

GUIDANCE PAPER 122

Inspection, Oversight of and Intervention in Schools: The Role of Ofsted, Regional School Commissioners and Local Authorities

This guidance provides a factual overview of the respective roles of Ofsted, regional school commissioners and local authorities in relation to schools they maintain. It makes the distinction between the inspectorate which has no executive powers in relation to schools, local authorities that have executive powers in relation to schools they maintain, and regional school commissioners who are the agents of the secretary of state and have executive powers in relation to academies. The document clarifies the term 'eligible for intervention' and offers guidance to schools who are in this position.

The role of Ofsted

- 1 Ofsted is a non-ministerial government department, accountable to Parliament. As the schools' inspectorate¹ it has the power to inspect schools (including academies). It also has a duty to inspect certain schools at prescribed intervals. It has **no executive powers** and cannot direct schools. Currently, Ofsted has no statutory power to inspect multi-academy trusts (MAT), but can inspect the constituent academies within a trust at the same time and can publish a summary letter giving an overall assessment of the role of the trust in supporting the academies.
- 2 Ofsted publishes a school inspection framework which sets out the statutory basis for inspections conducted under section 5 of the Education Act 2005 (as amended). The framework summarises the main features of school inspections and describes how the general principles and processes of inspection are applied to maintained schools, academies and some other types of school in England. The **current version of the framework** has been in effect since September 2014.
- 3 The framework makes it clear that "where Her Majesty's Chief Inspector (HMCI) or the Secretary of State has concerns about the performance of an exempt school (or any other school covered by the framework) HMCI has powers to inspect at any time under section 8. Such concerns may be identified through a risk assessment process or when Ofsted becomes aware through other means of concerns about a school's performance or the safety of pupils. HMCI may treat an inspection of such schools conducted under section 8 as if it were an inspection under section 5. Under section 8, HMCI may be required by the Secretary of State to conduct an inspection of an exempt school (or any other school covered by the framework)."
- 4 According to the framework, the purpose of inspection of a school is to provide an independent external evaluation of its effectiveness and a diagnosis of what it should do to improve.
- 5 Ofsted says its inspections of schools perform three functions. "They:
 - provide parents² with an expert and independent assessment of how well a school is performing, and help inform those who are choosing a school for their child
 - provide information to the Secretary of State for Education and to Parliament about the work of schools and the extent to which an acceptable standard of education is being provided; this provides assurance that minimum standards are being met, provides confidence in the use of public money and assists accountability, as well as indicating where improvements are needed³
 - promote the improvement of individual schools and the education system as a whole."

¹ Ofsted's statutory role as an inspectorate is not limited to schools.

² The term 'parents' refers to mothers, fathers and/or carers.

³ Under section 118 of the Education and Inspections Act 2006.

- 6 If Ofsted judges that a school is inadequate (for example, has serious weaknesses or requires special measures), then it is automatically **'eligible for intervention'** (see below).

The role of local authorities (maintained schools)

- 7 Under the Education and Inspections Act, 2006, Local Authorities have powers of intervention in relation to schools they maintain.⁴ Local authorities therefore have **executive powers in relation to schools they maintain**. The government has issued **statutory guidance to local authorities**, published in May 2014.

- 8 The legislation and statutory guidance states that a local authority can intervene in a maintained school by issuing a warning notice on one or more of the following grounds:

- Standards of performance of pupils at the school are unacceptably low and are likely to remain so unless the authority exercises its powers.
- There has been a serious breakdown in the way the school is managed or governed which is prejudicing or likely to prejudice the standards of performance.
- The safety of pupils or staff at the school is threatened.

- 9 The legislation and statutory guidance provides the following definition of what constitutes low standards of performance:

- the standards that the pupils might in all the circumstances reasonably be expected to attain; or,
- where relevant, the standards previously attained by them; or,
- the standards attained by pupils at comparable schools.

- 10 The guidance makes clear that unacceptably low standards of performance includes: "standards below the floor, on either attainment or progress of pupils; low standards achieved by disadvantaged pupils; a sudden drop in performance; sustained historical underperformance, performance of pupils (including disadvantaged pupils) unacceptably low in relation to expected achievement or prior attainment, or performance of a school not meeting the expected standards of comparable school."

- 11 The statutory guidance also encourages local authorities to consider issuing a warning notice to schools that have not responded robustly or

rapidly enough to a recommendation by Ofsted to commission an external review of their governance arrangements.

- 12 In the situations described above, policy expectation is that the local authority should issue a warning notice unless there is a particular reason not to do so. There is also a policy expectation that a school should become a sponsored academy where there is sustained underperformance.

