



Department  
for Education

# **Regional schools commissioners decision making framework**

**December 2016**

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## Introduction

The establishment of Regional Schools Commissioners (RSCs) has shifted operational decision-making from DfE ministers and officials and provided the infrastructure to enable our best leaders to play a wider role across the system.

Within an increasingly school-led system, the responsibility for taking action to improve outcomes lies with the governing board or academy trust. When an academy trust is failing to improve a school that has been identified as failing or coasting, it is important that Regional Schools Commissioners are able to take action. RSCs act in the name of the Secretary of State for Education, and are accountable to her and to the National Schools Commissioner.

The RSCs are supported and held to account by a board of outstanding academy headteachers and sector leaders, many of whom are directly elected by the sector. Working with their Headteacher Board (HTB), RSCs are well placed, to identify and commission the most appropriate support and interventions for an underperforming school or academy. RSCs have tight parameters over when intervention is permitted. Academies will not be subject to intervention if their educational performance, financial management and governance are of a high standard.

The aims of the approach include:

- educational excellence for all: setting high expectations for all schools and academies, with a focus on tackling areas of the country that have lagged behind for too long;
- creating a self-improving system: powers are discharged by our best academy heads and leaders;
- independence is preserved: a 'system-led' approach with tight parameters over when intervention is permitted;
- powers are carefully balanced: Ofsted and the DfE's accountability measures diagnose quality, RSCs commission intervention, a contestable market delivers the intervention.

This document describes the framework of RSCs' duties and limits of power; its content has been determined by ministers.

## Roles and Responsibilities

RSCs are civil servants, meaning that the Secretary of State remains accountable for, and has the power to overturn, their decisions. However the Secretary of State's powers set out within this framework are exercisable by RSCs in the Secretary of State's name.

Ministers receive regular reports from the RSCs in order to maintain oversight of the programmes and stay informed about significant operational matters across the regions.

RSCs escalate decisions to the National Schools Commissioner or the relevant minister that are: sensitive; raise issues of interpretation of government policy; relate to urgent safeguarding or extremism concerns.

## Parameters for Operation

The RSCs are required to:

- adhere to the [Seven Principles of Public Life](#) as set out by Lord Nolan and the [Civil Service Code](#);
- escalate issues and decisions, as appropriate;
- consult their HTB as appropriate;
- ensure they take decisions within legal parameters (including equality legislation);
- work closely with other RSCs where a school is near to the border of another RSC region, or where it may affect another RSC's region or the academies within it;
- ensure academies performing well retain their autonomy; and
- in performing their specific role, both have regard for and contribute to the wider business objectives of the DfE.

## National Coordination

All RSCs meet regularly in an RSC Strategy Forum, chaired by the National Schools Commissioner, to share best practice, raise policy issues/implications, discuss common issues and ensure consistency in decision-making across the country, where appropriate.

## RSCs and the role of HTBs

The HTB members are non-executive; the members' role is to provide advice, scrutiny and challenge to the RSCs' decision-making. Decisions are ultimately for the RSCs to take, but they should be informed by the views of their HTB, the members of which should contribute their local and professional expertise.

RSCs chair their HTB; a record of all HTB meetings should be made and published. Where an RSC intends to take a decision listed in this framework which does not accord

with the majority of HTB members' advice on that particular decision, then the RSC must record this deviation from the HTB view and their office should report it to:

- The National Schools Commissioner,
- The Minister.

## **Sponsor leads**

The National Schools Commissioner will lead the relationship with a small group of large sponsors, and will provide a single point of contact for these trusts. He will have a regular conversation with these trusts and lead on matters concerning overall performance, multi-academy trust (MAT) governance, the trust's capacity and growth. Intervention and performance issues concerning individual academies or free schools within the MAT will continue to be managed by the RSC for the area in which the trust is located.

Another group of large cross-regional sponsors will be allocated a lead RSC by the National Schools Commissioner. The decision about which RSC will lead the relationship with a sponsor will be based on: where a sponsor's academies/free schools and head office are located; the capacity of the RSC; any potential conflicts of interest and; the quality of existing relationships between the RSC and the sponsor.

The lead RSC will 'own' the relationship with the sponsor and will be responsible for negotiating any strategic decisions or approaches that have a direct implication for multiple regions. The lead RSC will lead on issues concerning the MAT, governance arrangements and overall performance. Any issues concerning individual academies or free schools within a MAT will be managed by the RSC for the area in which the school is located. The RSCs will lead the relationship with sponsors that operate solely in their region.

