



MAT assessment

1. Introduction

The Confederation of School Trusts (CST) represents more than 1,000 academies, multi-academy trusts and foundation schools. We are the national organisation and sector body for school trusts. This places us in a strong position to put forward proposals for MAT assessment. The CST is completely apolitical. We represent our members to advance education in the public interest.

2. Why is this important?

Half of our children and young people in England are educated in the academy system. Over the past eight years, multi-academy trusts have become a powerful force in education reform. Trusts are the legal entity and accountable body for the schools in each group. As the accountable body (and because of the amount of public money), the public has a right to feel confident in the quality of leadership and governance exercised by the trust.

At the legal and ethical heart of all academy and multi-academy trusts is a single charitable object – *the advancement of education in the public interest*. Parliament and the public therefore have a right to understand the quality of education across a group of schools, whether the organisation is financially sustainable and spending its money in the way that Parliament intends.

Trusts should not be considered a separate ‘authority’ (like a local authority) providing ‘services’ to a group of schools. The trust *is* the *aggregate* of the schools in the group. Trusts are not a new ‘middle tier.’ This mind-set will not help us to reach an effective policy solution.

3. Proposed principles of MAT assessment

- Intelligent (valid and reliable)
- Transparent (criteria for assessment published and openness about process)
- Impartial (carried out independently in an objective way)

4. MAT assessment

Rationale

The Secretary of State for Education has announced his intention to develop a model of MAT assessment.

The rationale is as follows:

- As a school system, we need to make decisions about which trust is best placed to take on and improve a particular failing school and how quickly a particular trust should be allowed to grow; and
- Where the trust is failing or at significant risk of failing, we need valid and reliable assessment in order to take regulatory action.

Domains of MAT assessment

1. Quality of education;
2. Financial management, sustainability and probity;

These domains are indicative of the effectiveness of governance - the capability and capacity of the trust.

A model of MAT assessment

The CST's position is that the regulators should work together to undertake a comprehensive assessment of all trusts in England. This assessment should be based on existing data (performance data, Ofsted inspections, financial information) already held by the DfE and its agencies. As now, the data should be disaggregated for schools that have been in the trust for less than three years.

We believe this approach to assessment offers value for money – particularly in a time of austerity. There is not the funding, capacity or capability in the system currently to send teams of assessors on site and it is not clear what value this would add.

It would be instructive if our collective effort and attention could focus on what we regard as acceptable levels of improvement and sustainability.

CST advocates that the assessment takes a balanced score-card approach using a RAG-rating. We believe this approach to assessment would lead to a stronger performance management and better, more transparent decisions about growth trajectories.

For the small number of trusts rated red or amber-red on one or more domain, this could potentially trigger strong performance management or regulatory intervention. Annex A sets out a summary of regulatory action that can be taken within existing powers and explores how this might be strengthened.

5. Conclusion

CST believes that intelligent, transparent and impartial arrangements for the assessment of multi-academy trust is crucial to strengthening decisions about growth and addressing problems at an early stage. We believe that this should be based on existing data. We would be pleased to work with the Department for Education in taking forward the proposals in this paper.



Annex A

Regulatory action in instances of significant risks/ failure - summary of action that can be taken within existing powers

The legislative position

Under section 2A of the Academies Act 2010 any funding agreement of *an academy* (not a multi-academy trust) may be terminated by the Secretary of State where special measures are required to be taken by the academy or the academy requires significant improvement and the Chief Inspector of Ofsted has given notice of that under section 13(3) (a) of the Education Act 2005.

As a result of the Education and Adoption Act 2016, regardless of the terms in an academy's funding agreement, the RSC (on behalf of the Secretary of State) can terminate the funding agreement of *an academy* (not a multi-academy trust) that has been judged inadequate. This enables re-brokerage.

Provisions in the funding agreements

Supplemental Funding Agreements for each academy in a multi-academy trust contain provisions for termination via a termination warning notice. This is usually preceded by a performance standards and safety warning notice subject to this being part of the funding agreement (for a stand-alone academy) or a supplemental funding agreement (for each academy within a multi-academy trust).