- 13 Warning notices must be issued to the governing body, and also copied to the headteacher and to the relevant Diocese/foundation where applicable. A warning notice must set out the matters on which the local authority's concerns are based, the action that the governing body is required to take and the action that the local authority is minded to take if the governing body does not take the required action. All warning notices must be copied to Ofsted.

- 14 Having been issued with a warning notice, within 15 working (not school) days the governing body must either:

- comply with the action required by the local authority, as set out in the Warning Notice; or
- make representations to Ofsted to challenge the Warning Notice.

- 15 A governing body in receipt of a warning notice can appeal to Ofsted and may do so, for example, if it believes that the warning notice has been issued without sufficient objective evidence or that the proposed action is disproportionate to the scale of the issues facing the school.

- 16 If, having given consideration to the action taken by the governing body in response to the warning notice (and assuming any appeal made to Ofsted has not been successful), the local authority is minded to intervene, it must write to the governing body to indicate that the school is **'eligible for intervention.'** A local authority can make this judgement irrespective of the school's most recent Ofsted judgement if it deems that there is sufficient evidence to do so and it is not satisfied with the governing body's response to the warning notice.

⁴ A maintained school means (a) a community, foundation or voluntary school, (b) a community or foundation special school, or (c) a maintained nursery school.

17 A maintained school is **'eligible for intervention'** under the 2006 Act if:

- it has not complied with a warning notice and the local authority have also given the school written notice of their intention to exercise their intervention powers under Part 4 of the 2006 Act; or
- the school has been judged by Ofsted to require 'significant improvement' (a 'serious weaknesses' judgment under the September 2012 Ofsted framework); or
- the school has been judged by Ofsted to require 'special measures'."

18 Where a school becomes eligible for intervention by virtue of failure to comply with a warning notice (as opposed to because of its Ofsted grade), then, with the exception of the power to impose an interim executive board, the local authority has 2 months from the date of expiry of the 15 day period to exercise its powers of intervention. If the local authority fails to exercise its powers within this time, the powers can no longer be exercised and a new warning notice must be given.

19 In terms of powers of intervention, where a school is eligible for intervention, the local authority can take the following action:

- Suspend the delegated authority for the governing body to manage the school's budget.
- Apply to the Secretary of State for consent to constitute the governing body as an interim executive board (IEB) – usually where there is a serious breakdown of working relationships within the governing body.
- Appoint additional governors.
- Require the governing body to enter into arrangements for specified services of an advisory nature or to collaborate with the governing body of another school, a further education body or to take steps to create or join a federation.

20 It should be noted that where maintained schools are eligible for intervention, the Secretary of State also has the power to appoint additional governors, appoint an IEB, or direct the local authority to close a school. The Secretary of State also has the power under the Academies Act 2010 to make an academy order, subject in certain cases to consultation.

21 The Secretary of State also has the power to direct a local authority to first consider giving a warning notice in specified terms and then, to direct the local authority to give a warning notice in those terms where a local authority has decided not to do so.

The role of the regional school commissioner and headteacher boards (academy schools)

22 Regional school commissioners (RSCs) are responsible for making important decisions about the academies and free schools in their area on behalf of the Secretary of State for Education. The regional schools commissioner acts as the agent of the Secretary of State in relation to academy schools.

23 Their main responsibilities are to:

- monitor the performance of the academies in their area
- take action when an academy is underperforming
- decide on the creation of new academies
- make recommendations to ministers about free school applications
- encourage organisations to become academy sponsors
- approve changes to open academies, including:
 - changes to age ranges
 - mergers between academies
 - changes to multi-academy trust arrangements.

24 Regional school commissioners are supported by headteacher boards. Headteacher boards are made up of academy headteachers who are elected by their peers and who advise and challenge the regional schools commissioner. The statutory powers of the Secretary of State are delegated directly to regional school commissioners, not to headteacher boards. Headteacher boards are advisory. The current working protocol is that where a headteacher board disagrees with a regional school commissioner, and the regional school commissioner takes a decision which is expressly against the view of the headteacher board, the regional school commissioner must report that decision to ministers and justify it to them directly.