## **RSCs' role in relation to safeguarding**

Safeguarding concerns are of paramount importance. Although the RSCs do not have a direct role in handling safeguarding cases and are not expected to take action themselves, they provide local intelligence to the Department for Education.

They may have greater involvement in the DfE's response to a safeguarding issue where this relates to the governance or performance of an academy, but the RSC would not lead the DfE's response.

RSCs should ensure that their office has the knowledge to handle safeguarding concerns, which may include extremism, and that both their HTB and office responds promptly. RSCs should report general safeguarding issues in academies or free schools (for example non-compliance with safeguarding duties placed on academies via their funding agreement) to the Education Funding Agency (EFA) who will take the necessary

action. RSCs must report all complaints or concerns about extremism to the Due Diligence and Counter Extremism Group (DDCEG).

RSCs should immediately report cases where there is a child at immediate risk of danger or harm to the EFA and the DfE's Children Services Team who will inform the Local Authority (LA) and request receipt of the case.

The statutory safeguarding guidance is: [keeping children safe in education](#) and [working together to safeguard children](#).

# RSC Core Functions

## 1. Intervening with under-performing academies and free schools to ensure that high quality support is commissioned to improve them quickly

### Tackling educational underperformance in academies and free schools

The RSC is responsible for holding academy trusts to account where academies or free schools are underperforming. In cases where formal intervention measures are required, RSCs will take action to address underperformance and bring about rapid improvement. This may include commissioning appropriate support, issuing a pre-warning notice or warning notice or by terminating the academy's funding agreement, and identifying a new sponsor to take on responsibility for the academy where this is necessary.

### Intervening in academies where governance is inadequate

The RSC is responsible for taking action in relation to academies where governance is inadequate. Governance of the academy trust will be of concern where the governing body lacks the capacity to deliver any of its core functions. Where the primary issue is one of financial management and compliance with the funding agreement, the EFA will have overall decision-making responsibility. When responding to issues of inadequate governance, the RSC must ensure discussions are held with the EFA, and others, to ensure that all issues about the trust are considered (e.g. issues of inadequate financial management) and that appropriate action is taken.

### Taking action against poorly performing sponsors and multi-academy trusts

Where a RSC has concerns about a sponsor or MAT in terms of educational performance, financial management or governance, there is a range of support and intervention measures they can take. The RSC will reassess MATs at key milestones throughout the academic year (such as following exam results) and at key stages of their growth to consider their capacity to support and enable the academies within their MAT to improve.

RSC powers of intervention are set out in the Education and Adoption Act 2016, [Schools Causing Concern guidance](#) and in individual academy funding agreements.

## **2. Tackling underperformance in maintained schools by providing them with support from a strong sponsor**

### **Tackling underperformance in maintained schools**

Maintained schools that have been judged inadequate by Ofsted will be required to become sponsored academies in order to secure rapid and sustainable improvement. In these circumstances the RSC will match the school with a suitable sponsor, issue the Academy Order and agree at which point the funding agreement can be signed.

RSCs will take decisions about whether and what action is necessary to bring about improvement in a maintained school that has met the coasting definition. RSCs will also be able to issue a warning notice to maintained schools that are otherwise causing concern. All of the RSCs' responsibilities and powers for addressing underperformance in maintained schools are described in the [Schools Causing Concern guidance](#). RSCs will look to work closely with local authorities in determining what action is necessary in a maintained school that is causing concern. Part of the RSCs' role in tackling underperformance is to consider applications from local authorities to appoint an Interim Executive Board in respect of a maintained school.

## **3. Working with the regional Headteacher Boards to approve the conversion of new academies**

### **Applications from maintained schools to convert to academy status**

The RSC's role is to approve or decline applications from maintained schools to convert to academy status. The decision about whether or not to issue an Academy Order includes consideration of the academic and financial performance of the school, as well as viability. Schools that are performing well can convert to academy status as part of a MAT or single academy trust. Schools that do not meet the 'performing well' criteria must join a MAT or sponsor.

We have published criteria on our [website](#) that the RSC must consider before deciding that a school is performing well.

## **4. Approving new sponsors and the creation of multi-academy trusts**

### **Applications from sponsors to operate in a region or regions**

RSCs will encourage suitable organisations in their area to apply to become a sponsor and will support them in this process (where necessary), particularly where increased numbers of sponsors are required. RSCs will decide who can be a sponsor in their



region, including new sponsors and the expansion of existing sponsors. RSCs should take decisions based upon the published criteria for applicants and national policy. The criteria are set out in the sponsor application form and on the [DfE's website](#). They include: the sponsor's overall vision and plans for growth, educational and financial capacity, and governance.

