

8. Responses to Issues from the Governing Body

The Governing Bodies of the Aylsham Cluster schools involved in the consultation (Aldborough, Aylsham High, Bure Valley, Hevingham & Marsham and John of Gaunt) would like to thank all those who took the time to respond to the first stage of consultation.

We have carefully considered all the points made and we recognise that there are a number of concerns raised, for example - the current effectiveness of the present cluster; the new responsibilities for governing bodies, the practical benefits of acquiring a trust and employment issues for staff, if such a change took place.

We hope we have been able to allay those concerns and others in the responses attached to this letter.

Please take time to look at our responses and the other documents and thank you for taking part in the consultation process.

Yours sincerely

Richard Hembling, Sue Platt, Derrell Waller, Susan Jarvis, Mike Downes.

(Aldborough (a*), Aylsham High (A*), Bure Valley (b*), Hevingham & Marsham (h*) and John of Gaunt (j*))

Chairs of Governors

(*Key to origins of questions and key issues)

The responses from the Governing Body to the issues raised in the public consultation exercise need to be read with reference to the documents below which are all to be found on the cluster website at <http://www.aylshamcluster.co.uk/>.

Trust School Proposals – a guide (TSLA), published by DCSF.

Trust Schools FAQs for LAs, published by DCSF

The Trust School Toolkit (TK), published by DCSF

The Expression of Interest application (EOI), published by the schools

Consultation Booklet 1 (CB1), published by the schools

Consultation Booklet 2 (CB2), published by the schools

Formal Consultation Summary (FCS), published by the schools

Issue	Key Questions	Draft Responses
The Aylsham Cluster	<p data-bbox="331 248 779 280">'If it ain't broke, why fix it?' (Aabhj)</p> <p data-bbox="331 699 775 863">Can't the educational aims be achieved without changing to FT status? Do the perceived benefits outweigh the potential disadvantages? (Aabhj)</p> <p data-bbox="331 1034 797 1182">Will the same level and extent of collaboration be available to cluster schools whether in the trust or not? (Aabj)</p>	<p data-bbox="842 248 2047 619">The current partnership between the schools has been built up over a number of years, gradually becoming more and more complex and providing increased benefits for staff and pupils. It would be possible to continue this collaboration on an informal basis but it is very much dependant on the philosophy of individual heads / schools. The schools have begun to discuss a greater degree of involvement and can see much potential in the future, however, in order to reduce the risk of some schools 'opting out' in the future and to continue to build long term strategies, a means of formalisation is essential. For schools to increase their commitment, build further networks and commit head teacher / staff time to something that might not come to fruition as head teachers move on would seem very shortsighted. There is also a limit to the kind of partnerships / strategies that can be achieved for the benefit of children across all schools without a formal agreement being in place.</p> <p data-bbox="842 671 2047 804">Yes, but the proposed Trust will unite the external organisations and schools in a sustainable partnership and will signify a longer term commitment to work together – regardless of changes in personnel. It should also allow us to achieve our aims more quickly, to re-set out aims even higher and to deepen relationships with schools and partners</p> <p data-bbox="842 807 2024 975">The Trust will also create the opportunity for a range of organisations to come together as partners to support the schools in a specific way. This collective approach will create new innovation and energy that will have a much greater impact than schools working with partners individually. It is the view of the HTs and GBs, therefore, that the potential benefits do outweigh the new responsibilities.</p> <p data-bbox="842 1027 2047 1362">One of the many benefits of the Trust model is that not ALL schools have to become full members at the same time and that some Governors may wish to see how things develop before making that commitment. All of the schools in the cluster have been involved in the exploration. Some were able to commit at an early stage and were included in an initial expression of Interest. One school, which did not feel ready to make the decision to explore at that stage decided to put in an expression of interest at the next opportunity and another is considering consultation during the coming term. There are a large number of Cluster Trusts in existence throughout the country and very few are established with every single schools being founder members. It sometimes takes a little while for all schools to be ready to take the step to becoming a Trust school.</p>

	<p>How will the Trust be monitored and regulated? (Aj)</p> <p>How would conflicts of interest be managed? (abj)</p>	<p>The appointment of key staff is even more important to some governing bodies. Foundation schools are obliged to send copies of their long lists to the local authority for comment but, unless they have specifically granted advisory rights to the head of children's services, the local authority's involvement ends there. There is a safety mechanism by which the local authority can ask for the Secretary of State to order the school to grant advisory rights. However, it can only be activated to prevent the school from proceeding without a level of advice that would be of the same quality that the local authority could provide. Most schools do involve their local authority, of course.</p> <p>As far as buildings and other facilities are concerned, heads and governors seem to value the fact that they can integrate the development of the building into their own vision for the school to a greater degree than they perceived they were able to do before. They also control the use of buildings and this allows them both to raise funds directly and, again, to tailor the activities to the ethos of the school.</p> <p>Access to major investment is still in the hands of the local authority and so it is normal to find close cooperation between the school and property services. However, it is the feeling that the school has the initiative that once more seems to be important.</p> <p>The performance of the Trust will be monitored by the Governing Body which remains responsible for the performance of the school. The performance will also be monitored by the LA and Ofsted. Accountability is embedded in the LA, Companies House and the Charities Commission. The LA has other powers of intervention if problems arise.</p> <p>There are a number of safeguards to prevent and address problems in the Trust's management and conduct. Trusts will be charitable companies. As charities, Trusts are not allowed to make a profit and the Charity Commission has a range of statutory powers. For example, it can act on complaints if there is evidence of:</p> <ul style="list-style-type: none"> ▪ Fraud or criminality; ▪ Maladministration putting significant assets or funds at risk; ▪ The charity's assets being applied in significant breach of the terms of the governing document; ▪ Trustees acting in significant breach of the provisions of the charity's governing document or of charity or trust law;
--	---	--

	<p>How is the trust administration to be paid for and managed? (Aabj)</p> <p>How does a cooperative trust model</p>	<ul style="list-style-type: none"> ▪ Risk of the charity being brought into serious disrepute, for example, through association with public disorder or links to terrorist organisations; ▪ The administration of the charity having broken down to such an extent that it is not working effectively; ▪ The trustees seriously misleading the public, or the Commission, or others with an interest in the charity (e.g. funding bodies, beneficiaries or employees) about matters of material importance; ▪ Adequate accounts not being kept; ▪ Trustees receiving unauthorised benefits from the charity; ▪ Fund-raising or administration costs that are excessive; or ▪ The charity undertaking improper political activities. <p>The Secretary of State also has the power to remove a trustee if he is satisfied that the trustee has either:</p> <ul style="list-style-type: none"> ▪ Acted in a way that is incompatible with the aims and objectives of the Trust; or ▪ Is liable to harm the reputation of any schools that the Trust supports. <p>Most issues will be best resolved within the Trust or by the schools and Trust and so we expect this power to be used only in extreme situations.</p> <p>The Charities Commission also recommends that trusts have a policy on how they will deal with any conflicts of interest which arise as a result of the work which the trust undertakes. A policy should include guidance on the procedures to follow when a trustee is subject to a conflict of interest, such as the removal of the trustee concerned from the decision making process; managing the conflict of interest once a decision has been made; and recording details of the discussions and decisions made.</p> <p>It recommends that trustees establish a register of interests. In recording all their other interests openly, any actual or potential conflicts of interest can be identified more easily. The register of interests should be regularly updated.</p> <p>It is envisaged that only a small amount of administration will be needed to run the trust eg trust register updating, agendas sent out, minute taking etc. There are various options to pay for such support in existing trusts eg a small levy per school based on pupil numbers; re-allocation of some cluster funding monies to the trust or specific charity fundraising.</p> <p>A unique feature of Co-operative Trusts is that they have a Forum with elected members from stakeholder groups, including parents, staff, learners and community organisations.</p>
--	---	--

	<p>work? (Ab)</p> <p>Is this just another layer of bureaucracy? (aj)</p>	<p>This Forum holds the Trust to account, helps shape its policies and also elects some trustees – but always a minority. Members must buy in – they do not become members automatically. The intention is to give the Trust roots, turning the school from ‘the’ to ‘our.’ The model is also international, with strong link to global cooperative schools, as well as its strong network of Business and Enterprise Schools in this country, which can readily demonstrate clear improvements in attainment and school culture as a result of the ethos engendered. The Co-operative would also become an institutional partner, via one of its local /regional businesses, so it is much more than another layer of bureaucracy.</p>
Partners	<p>How were they chosen? How much say will they have? (Aabhj)</p> <p>What is in it for them? (Abj)</p> <p>How are Trustees selected? For how long? What qualifications do they hold? (Aabh)</p>	<p>All partners will be chosen by the schools after long and detailed discussions on the extent to which they share our vision for the schools and community in the future. They will be involved at a strategic level in helping us shape the future direction of the cluster. Day to day running of the schools will still be the responsibility of the Governing Body, as it is now.</p> <p>There is mutual benefit to be derived for the partner organisations as long term involvement with us helps them to meet their own agendas, but they are not expecting commercial gain. Many organisations welcome the opportunity to engage with and raise aspirations in their local community by sharing expertise and skills with local schools and contributing to policy development. They also welcome engagement with young people who are going to be the employees of the future. A Trust may help to build capacity in a specific subject or skills area through, for example, supporting a particular specialism such as Business & Enterprise. Becoming part of a Trust makes it easier to work with a group of schools through a shared and formal framework and governance structure. It provides the opportunity to help build a culture of creativity, innovation and expertise in schools as well as helping to create a distinctive ethos for the schools. Partners also see advantages for the development of their own staff. Involvement in such programmes has proved popular with many employees and many organisations are seeing improvements in staff morale and retention as a result.</p> <p>Our partner organisations will be required to show an understanding of the work of the local Children’s Centre, schools and colleges. They will all sign Memoranda of Understanding to that effect. The organisations will be permanent members of the Trust Board unless they are voted off by a majority of the members. Each organisation is responsible for nominating a CRB checked, senior executive representative to attend three key strategic meetings per</p>