25 Regional school commissioners are accountable to the Schools Commissioner.

26 There are eight RSC regions:

- East of England and North-East London
- East Midlands and the Humber
- Lancashire and West Yorkshire
- North of England
- South-Central England and North-West London
- South-East England and South London

- South-West England
- West Midlands

- 27** In relation to taking action where there is underperformance in an academy school or trust, the regional school commissioner takes their authority from the funding agreement (the contract between the Secretary of State and the Trust). The regional school commissioner deals with potential breaches of funding agreements on grounds of failure to deliver a good quality education, for example, this is defined as academies not meeting Key Stage 2 or Key Stage 4 floor standards, or on a downwards trajectory, or academies judged to be inadequate by Ofsted.
- 28** An academy whose results are below the floor standard or which is graded inadequate by Ofsted therefore may be issued with a warning notice by the regional school commissioner. This may follow a meeting with an educational advisor who is a professional with relevant education experience employed by the regional school commissioner to gain a fuller understanding of the school and the quality of its work.
- 29** An academy may be issued with a 'pre-warning notice' prior to a warning notice as a first stage warning. These are sometimes written into the terms of the funding agreement and therefore have formal status. Where a funding agreement does not make provision for a pre-warning notice they can nevertheless be a useful informal expression of concern and flag up for the academy that the secretary of state may consider that they have breached their funding agreement on grounds of standards.
- 30** The regional school commissioner does not deal with other potential breaches of funding agreements, such as conflicts of interest or financial mismanagement – these are currently dealt with by the Education Funding Agency.
- 31** In terms of the right of access of a regional school commissioner or their representative, the model master funding agreement (July 2014) for multi academy trusts states that: "The Academy Trust must allow DfE officials to enter any of its academies at any reasonable time. All records, files and reports relating to the running of each academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of each academy's local governing body, of the academy trust's board of charity trustees or any other meetings of the charity trustees of the academy trust." The same provision

exists in the model funding agreement for single academy trusts (July 2014).

- 32** In terms of the relationship between local authorities and regional school commissioners, in a letter to the Education Select Committee in December 2013, Lord Nash said: "The role of local authorities will remain unchanged, although we would expect the regional education leaders and their boards to build relationships with LAs."
- 33** As stated above, the Secretary of State also has the power to direct a local authority to first consider giving a warning notice in specified terms to a maintained school and then to direct the local authority to give a warning notice in those terms where a local authority has decided not to do so. Thus there is a role for the regional schools commissioner if they come across maintained schools in their region where standards of performance are "unacceptably low" and make local authority aware of the situation. In practice, ASCL has no evidence that this is (as yet) happening.
- 34** The DfE has indicated that it intends to bring brokerage decision-making closer to the regions. The regional school advisors therefore have a role in leading brokerage discussions, including for maintained schools who are eligible for intervention.

What to do if your school is issued with a warning notice and/or becomes 'eligible for intervention'

- 35** Contact the ASCL hotline. The duty officer will discuss with you appropriate support that ASCL may be able to offer to you.
- 36** If your school has been issued with a warning notice, check the evidence in the warning notice against your data. Also give consideration as to whether the action being proposed is proportionate to the scale of the issues facing the school. A governing body of a local authority school (but not an academy) in receipt of a warning notice can appeal to Ofsted. Details of how to make an appeal to Ofsted are found in the statutory guidance on schools causing concern. Schools sometimes seek legal advice on the content of their representations to Ofsted.
- 37** Be proactive and remain in control. If the warning notice is fair and proportionate, work with the governing body to develop a credible and robust response to the issues of concern. Ensure that you are communicating that you understand the urgency and pace and have the capacity to put things right. It can be useful for you and your chair of governors

GUIDANCE PAPER 122

to request a meeting with the director of children's services (if your school is a maintained school) or the regional school commissioner (if your school is an academy) – keep dialogue open and remain solution focused. It is important that you demonstrate that you are in control of the solution and that your school has the capacity to respond to the concerns, address them rapidly and secure improvements.

- 38** If you are an academy, look at your funding agreement and understand the status of the warning notice or pre-warning notice you have been issued. It is always advisable to take these notices seriously and respond within the timescale identified with an appropriate explanation of how you are addressing the issues identified. You can also communicate less formally with the office of the regional school commissioner, and ask to meet the regional school commissioner or an official, or, indeed, ask for an education adviser visit to your school.
- 39** If your governing body has been notified by the relevant authority (local authority or regional school commissioner) that it intends to exercise powers of intervention, once again be proactive and remain in control. If your school is an academy, proactively request a meeting with the regional school commissioner and/or educational advisor. If your school is a local authority maintained school, seek a meeting with the director of children's services. Discuss solutions that are being considered. If appropriate, explore different models of structural solutions – consider the character and value of different academy trusts, test out solutions for soft and hard federations. Seek ASCL's support by contacting the ASCL hotline.