## **Taking decisions on the creation and growth of multi-academy trusts**

Our preference is for academies to be part of a strong MAT as there is increasing evidence that the benefits of academy status are maximised through this form of collaboration, with clear accountability.

When schools are converting to academy status as part of a MAT or joining an existing MAT, the RSC will want to be assured that the governance and leadership of the MAT is clear and robust and the MAT has the capacity to drive improvement across all schools within it. [Multi-academy trusts: good practice guidance and expectations for growth](#) sets out more detail on what RSCs will look for when approving new academy trusts and the growth of existing trusts. It provides further information on what we know about the characteristics of successful academy trusts and provides a framework for trusts at all stages of their development to learn from other trusts.

## **5. Ensuring that the pipeline of outstanding free school proposers is secure and capable of delivering great new schools**

### **Advising on free school applications**

RSCs advise ministers on free school applications (including mainstream free schools, 16 to 19, special and alternative provision) and will make recommendations about which applications to reject before interview and which to approve into pre-opening once interviews have taken place. Ministers will make the final decision. Free school, university technical college (UTC) and studio school applications are assessed against a set of [published criteria](#) set by ministers. RSCs will also make recommendations to ministers about actions to take on free school projects in pre-opening, including advising on whether to cancel or defer a project or enter into a funding agreement. Again, ministers will make the final decision. If at the pre-opening stage a free school, UTC or studio school proposer group suggests any change to the vision set out by the proposer group at the application stage, this must be in line with the [published criteria](#).

## **Proposals for new free schools under the LA free school presumption arrangements**

Where proposals are received (via the LA) for the establishment of a new free school within their region, the RSC will make the decision about which proposer is most likely to deliver a high performing school. The RSC has the ability to exercise the Secretary of State's right to put in place a proposer of his/her own choice where there is further evidence about the suitability of a proposer or availability of a better proposer.

## **6. Taking decisions on changes to academies and free schools**

### **Significant changes to academies and free schools**

Trusts are legally required to seek approval from the Secretary of State before making any material (significant) changes to an academy or free school in line with the [published guidance](#). These decisions are exercised by the RSC in the name of the Secretary of State; unless the change being considered sets a policy precedent or is not fully funded, when such cases will be escalated to the minister to decide.

### **Deciding changes to admission arrangements**

Academies are contractually obliged to comply with the School Admissions Code, (hereafter, "the Code"), except where the Secretary of State has agreed a limited derogation to support fair access. This is set out in the funding agreement or the admission annex to the funding agreement. RSCs have a specified range of circumstances where they will decide changes to admissions arrangements. These are:

- Where the trust of an academy, free school, UTC or studio school has requested a variation of its admissions arrangements outside the normal timeframe for consulting on and determining admissions (i.e. as set out in 1.42 to 1.49 of the Code). Such changes can only be agreed where there has been a major change in circumstances since the arrangements were determined as final: most cases, though not all, will be part of a 'significant change in age-range' request (see section 4a).
- Where, following a Code-compliant consultation by the trust, the academy requests a change to any admissions arrangements that are written into the funding agreement. This will only affect a limited number of academies which entered into a funding agreement prior to 2011. Their funding agreements might require any change in the school's admissions policy to be agreed with the Secretary of State.
- Where an academy, free school, UTC or studio school has requested a post-opening 'derogation' from the requirement to comply with the Code, but only where there is an existing policy precedent (i.e. founders derogations in free

schools or where a UTC wants to adopt two published admission numbers (PANs) in a relevant age group for admission).

Other derogations will be escalated by the EFA to the minister for approval and RSCs will advise ministers. These include:

- Where an academy, free school, UTC or studio school has requested a pre-opening derogation from the requirement to comply with the Code.
- Where there are any post-opening derogations without a policy precedent falling to ministers to decide which the RSC wishes to comment upon.

## **Exemptions from providing Christian collective worship**

Non-faith academies, like equivalent schools in the maintained sector, can apply for an exemption from providing a “broadly Christian” daily act of collective worship. They can replace that with collective worship that reflects the faith background of the academy’s pupils. The exemption lasts for five years. The RSC will consider the merit of applications, taking into account the population the academy serves, the nature of the provision they plan to offer and the views of parents. For schools with a valid exemption that have applied to become an academy, the RSC will assess whether their current approach to collective worship should continue and a new exemption be awarded.



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