The Secretary of State may serve a Termination Warning Notice where he considers that:

- a. the Academy Trust has breached the provisions of this Agreement or the Master Agreement;
- b. the standards of performance of pupils at the Academy are unacceptably low; or
- c. there has been a serious breakdown in the way the Academy is managed or governed; or
- d. the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e. the Academy is coasting provided he has notified the Academy Trust that it is coasting.

Once again, this enables rebrokerage of academies within a multi-academy trust.

The provision in the *Master Funding Agreement* for termination is restricted to the following events or a serious risk that any of these events may occur:

- a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or
- b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or
- c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 will have effect as if £10,000 was substituted for £750. The Academy Trust will not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or
- d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or
- e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or
- f) the Academy Trust has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Academy Trust.

Thus intervention by the Secretary of State (or his/her agent) in a multi-academy trust, **at trust level**, appears to be restricted to matters relating to insolvency or the threat thereof.

Financial Notices to Improve

The ESFA has the power to issue a Financial Notice to Improve (FNtI). For example, a FNtI may be issued where there is an actual or projected deficit, cash flow problems, risk of insolvency, irregular use of public funds, or inadequate governance and management (including weak oversight by trustees, poor internal scrutiny and breaches of requirements over related parties).

If an FNtI is issued then the delegated authorities in sections 3.3 to 3.7 of the Academies Financial Handbook are revoked, and all transactions of this nature must be approved in advance by ESFA.

Subject to the relevant provisions being present in the trust's funding agreement, the Secretary of State can require the trust to remove a member or trustee.

Secretary of State Directions

The Secretary of State can make directions under section 128 of the Education and Skills Act 2008 prohibiting individuals from taking part in academy trust management. This could prevent an individual from acting as a member, trustee or executive leader of a trust. The circumstances are prescribed in regulations but can include where the individual is subject to a caution or conviction or has engaged in relevant conduct, and the Secretary of State considers that because of that caution, conviction or conduct that individual is unsuitable to take part in the management of a school.

Regulation of academies as exempt charities – enforcement powers (to explore further)

Academy trusts are charities and must comply with charity law. They are exempt from registration and direct regulation by the Charity Commission and are instead overseen by a Principal Regulator – the Secretary of State. As Principal Regulator the Secretary of State has a duty to promote charity law compliance by the charity trustees with their legal obligations in a trust's management and administration. Enforcement powers rest with the Charity Commission.

Where there is a concern, ESFA may refer trusts to the Charity Commission, reflecting the Commission's interest in addressing non-compliance with legal or regulatory requirements or misconduct or mismanagement in the administration of any charity, and in ensuring that individuals acting in the administration of the charity (in particular, but not limited to, the charity trustees) do so in compliance with their legal duties.

This means that, in consultation with the Principal Regulator, the Charity Commission can investigate and, if a serious failure to comply with charity law is found, will have enforcement powers to act if sanctions are required.

Exploration of possible action that could be taken by agreement between the ESFA and the trust

In the absence of additional primary legislation, it may be possible for action proportionate to risk to be agreed with the trust, for example:

- The appointment of additional trustees; and/or
- The appointment of additional members; and/or
- Enter into arrangements with a person or organisation to support with a duty required in the Funding Agreement or Academies Financial Handbook, for example a CFO or governance professional from another trust.

These are all provisions in the 2006 Act for maintained schools and apply to some single academy trusts depending on their funding agreement. There is no similar legislative provision for making this sort of intervention in a multi-academy trust. However, the ESFA could work with the trust, if it were deemed to be at risk, to take one or more of these actions *by agreement with the trust*.

Is there a possibility of enhancing and strengthening the FNtI in relation to governance?

Currently a FNtI removes only financial delegation. Is it possible for the FNtI to set out additional action that the ESFA requires the trust to take in cases where governance is considered to be weak?