revising and developing academies' financial control frameworks."

Currently the YPLA website states: “Subject to the passage of legislation, the Education Funding Agency will take over responsibility from the YPLA on 1st April 2012 for the funding of young people's education and training, including the increasing number of Academies.” There is no further detail

While we wait to see whether the new EFA will address the concerns raised, worries about the accountability of Academies continue to be voiced.

According to Helen Flynn, contributor to the **Local Schools Network** (www.localschoolsnetwork.org.uk) “academies have a corporate structure, being charitable companies, and the Members of the Trust Board and indeed the Governors are in fact directors. Going further, the members of the Trust Board are also shareholders, and once they have been appointed, can continue as long as they like (as long as there are no transgressions), there being no lengths of term of office stipulated. If you refer to the UK Corporate Governance Code 2010 [see Appendix] (which Academies must fall under now), you will notice that one of the three basic recommendations is: “each board should have an audit committee composed of non-executive directors”. When I trawled through all the academy statutory guidance, Articles of Association and draft funding agreement, etc, there is no mention made of a requirement for an academy to have an audit committee.”

Contributor Henry Stewart adds: “This is an important point. It seems very odd that the ultimate power in academies lies not with the Governing Body, representing parents, staff, community etc, but with its Trust Board. As you say the Trust Board (normally just 3 or 4 people) is accountable to nobody and has no accountability.”

In July 2011 Fiona Millar, writing in The Guardian, said:

“There is little difference between an **academies group** and a local authority apart from a lack of accountability... Sir Bruce Liddington, schools commissioner in the last Labour government, now director general of the academy chain E-ACT and one of the movers and shakers in the academy world, made a speech in which he set out his vision for a "world-class education system"…Liddington unveiled his organisation's five-year business plan. From a low base – 11 academies in 2010 – the group has big ambitions. By 2015, it hopes to have 40 academies, 21 free schools and 65 "converter" academies. Elsewhere, he has been reported as speculating that E-ACT might one day run more than 250 schools…scratch the surface and an alternative vision of the future emerges, one in which a patchwork of government-funded chains, each with a distinct brand, run thousands of schools, top-slicing revenue in the same way that local authorities have been doing for years, and so protected from the public gaze that the outgoing Ofsted chief, Christine Gilbert, recently urged ministers to bring them within the inspection framework…

The accounts of the bigger [Academy] chains, published on the Charity Commission website, reveal how much funding is at stake, and how little transparency exists about the flow of money between the governing trust and the schools, many of whose budgets are not publicly available…

Eyebrows were raised when it emerged that Liddington's own salary had risen from £154,000 in 2009 to £280,000 last year (thought to be over £300,000 when pensions and bonuses are included). The E-ACT director general now earns more for running 11 schools than many council chief executives receive for overseeing multibillion-pound budgets…Even without the potential to make a profit, the financial returns to those involved in school chains can be considerable.

According to a DfE spokesman, there is "no limit" to the number of schools that can be taken on by a chain if it is perceived to be doing a good job. "The secretary of state would also say it is up to the chain how they manage their funds and how much they retain for central use," he adds. Only time will tell how many academies will end up in the hands of the chains and whether that will have a transformational effect on school standards. In the meantime, it is worth asking whether it is really autonomy that schools need, or smarter forms of local accountability, and who will hold the new breed of chains to account for the large amount of public money that may flow through their hands in years to come."

In later editions of The Guardian, both Estelle Morris and Mike Baker reflected on the way in which unaccountable Academy chains appeared to be becoming the middle tier of the education system, gradually replacing democratically elected local authorities.

Despite these concerns, in an interview in The Guardian **Sir Michael Wilshaw**, the new Chief Inspector was described as "scathing about anti-academies campaigners who complain about the schools' lack of democratic accountability." "If local democracy had worked, if local governing bodies had worked in the most challenging schools and for the most disadvantaged children, we would never have needed academies," he says. "Often governing bodies are the problem, actually."