	<p>What are the benefits of formalising relationships? (A)</p> <p>What liabilities will they have? (abj)</p> <p>Will they bring in extra funding? (h)</p>	<p>year.</p> <p>We are aiming for a balance between educational, public and business organisations to provide a mix of new skills for us to draw on to move the schools forward with greater certainty in a formal, legal, sustainable, long-term inter-organisational relationship, rather than many existing 'ad hoc' ones that rely on personalities and short term objectives. Our proposal is to form a Trust with our main partner schools and external partners who share our long term vision. In the same way as governors are expected to serve a 4 year term, it is anticipated that when the constitution of the trust is written and agreed by all parties that there will be an expectation of a similar relationship timeframe, albeit with clear exit and enter protocols.</p> <p>As an incorporated body, the financial liability of members of the Trust is limited to the sum they guarantee when they join the company. Members of a charitable company guarantee to pay a nominal sum (for example £10) which is the amount which members undertake to contribute to the assets of the company in the event of it being wound up. Very few trustees who have acted honestly suffer financial loss as a result of their trusteeship. There are risks, but they should be kept in proportion. The Charity Commission says: 'If trustees act prudently, lawfully and in accordance with their governing document then any liabilities they incur as trustees can be met out of the charity's resources.' (from 'Responsibilities of Charity Trustees', The Charity Commission). The courts also have the power to relieve trustees from liability where they have acted honestly and reasonably.</p> <p>It is unlikely that trustees will be held personally liable, if they always:</p> <ul style="list-style-type: none"> • Act reasonably • Comply with their governing document • Take appropriate professional advice where they don't know enough to make a decision • Take appropriate professional advice where they are required to by law. <p>There is no requirement or expectation that Trusts will contribute financially to the schools that they support. Trusts are not about generating income for schools - they are about a range of organisations contributing their skills and expertise to the development of schools. Of course, Trust partners may contribute financially if they want to. Having charitable status does open up fundraising opportunities that are not available to community schools such as</p>
--	---	--

		<p>Governing bodies as a whole, and not the Trust, will be accountable for the school's performance whilst the headteacher remains responsible for the day to day running of the school. Governors have a legal responsibility to conduct the school with a view to promoting high standards of educational achievement. Governing bodies are corporate bodies. As such, a governing body acts as a single legal person with an identity separate from its members. Responsibility for the actions and decisions of a governing body rests with the whole body rather than with individuals.</p> <p>There is no distinction between Trust appointed governors and other governors on a Trust school governing body with respect to financial or any other kind of liability. The governing body of every maintained school has a duty to ensure that the school has adequate levels of insurance cover to cover, for example, property, employers' liability and public liability. By virtue of Section 50(7) of the Standards and Framework Act 1998, governors do not incur any personal liability in respect of anything undertaken in good faith in exercising their power to spend the school's budget share, or delegating power to the head teacher. An example of an act not undertaken in good faith is fraud.</p>
<p>Relationship with LA</p>	<p>Does this sever links with the LA? Does this undermine public service provision? (Aabhj)</p> <p>Is this causing more fragmentation, negative impact on other LA schools and a diminution of power for the LA? (Aabhj)</p>	<p>It's true that foundation trust schools have more freedom than community schools in that they manage their own assets, employ their own staff and set their own admissions arrangements. However, a Trust school remains an integral part of the family of Local Authority maintained schools:</p> <ul style="list-style-type: none"> ▪ it will still be funded by the Local Authority on the same basis as other schools; ▪ it will have to act in accordance with the Admissions Code; will be entitled to be represented on the local admissions forum and will take part in co-ordinated admissions arrangements; ▪ the Local Authority will be able to intervene in a Trust school as in any other school if it is failing or underperforming; and ▪ the Local Authority will be able to publish proposals to close the school and to make certain changes to the school, as it can with any maintained school <p>Trust schools remain LA maintained schools with the LA having the same powers of intervention as in any other type of maintained school. GBs have the same democratically elected constituencies thus: -</p>

	<p>What is the decision making process for a school's closure or expansion? (j)</p> <p>How is access and cost of LA services affected? (h)</p> <p>Can our LA funding be reduced if trust has funds from private sources? (j)</p>	<ul style="list-style-type: none"> • Parent governors: at least one-third; • Staff governors: at least two places but no more than one-third, including the headteacher; • Local Authority appointed governors: at least one but no more than one-fifth; • Community governors: at least one-tenth; PLUS • Foundation governors; at least two but no more than one quarter. <p>Although the GB becomes the employer of staff, the school still has to work closely with the LA in ensuring that all employment rights are met such as continuity of service, maternity, redundancy and retirement matters, exactly as it does with all VA schools currently. Teaching staff would stay in the Teachers' Pension Scheme and would not be subject to any change. The LA would continue to be responsible for completing and signing off all the relevant documentation in relation to individual staff's pensions. Non-teaching staff are allowed to continue to be in the Local Government Pension Scheme (LGPS) if the LA, with the consent of the school governing body, has, by a statutory resolution, specified them to be eligible to belong to the scheme.</p> <p>Local Authorities will be able to publish statutory proposals at any time to close a Trust school, for instance, to enable it to re-organise or to cope with falling rolls or other priorities. Local Authorities will also be able to propose the placing of a new or re-sited school on surplus foundation or Trust land, and also for other educational purposes and the provision of children's services where it cannot otherwise reasonably meet a local need and which are suitable to be next to a school. Where local agreement cannot be reached, the Schools Adjudicator will determine the outcome</p> <p>The access to and cost of LA services remains unaffected by the change of status</p> <p>No, Trust schools are funded via the LA in the same way as other maintained schools. Trust schools also remain a full part of the local asset management planning process, and are treated equally in terms of government support for capital investment. As with all other maintained schools, the LA will remain responsible for funding the maintenance of a Trust school's buildings and Trust schools will continue to receive devolved capital funding on the same basis as other maintained schools that they can invest according to their individual priorities. There is no funding reserved centrally for Trust schools. With the</p>
--	--	---

	<p>What are the changes to the management, maintenance and liability of the land & assets? (A)</p> <p>How can being responsible for assets bring about more freedom to meet learning needs? (A)</p>	<p>community. LAs will also be able to object to reinvestment proposals and to claim a share of the proceeds attributable to public investment in the land. Where local agreement cannot be reached, the matter will be referred to the Adjudicator for resolution. LAs will not be able to force a Trust to sell any surplus land to raise money.</p> <p>Trust schools will be able to benefit directly from the disposal of land but all proceeds must be used for capital investment in educational assets in either the school itself or the maintained sector (according to the Trust’s Memorandum and Articles), and the Trust itself will not be able to profit from any such disposals.</p> <p>There is no change to the rigorous procedure for any disposal of school playing fields, which will continue to require the consent of the Secretary of State.</p> <p>The governing bodies of all categories of school have day-to-day control over the use of their premises and have responsibility for the day-to-day management of the property, both during and outside school hours. If the governors wanted to do anything which would count as a disposal of land (selling land; leasing it to someone else; substantially changing the use to which the land is being put - i.e. not using it for the education of pupils at the school) they would need to agree this with the Trust and ask the Trust to notify the LA. As a general rule governing bodies are only responsible for those things for which they have received funding delegated from the LA – but the Trust must ensure that the governing body has taken out proper insurance. Where there is an emergency LA support would be available as for any other maintained school. Part of the funding the LA receives is to enable them to respond to unforeseen circumstances such as these – Trust schools are eligible for support and funding in the same way as any other maintained schools. Proper insurance would need to be taken out and the LA will delegate funding for this purpose to Trust schools equal to the amount it would spend if it insured the school.</p> <p>This provides the schools with opportunities to generate income by maximising the use of the sites and to make savings through exploiting economies of scale across the schools in the trust. Any extra money can be used directly on front line educational provision to meet learning needs.</p>
--	---	--

