

The schools accountability and regulatory system in England

Building an intelligent and compassionate system of accountability

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The voice of school trusts



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Introduction

“Teachers and learners, like others, need to be held to account, but this requires *intelligent systems of accountability* that do not distort primary activities. Intelligent accountability in education, as elsewhere, also needs to communicate, not merely to disseminate, relevant evidence that can be assessed by those to whom professionals and institutions are accountable.”

Professor Onora O’Neill¹

As we begin to think about reforms to our accountability system in England, it is fundamentally important that we ask two questions:

1. How do we create a more intelligent (and compassionate) system of accountability?
2. How does it all cohere?

It is fundamentally important that in building an intelligent and compassionate system of accountability that we bring *the whole system* into view, not just a part of it. A huge problem in our system is the distorting effects of developing policy for one part of the system (for example Ofsted) without seeing Ofsted as part of the entire accountability and regulatory system.

There are three important parts of the accountability and regulatory system:

1. Regulation and commissioning
2. Inspection
3. Performance measures (accountability data)

We have a once in a generation opportunity to build system coherence and create a school system that can potentially become the best system in the world at getting better. If the new system governance arrangements mean any children fall through the gaps, these will be gaps we have created. We must be sure that this is a system that works for all children.



¹ O’Neill, O. (2013). Intelligent accountability in education, *Oxford Review of Education*, 39(1), 4–16.

Part one: the system now

Regulation and commissioning

Broadly speaking, there have been two parallel regulatory systems:

- Education and Skills Funding Agency (ESFA): which has historically been both a funding agency and the regulator of governance and finance, meaning that it could use powers to issue a Financial Notice to Improve (FNtI).
- Regions Group (formerly the regional school commissioners): which has historically been the regulator for performance and standards with the power to issue Academy Orders to maintained schools and to 'rebroker' academy schools that have failed their Ofsted inspection.

The [Bell Review](#) led by Sir David Bell KCB DL, was a review of the ESFA which took place between July 2021 and January 2022. This review recommended a 'single regulatory interface.' It led to a fundamental restructuring of the DfE so that the ESFA was pivoted to focus on funding delivery. The ESFA does however continue to focus on 'helping to inform policy and delivery activity and ensuring the financial health and sustainability of providers.'

The new Regions Group, aligned to the nine regions used across the rest of government, was created in summer 2022. The new Regions Group took on a huge number of delivery functions for schools and local authorities, including children's social care and Special Educational Needs and Disabilities. Thus, Regions Group was never properly defined as a regulator – and it became both regulator and delivery arm of the DfE, which creates inherent conflicts of interest.

While the Bell Review was right to refocus on the ESFA on funding, the promise of a single regulatory interface was never really delivered.

In June 2022, at the same time as Regions Group was being implemented, the DfE undertook a [Regulatory and Commissioning Review](#) primarily focused on the academy trust sector. And prior to the Regulatory and Commissioning Review, the Schools Bill was laid before the House of Lords – *before* the regulatory and commissioning review had met, and before a theory of regulation had been developed and agreed. The Schools Bill failed because its provisions on regulation (contained in part one) were wide open – as a direct consequence of the fact that no theory of regulation existed. CST was so alarmed by this that we took the unprecedented action of instructing (then) Queen's Counsel. The Bill subsequently and unsurprisingly failed.

The failure of the Bill hindered the conversation about regulation through the Regulatory and Commissioning Review, which now focused almost exclusively on commissioning. A [report](#) which was the product of the review was published in March 2023. The chapter on regulation simply promised to 'continue' to improve how the Department works with trusts by embedding recommendations set out in the Bell Review by building a single regulatory interface.

The Regulatory and Commissioning Review did much better work on a more transparent approach to commissioning which led to the publication of [Commissioning strong trusts](#) and accompanying [trust quality descriptors](#) (both heavily influenced by CST's [Building strong trusts](#)).



Inspection

Ofsted is not the regulator of the school system in England (but it is the regulator of early years and childcare). Ofsted has a statutory role in inspecting schools and reaching a judgement about the quality of education at a point in time. But perhaps confusingly inspection *is* part of the regulatory system because *regulation of the school system is largely (but not exclusively) is exercised on the back of Ofsted judgements*.

The Secretary of State has a duty (not a discretionary power) to issue an Academy Order to maintained schools that have failed their Ofsted inspection and will intervene where academy schools have failed an inspection. This duty is exercised through the Regional Directors. The [Schools Causing Concern Statutory Guidance](#) sets out how this is done and the legal basis for intervention.