If we return for a moment to the Rawlins College explanation of accountability in an Academy, we see that each component is vulnerable:

"Governors would remain accountable to our parental body" – but there is no formal requirement or format for this. Currently in maintained schools, this continues to be a weakness, ever since the Annual Report to Parents was abolished under the last government.

"Governors would also be monitored by Ofsted" – except that schools judged outstanding by Ofsted will not be inspected in future, and many Converter Academies are outstanding. The new Ofsted framework from January 2012 does not include a separate judgement on governance.

"Parents would still be able to trigger inspections by complaining to Ofsted" – this happens very rarely indeed and there is no reason to suspect that it will increase as a result of the new Ofsted framework.

"The YPLA (Young Peoples Learning Agency) would monitor school finances" – we have seen that this has been identified as an area of weakness by the National Audit Office and the Public Accounts Committee. The YPLA will be replaced by the EFA in future but there is currently no information about what it will do.

"The LA (Local Authority) has the right to refer an Academy to the Secretary of State if they have concerns over standards" - but Academies have been "set free" from LA control and School Improvement Partners have been abolished. If it wishes, an Academy can close itself off from the LA.

"Parents would also retain the right to complain to relevant ombudsmen depending upon the issue, for instance: admissions". Perhaps, but again, one questions how often this would happen or the complaint be upheld.

Whilst Sir Michael Wilshaw may have a point about the failure of some governing bodies to monitor, evaluate and challenge headteachers in poorly-performing schools, he ignores the fact that powerful heads like him are more than capable of denying governors the data they need to provide valid and robust scrutiny. He should also take the trouble to read the recent report from the organisation he is about to lead which identifies the characteristics of outstanding governing bodies and shows just how crucial they are in providing the democratic accountability that is yet to be firmly embedded in Academies.

On the face of it, governors' accountability in Academies is poorly defined and understood, lacks formal, strong mechanisms to ensure compliance and is in danger of being weakened still further as Academy chains grow larger and more powerful.

Appendix

UK Corporate Governance Code 2010

ACCOUNTABILITY

C.1 Financial and Business Reporting

Main Principle

The board should present a balanced and understandable assessment of the company's position and prospects.

Supporting Principle

The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements.

Code Provisions

C.1.1 The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and there should be a statement by the auditor about their reporting responsibilities.

C.1.2 The directors should include in the annual report an explanation of the basis on which the company generates or preserves value over the longer term (the business model) and the strategy for delivering the objectives of the company.

C.1.3 The directors should report in annual and half-yearly financial statements that the business is a going concern, with supporting assumptions or qualifications as necessary.

C.2 Risk Management and Internal Control

Main Principle

The board is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems.

Code Provision

C.2.1 The board should, at least annually, conduct a review of the effectiveness of the company's risk management and internal control systems and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls.

C.3 Audit Committee and Auditors

Main Principle

The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the company's auditor.

Code Provisions

C.3.1 The board should establish an audit committee of at least three, or in the case of smaller companies17 two, independent non-executive directors. In smaller companies the company chairman may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as chairman. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

C.3.2 The main role and responsibilities of the audit committee should be set out in written terms of reference and should include:

- to monitor the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them;
- to review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems;
- to monitor and review the effectiveness of the company's internal audit function;
- to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, re-appointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;
- to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;
- to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm, and to report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

C.3.3 The terms of reference of the audit committee, including its role and the authority delegated to it by the board, should be made available. A separate section of the annual report should describe the work of the committee in discharging those responsibilities.

C.3.4 The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

C.3.5 The audit committee should monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report.

C.3.6 The audit committee should have primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditor. If the board does not accept the audit committee's recommendation, it should include in the annual report, and in any papers recommending appointment or re-appointment, a statement from the audit committee explaining the recommendation and should set out reasons why the board has taken a different position.

C.3.7 The annual report should explain to shareholders how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded.