

Report to: **Audit, Best Value and Community Services Scrutiny Committee**

Date: **6 November 2012**

By: **Director of Children's Services**

Title of report: **Scrutiny Review of the roles and responsibilities of East Sussex County Council in relation to schools**

Purpose of report: **To present the outcomes of the scrutiny review.**

RECOMMENDATIONS: That the Committee (1) considers the report of the Review Board and endorses the recommendations; and

(2) agrees to receive a 12 month monitoring report.

1. Financial Implications

1.1 There are no direct financial implications resulting from this report at this stage.

2. Summary

2.1 The Review Board comprised Councillors John Barnes, Michael Ensor, Kathryn Field, Martin Kenward, Paul Sparks (Chairman), Meg Stroude, Bob Tidy, Trevor Webb and Francis Whetstone

2.2 The report attached at Appendix 1 contains a summary of work of the review, together with the findings and recommendations of the Review Board. An evidence pack of supporting documentation is available on request from the contact officer.

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Local Member: All

Background Documents
None

Scrutiny Review of the roles and responsibilities of East Sussex County Council in relation to schools

Report by the Review Board

Councillor Paul Sparks (Chairman)

Councillor Michael Ensor

Councillor John Barnes

Councillor Kathryn Field

Councillor Martin Kenward

Councillor Meg Stroude

Councillor Bob Tidy

Councillor Trevor Webb

Councillor Francis Whetstone

November 2012

Audit, Best Value & Community Services Scrutiny Committee – 6 November 2012

Children's Services Scrutiny Committee – November 2012

The report of the Scrutiny Review of the roles and responsibilities of East Sussex County Council in relation to schools

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Recommendations

The role of East Sussex County Council should be to:

1	Provide individual governors with documentation to keep them abreast of changes in legislation and to signpost them to relevant advice and guidance on their responsibilities.
2	Through the schools' clerking service, aim to ensure that every school governing body engages in a process of 'self-review' by means of a 'checklist' of responsibilities and risks for discussion at governing body meetings.
3	Set out clearly the costs and benefits of each different element of local authority support to schools and governing bodies to enable choices to be made as to which types of services should be provided to mitigate the risks identified in the report (including that of reputational damage) to the County Council.
4	Provide more tailored support and training to identified, appropriate governors. This could include a personal development plan (PDP) type checklist that would allow governors to keep track of their knowledge, training and responsibilities. Consider providing training free of charge, or at a reduced cost, to appropriate governors.
5	Offer packages of targeted support to governing bodies, for example of small schools or schools where there are concerns about governing body decision making capability.
6	Target support towards schools and governors to give early warning of non-compliance that comes to light from shared intelligence collected by officers across different services working with schools.

Overview

1. The government's ongoing educational reforms are radically changing the relationship between local educational authorities and schools. It is important that the shifting roles and responsibilities of local authorities in relation to schools are understood in order to reduce East Sussex County Council's exposure to risk. A report on this issue was presented to a joint Audit, Best Value and Community Services Scrutiny Committee and Children's Services Scrutiny Committee reference group on 16 July 2012.

2. It is clear from the report that the Council retains a number of legal duties and it faces real and significant risks. Furthermore, it is evident that the Council no longer has the power to compel schools to follow advice and must instead rely on building relationships with a school and its governing body to exert influence.

3. We considered that several points from the report were likely to need greater emphasis and/or publicity for the sake of improved clarity and accountability. This scrutiny report combines the original report and additional points raised at the meeting. The recommendations are designed to ensure that the Council is able to respond robustly to the changing educational landscape by providing school governors with significantly enhanced support.

Areas outside the scope of the review

4. On 24 July 2012, Cabinet discussed a draft proposal for the role of the Council in securing educational excellence in schools. That draft proposal was outside the remit of this review, which focused on influence and risk. Children's Services Scrutiny Committee is addressing details of this proposal in its work programme.

5. Academies operate independently of the local authority other than within an informal 'family' or as part of a landowner-tenant relationship. Whilst in theory the actions and decisions of academies ought not to pose a direct financial, legal or reputational risk to the Council, if an academy (or a free school) fails, the Council is legally obliged to ensure there is educational provision for the pupils affected.

The changing role of the local education authority

6. The Education Act 2011 introduced significant changes to the education landscape, including increased autonomy for schools and their governing bodies. The rapid pace of change and the less prescriptive nature of the legislation has left many areas of responsibility unclear.

7. Under this emerging system, maintained schools (unlike academies) are not independent entities but they now have significantly more autonomy. This means that the Council no longer has many of its powers to compel a maintained school to follow its advice. In extreme cases, the Council still has a range of powers of intervention; for example, a governing body can be replaced, or delegation of the school's budget can be withdrawn without notice. Such instances are rare, however and are not used for day-to-day management.