Following the tragic death of Ruth Perry, the DfE changed the statutory guidance for schools judged inadequate solely due to safeguarding. The updated text sets out that where a school is judged inadequate for leadership and management solely because of ineffective safeguarding but judged good or outstanding in all other key areas that Ofsted will carry out a monitoring visit within three months of publication of the inadequate judgement to determine whether improvements have been made. The monitoring visit will either confirm the school remains inadequate or, if inspectors are satisfied that safeguarding is now effective and there has been no decline in the school's performance in other areas, regrade the school. In these instances, the academy order will not be made until after the monitoring visit and if the outcome is good, no academy order is made.

Performance measures (accountability data)

A wide range of [performance measures are used across different phases of education](#). The headline measures which appear in published performance tables for Key Stage 4 are:

- Progress 8 - progress across 8 qualifications
- EBacc entry - percentage of pupils entering the English Baccalaureate
- Pupil destinations - percentage of students staying in education or going into employment after Key Stage 4
- Attainment in English and maths - percentage of pupils achieving a grade 5 or above in English and maths.
- Attainment 8 - attainment across the same 8 qualifications as Progress 8
- EBacc APS - English Baccalaureate Average Point Score

The government changed its approach to accountability data in the 2020-21 and 2021-22 academic years due to the pandemic, when most exams and assessments did not take place. The government also did not publish school or college level results data on its [Compare school and college performance website](#) in this period. The government has reintroduced accountability data and the website that allows the public to compare schools in 2023, although availability of future progress measures will be affected by the gaps in exam data resulting from the pandemic.

Concluding thoughts

These three parts of the accountability and regulatory system (regulation and commissioning, inspection and performance measures or accountability data) work together in complex ways. Therefore, it is important to see the whole system, and the interrelationships among its constituent parts if we are to build a more intelligent and compassionate system of accountability.

Part two: building a more intelligent and compassionate system of accountability

Trust with accountability

"We cannot have any accountability without some forms of trust... A quest for a trust-free world is based on fantasising that there can be an infinite regress of accountability. So the serious question is not whether some ways of achieving accountability are miraculously trust-free: none are. Rather we need to consider which forms of accountability are needed to support which relations of trust and which professional standards."

Professor Onora O'Neill²

IPPR has recently analysed why decades of the discourse of "new public management" in terms of public service accountability has failed³. It is a compelling argument. But what do we replace it with? In a forthcoming paper, they will argue for five-point reform to achieve great government. Here, we are arguing for something much more fundamental and values-based – trust with accountability.

Relational trust is something that is much misunderstood and under-valued in our public services. A recent [evidence review by the Education Endowment Foundation](#) has put relational trust as one of three key evidence-informed approaches to retain teachers.

The government should move away from a reductionist 'new public management' approach to public service reform. Instead, it should reset its relationship with public services and build a new settlement, based on trust with accountability.

Regulation and commissioning

The state must be able to act (or intervene) quickly on behalf of children, parents, and the wider public to ensure the highest quality of education, safety, and safeguarding, and enforce regularity and propriety in the use of public money.

However, the state does not need to exercise 'blunt' regulation in the form of intervention in order to protect high quality education. Drawing on the work of Malcolm Sparrow, regulation can be viewed as:

- The prevention of harms – or indeed the correction of harms; and
- The promotion of 'goods' – or perhaps differently worded, the promotion of high quality education.

The state must retain the power (ultimately) to intervene in the most serious cases of poor quality education or serious failures in safety and safeguarding. In these



² O'Neill, O (2003). Trust with accountability *Journal of Health Services Research & Policy*, 8 (1)

³ Menzies, L and Quilter-Pinner, H (2023). [Improvement through empowerment: Helping our teachers and schools be the best they can be](#). IPPR

cases, the strong likelihood is a change of the governance of the school. But the state can also pursue a regulatory strategy that promotes high quality education through some softer levers that support the improvement of a school. CST has published a [paper on what the school improvement architecture could look like](#).

There are some in the sector who are proposing that regulation and commissioning could or should be exercised locally, and in particular by local authorities. There are two serious flaws in this argument:

1. While local authorities are the “responsible bodies” for the schools they maintain, they cannot exercise regulatory authority over other types of responsible bodies (school trusts or diocesan authorities). This would drive massive conflicts of interest into the system.
2. Regulation and commissioning require specialist technical expertise that is unlikely to be available in 152 local authorities. We have seen this with Ofqual – the regulation of qualifications would fail absolutely if the authority to regulate qualifications were passed to 152 local authorities. Different approaches to regulation would result in inconsistent and variable quality of provision.

So regulation must be retained nationally. But unlike the current arrangements, regulation should be independent of the Department for Education.

The government should establish an independent schools regulator with the same legal basis as Ofqual, with a chief regulator, accountable to Parliament. This would ensure independence, impartiality and transparency of regulation.

The government should also commit to developing an accountability and regulatory strategy that determines the roles of different system actors, including Ofsted. The basis of this accountability and regulatory strategy could be establishing an intelligent and compassionate system of accountability, underpinned by professional trust.

Inspection

The inquest into Ruth Perry’s death has resulted in severe criticism of Ofsted by the coroner. Sir Martyn Oliver, His Majesty’s Chief Inspector, has made a series of strong commitments in relation to the reform of Ofsted:

- A rolling programme of training and support from Mental Health First Aid England.
- A commitment to address urgent calls for reform
- Ensuring inspections are conducted with professionalism, courtesy, respect, and empathy.
- A Big Listen programme, marking a determination to hear from parents and professionals.

We very much welcome these commitments and will continue to work closely with Sir Martyn and Ofsted.

In January 2023 CST published a discussion paper, '[Navigating uncertainty: a future direction for Ofsted](#)'. We subsequently published [ten principles](#) for the reform of Ofsted. We think it is probably necessary to go further. Sir Martyn Oliver, incoming HMCI has promised a ‘big listen.’ We think it is right that we pause to listen to the sector before deciding on the reform agenda. But whatever the reform agenda is, it is fundamentally important that this is seen in the context of wider accountability and regulatory reform.

We think that the inspection of school trusts in some form is probably inevitable.

But we must be clear about the role of those inspections within the regulatory approach. There are a number of ways in which this could be considered:

- The regulator could commission the inspectorate to undertake an inspection of a trust where the regulator has concerns.
- Trusts could be inspected on a rolling programme – as schools are now, and the regulator could take inspection outcomes into consideration in regulatory activity.
- Adverse inspection outcomes could trigger statutory intervention in trusts.

The development of a regulatory strategy which sets out the approach to regulation – and the role of inspection in regulation – may help us to be clearer on this important issue.

Government should be cautious of any reforms to accountability that intentionally or unintentionally increase regulatory burden, either through the introduction of separate safeguarding inspections or through the introduction of trust inspection.

The government should consult on report-card style reports for school inspections to replace the current system of graded judgements.

The government should consider carefully the purpose of, and underpinning evidence for, trust inspection.

Performance measures (accountability data)

The pandemic interrupted the usual pattern of national assessments, which led to changes in how accountability data was reported. While some of this has returned to its pre-pandemic state, further change seems likely, not least because there will be a couple of years when it will not be possible to calculate Progress 8 as normal because the key stage 2 baseline data does not exist. Viewed constructively, this could create the opportunity for government to revisit from first principles how and why accountability data is used.

We think it is important that it takes these decisions in the context of an overall approach to building an intelligent and compassionate system of accountability. It is important there is transparency about a wide range of education and organisational data, but this does not have to translate into automatic use of this data to make regulatory decisions. Just as Ofsted inspections must balance the use of 'hard' data and 'soft' intelligence on curriculum and practice, regulation should be alive to the potential for different settings and circumstances to require adjustments, and of the potential for metrics to reveal different insights about school quality.

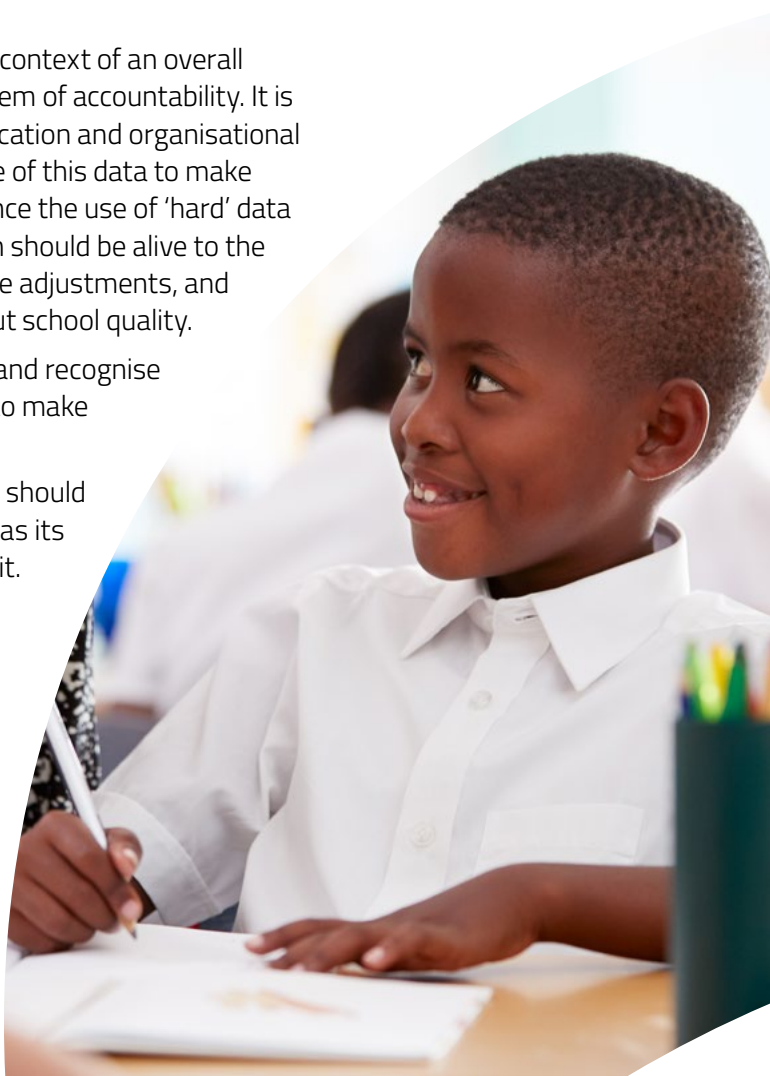
Care is needed to make sure that metrics work to support and recognise inclusivity and that schools remain empowered to be able to make decisions that are in the best interests of all pupils.

Decisions about the suite of accountability data and its use should be made in the context of a regulatory strategy, which has as its widest goal the advancement of education for public benefit.

The government should review the current approach to performance measures to ensure that performance measures are aligned to the broader intentions of the accountability framework and do not have unintended consequences or perverse incentives.

Professional accountability

There is one further form of accountability that is given



insufficient attention in our current system – that is professional accountability to the people we serve. CST first wrote about this in our paper [Intelligent systems of accountability](#) in 2021. The *highest* form of accountability is the individual's *professional* accountability for the quality of her or his own work and to the people whom the profession serves.

CST would advocate that, rather than accountability being perceived as something that is only externally imposed by the government, we could shift it in the direction of trust boards being ever-more explicit and eloquent about their vision and the measures that will evidence success.

This will need to include the government's performance measures but need not be constrained by them. In other words, this involves a move to measuring what we value in our school or group of schools.

Trusts should be ever-more explicit and eloquent about their vision and the measures that will evidence success. This will need to include the government's performance measures but need not be constrained by them. In other words, this involves a move to measuring what we value in our school or group of schools. It means a shift in our mindset to being accountable to the people and communities we serve.

Concluding thoughts

If we could harness a collective effort to secure good outcomes – alongside a shift in our accountability system towards an intelligent and compassionate system of accountability, underpinned by professional trust, we may have conditions more suited to enabling the system, and more importantly our children, to flourish.

Summary of recommendations

1. The government should move away from a reductionist 'new public management' approach to public service reform. Instead, it should reset its relationship with public services and build a new settlement, based on trust with accountability.
2. The government should establish an independent schools regulator with the same legal basis as Ofqual, with a chief regulator, accountable to Parliament. This would ensure independence, impartiality and transparency of regulation.
3. The government should also commit to developing an accountability and regulatory strategy that determines the roles of different system actors, including Ofsted. The basis of this accountability and regulatory strategy could be establishing an intelligent and compassionate system of accountability, underpinned by professional trust.
4. The government should consult on report-card style reports for school inspections to replace the current system of graded judgements.
5. The government should consider carefully the purpose of, and underpinning evidence for, trust inspection.
6. The government should review the current approach to performance measures to ensure that performance measures are aligned to the broader intentions of the accountability framework and do not have unintended consequences or perverse incentives.
7. Trusts should be ever-more explicit and eloquent about their vision and the measures that will evidence success. This will need to include the government's performance measures but need not be constrained by them. In other words, this involves a move to measuring what we value in our school or group of schools. It means a shift in our mindset to being accountable to the people and communities we serve.





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Suite 1, Whiteley Mill
39 Nottingham Road
Stapleford
Nottingham
NG9 8AD

0115 9170142

cstuk.org.uk

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