<p>Finance</p>	<p>How will FT status affect how the schools are funded? (Aa)</p> <p>Who will have accountability for school finances? (A)</p> <p>What are the potential financial downsides? (A)</p> <p>Where is the funding to cover the costs of this process of changing status? (A)</p>	<p>The funding remains the same as for all LA maintained schools (i.e. it is based on the number and age of students at the school), but a Trust can look at generating income. It can also apply for funds as a collaborative registered charity that an individual or community schools cannot.</p> <p>All maintained schools, including Trust Schools, have a governing body which is responsible for all major decisions and accountable for all aspects of the conduct of the school, including finances. Governing bodies as a whole, and not the Trust, will be accountable for all aspects of the school's performance whilst the headteacher remains responsible for the day to day running of the school. Governors have a legal responsibility to conduct the school with a view to promoting high standards of educational achievement and efficient financial management. Any deficit occurring in the delegated budget of a Trust school is the responsibility of the LA. The Trust would not be liable.</p> <p>All the costs of exploring foundation trusts are met by a government grant, once schools have been accepted onto the supported schools programme. The level of funding is such that the schools should not need to use any of their own budgets for the costs of exploration and, if they so decide, to change status and establish the shared trust.</p>
<p>Staff Employment</p>	<p>Will teachers' conditions of service change? (Aabhj)</p> <p>Can support staff pay and conditions be changed? (Aaj)</p> <p>Will conditions be at least as good if not bettered by the change? (Aabhj)</p>	<p>The statutory provisions set out in the School Teachers Pay and Conditions Document will continue to apply to teaching staff, this includes existing pay scales for teachers. The provisions of the Conditions of Service for School Teachers in England and Wales (The Burgundy Book), the NJC National Agreement on Pay and Conditions of Service (The Green Book which applies to support staff) and any existing local agreements will also continue to apply unless the Governing Body chooses to seek to vary them. If this is the case it will represent a variation to employees' contracts of employment and will require the Governing Body as the employer to enter in to formal consultation and negotiation with staff and recognised professional associations and unions before implementing any change. The Governing Body will be responsible for determining the pay and grading of support staff and will not be bound to use the Local Authority's grading structures or have regard to the Local Authority's Job Evaluation Scheme. However, Governing Bodies will need to consider their obligations under equal pay legislation. Equity of pay across similar positions should be ensured, as it is currently, by way of Job Descriptions and adherence to the Pay and Grading document for support staff and the application of the School Teachers Pay.</p>

	<p>What about pensions, redundancy, maternity, continuity of service etc? (Aab)</p> <p>Will FT status increase workloads? (Aaj)</p>	<p>Maternity rights will be protected. Eligibility is determined by “continuous service” and service within a Foundation School counts as continuous service within an LA. The cost for schools does not increase as a result of a move to Foundation status, the cost of maternity leave being met centrally, and the school being responsible for the replacement.</p> <p>The Governing Body, as the employer, can grant premature retirement to a member of staff either for reasons of redundancy or in the interests of the efficient discharge of their employer function. The Governing Body also decides on the level of compensation to grant to any member of staff they may make redundant subject to the statutory rules for the calculation of a redundancy payment. All pension costs associated with granting premature retirement must be met by the school’s delegated budget unless the LA agrees with the Governing Body, in writing, to meet them centrally. Costs of redundancy/severance payments will be met by the LA unless it considers there to be a good reason to deduct them from the School’s budget. In the case of early retirement on ill health grounds, the Teachers Pension Scheme or the Local Government Pension Scheme as appropriate will pick up the costs.</p> <p>Teaching staff are unaffected. The Teachers Pensions Scheme regulations provide that, for the purpose of the Scheme, the LA will be the employer of teachers employed in schools which it maintains. Consequently the change to Foundation status makes no difference to a teacher’s eligibility to belong to the Teachers Pension Scheme.</p> <p>For support staff, the Local Government Pension Scheme regulations allow such staff to be eligible for membership of the Scheme provided that the LA has made a statutory resolution to this effect and the Governing Body of a Foundation or Voluntary Aided School has given its consent for its support staff to be eligible for membership.</p> <p>FT status will not increase staff (teaching and non-teaching) workloads.</p>
Other Issues	<p>Church schools cannot become trust schools. Can they be associate members? What rights responsibilities would they have? (A)</p>	<p>Church schools already have foundations and so cannot become trust schools. However, the 2010 Education Act allows them to become full members of a shared trust if governing bodies so wish with full rights and responsibilities.</p>