8. Seen in this light, the role of the Council is shifting quickly and radically from *being* the 'education institution' towards *providing support* to individual pupils and being a 'commissioner' of services through the School Improvement Service. Consequently, it is key that the Council maintains its close ties with schools to help ensure a degree of influence over their decisions.

9. The role of Ofsted is expanding to include assessment of the capacity, ability and performance of local authorities carrying out their legal duties in relation to schools. This will act as an external test of the Council's competence as a local education authority.

Statutory Duties and responsibilities

10. Despite the increasing move towards the autonomy of maintained schools and academies, the Council retains a number of statutory duties towards education and the general safeguarding and wellbeing of children and young people. These include:

- ensuring that the necessary provision is made for pupils with special educational needs (SEN);
- determining a school's budget and maintaining a scheme for financing schools;
- employing staff in maintained schools (in practice schools carry this out on behalf of the Council);
- having a general duty of care towards school premises (maintained schools receive delegated funding for day to day building maintenance with large scale works being funded by the Council);
- safeguarding and promoting the welfare of children;
- securing sufficient primary and secondary places in the area;
- making provision for suitable home to school travel arrangements for eligible children aged 5-16;
- intervening where parents fail in their duty to ensure their children attend school regularly;
- providing suitable education for excluded pupils and supporting their readmission into school;
- promoting the educational achievement of looked-after children (LAC) and providing support to care-leavers, particularly with regard to their education;
- ensuring e-safety measures are in place in schools and other settings;
- providing advice and guidance to schools on their responsibilities for data protection and responding to freedom of information enquiries; and
- having ultimate responsibility for health and safety in maintained schools.

Key areas of risk

11. The combination of continued statutory duties and a loss of powers to compel schools to follow advice puts the Council in a potentially risky situation. There are a number of potential risks in several areas for which the Council has responsibility:

Special Educational Needs (SEN)

- A school failing to publish a mandatory 'local offer' that demonstrates how they will meet pupils' needs, including SEN pupils, may cause reputational risk.
- Failing to plan for sufficient SEN provision due to the Council having an incomplete knowledge of the number of SEN pupils may cause reputational risk.
- Parents have a right to appeal to the First Tier Tribunal, against both a school and the Council, for failure to provide access to specific specialist provision for their children. Losing a tribunal may result in reputational and financial risk to the Council.
- The Council may experience a loss of strategic control of SEN as facilities located in schools that convert to academies are no longer subject to the Council's strategic oversight.

Contracts and procurement

- There is an increasing risk of legal challenge over public sector procurement. The Council's Internal Audit team gave only minimal assurance to procurement practices in schools.

Financial management

- The main financial risk is that governing bodies will have insufficient understanding and challenge of school spending despite having responsibility for financial management.
- The introduction of a new national formula for funding schools in March 2013 and new arrangements for funding SEN mean that there will be transitional risks as these arrangements are implemented.

Employment

- An internal audit review in 2011 could provide no assurance that recruitment and selection processes in maintained schools are fair, capable of standing up to challenge and able to ensure the appointment of the best applicants. This has a high financial and reputational risk to the Council.

Estates and property

- Schools neglecting maintenance, leading to expensive capital works is a financial risk to the Council.

Safeguarding and well-being

- Ofsted inspects Council's safeguarding and looked-after children services and covers pupils' behaviour and safety in school inspections, so there is reputational risk to the Council and to schools if their arrangements are judged inadequate (they are currently rated 'good').
- One key reputational risk for the Council is that schools will escalate cases to bring in statutory agencies too soon. Instead, they need to have the confidence to take greater responsibility and early action themselves.

School places, admissions and transport

- The Council has lost strategic control of school place planning and admissions planning. This is caused by more schools becoming academies; the new School Admissions Code allowing successful schools to set their own intake; and government funding for school places being set on an ad hoc basis. This poses a legal risk to the Council.
- There is a substantial risk that academies will not admit some vulnerable children. This is happening already, particularly for in-year admissions of excluded pupils and under Fair Access Protocols. The Council is challenging some academies to accept refused pupils, especially when there is space available.

Attendance, exclusion and behaviour

- Schools may choose not to buy services such as the Behaviour and Attendance Service and the Educational Psychology Service. This may increase the number of formal exclusions, increasing the financial and reputational risk to the Council.

Looked-after children

- Ofsted inspects local authority safeguarding and looked-after children services and the assessment contributes to its annual performance rating of the Council. This carries a reputational risk to the council.

ICT governance

- There is a reputational risk to the Council if school e-safety is insufficient. A 2010 audit review of ICT governance in schools gave only partial assurance.

Health and safety

- The Council may face financial, legal and reputational risk for damage to people or property if a school does not make provisions for health and safety.

Mitigating risk

12. The Council has put in place, or is developing, several policies to mitigate risk to the local authority and schools in East Sussex, including:

- Good provision of information, advice and influence for schools. The Council has a good relationship with its schools, and is looking to enhance that reputation through briefings, training, support packages and communication channels such as Czone. This will help to ensure schools are aware of their responsibilities and the risks they face.
- Ensuring governors understand their changing responsibilities. This is particularly important as they are responsible for oversight of much of a school's functions and often, the risks to the school outweigh the risks to the Council. Governors need the appropriate information to allow them to challenge their school management where necessary to ensure the school is meeting its statutory responsibilities. The Council offers a governor training package and there is considerable information on Czone but it is *not tailored well enough to governors' needs*. The Schools Forum also allocated resources to a clerking service.
- Successfully marketing services to schools. The Council offers a range of traded services to schools that provide support in some key areas such as financial management, human resources, ICT, health and safety, and building maintenance. A very high proportion of schools currently buy these services which ensures closer oversight of practice and more responsive support. However, schools (including maintained schools) are free to buy elsewhere so it is particularly important that their procurement practices are effective and enable them to purchase high quality services and that the Council ensures they understand the responsibilities they are taking on when choosing a different provider.
- Working with struggling schools to minimise deficits and work out recovery options. This has been effective as there are now only four East Sussex schools in cash deficit. Overall, schools are now demonstrating improved financial management. The Council can 'claw back' schools' excessive cash surpluses but very little claw back has happened over the last year. In extreme cases, the Council may remove the delegated budget and take charge of a (non-academy) school that displays clear financial mismanagement. The Resources team would then work with the school to ensure that the budget issues are resolved. Whilst the new funding formula is expected to cause 'turbulence' when introduced in 2013, the Council has identified which schools will be most affected and has made provision to mitigate some of the impact for the first two years of the new arrangements.

Conclusions and recommendations

13. It is clear that the Council retains significant responsibilities in education that carry potential risk. Although the Council has taken action to mitigate current risks as far as possible, increases in the responsibilities of maintained schools represent a particular source of concern as they limit Council influence and the resources available at Council level. There is a risk that maintained schools may choose not to spend their budget in line with the risks identified here, leading to the build-up of potential liabilities for the Council. The uncertain consequences of changes in funding and responsibilities taking effect over the next year may add to the risk. Fundamentally, therefore, there is a limit to the Council's ability to mitigate risk, particularly where it is reliant on maintained schools purchasing or accepting advice.

14. The increased autonomy of maintained schools has given greater oversight and responsibility to governing bodies. However, their general perceived lack of preparedness to manage the complexities of the task they face is of serious concern. Strong oversight of a maintained school's performance is essential and this task will increasingly fall to the governing body. However, the Internal Audit team has identified some significant shortcomings in financial management and employment practices in individual maintained schools and governing bodies have oversight for both, suggesting there is much work to be done.

15. Whilst in theory academies pose no risk, there is a clear reputational risk to the Council if academies do not fulfil their duty to admit vulnerable children. The Council has recognised that there is a risk and in response is challenging some academies that have refused to fulfil this duty. There is also the risk that if an academy fails, the Council is legally obliged to ensure there is educational provision for the pupils affected.

16. The Council already offers training and information to help to prepare governors for their roles and responsibilities but it is clear there is room for improvement. We recommend, based on the original report, that the Council increases significantly the support, training and information available to governors and proactively targets the support at governors.

17. Finally, it is important that detailed mechanisms are put in place to ensure that the Council carries out the actions designed to reduce risks outlined in this report.

Appendix: Terms of reference, membership and evidence

Scope and terms of reference

The Audit Best Value and Community Services Scrutiny Committee received a report at its meeting on 28th February 2012 about the background to this work and progress on identifying the County Council's statutory duties to schools.

At the Committee's meeting on 1st June a joint member reference group, together with the Children's Services Scrutiny Committee, was established to:

- take an overview of the powers, responsibilities and roles of the local authority in relation to schools especially where the consequences of failure may impact upon the local authority;
- examine how to achieve effective risk management by schools; and
- propose how the local authority can influence school governors to ensure appropriate decision making by governors with particular reference to the selection, training and role of local authority governors.

Members considered it worth repeating the joint committee overview in a year.

Board Membership and project support

Review Board Members:

Councillors Barnes, Ensor, Field, Kenward, Sparks (Chairman), Stroude, B Tidy, Webb, Whetstone

Support to the Board was provided by the following officers:

Matt Dunkley, Director of Children's Services
Penny Gaunt, Deputy Director of Children's Services
Hazel Cunningham, Assistant Director, Children's Services, Resources
Fiona Wright, Head of School Standards and Learning Effectiveness
Duncan Savage, Assistant Director, Corporate Resources, Audit and Performance
Nigel Chilcott, Audit Manager
Paul Dean, Scrutiny Manager
Harvey Winder, Scrutiny Support Officer

Review Board meeting date

16 July 2012

Evidence papers

Item	Date
Report: The main responsibilities of the County Council in relation to schools and the associated risks to the County Council	16 July 2012

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