

Government consultation on supporting schools that are not making necessary improvements

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) represents over 21,500 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation.

B. Key points

3. ASCL does not support the proposals in this consultation, which we believe are overly heavy-handed and may create perverse incentives in the system.
4. There is no legal definition of a 'strong trust', which the proposals reference several times. The criteria for a strong trust should be defined, following consultation, before any attempt to move schools and academies in this position into a trust is implemented.
5. Schools and academies which have previously been graded inadequate, but are now requires improvement, are clearly on an improvement trajectory. It would seem perverse and counterproductive to move them into a trust, or from one trust to another, if they are making improvements.
6. Schools which are requires improvement are likely to have specific strengths and specific weaknesses. If intervention is required, then the school should be supported by a trust or other organisation which can meet and support their specific needs – not just one which happens to meet the generic definition of a 'strong trust'.
7. It is the government's stated intention for all schools to be in strong trusts by 2030. This policy should be considered as part of that broader move, rather than being rushed in for a small group of schools. We also believe that introducing this measure as soon as September 2022 breaches the DfE's workload protocol, which states that new accountability measures with significant implications for teacher and leader workload – which we believe this is – should be introduced with at least a year's lead time.
8. Under the proposals, a trust taking on a school previously been judged would assume it would be rebrokered if it was judged RI again. This creates a disincentive for trusts to take on RI or inadequate schools.

9. We do not understand why, for the purposes of this measure, the inspection histories of academies will be taken to include judgements that were issued to the school prior to its conversion to academy status, or while it was part of a different academy trust. This appears counter to the change in legal status of academies in this situation, and further exacerbates the disincentives to trusts taking on RI or inadequate schools.
10. ASCL rejects the language of 'coasting schools', which the proposals use. As stated in paragraph 5 above, some of the schools which meet the proposed definition will have seen significant improvements and are not 'coasting'. We understand that this terminology is enshrined in the regulations under which these changes would be made, but would urge the government to move away from this unhelpful and derogatory language as soon as possible.
11. The proposals would place greater emphasis on Ofsted judgements, and inspectors would be aware that a second RI judgement would likely result in an academy order or termination warning notice. This may affect the reliability of inspection. If these proposals are adopted, we would encourage Ofsted to produce an impact report on how to maintain the reliability of inspection.

C. Answers to specific questions

Question 7: To what extent do you agree with the principle of intervening in schools which are rated 'requires improvement' (RI) by Ofsted and were rated less than good in their previous inspection?

12. Disagree. It is our view that this is a reductive approach which lacks nuance. There are schools which have previously been inadequate but have since been judged as requires improvement under the new framework: this demonstrates improvement. We are also concerned that this creates a disincentive for trusts to take on RI or inadequate schools, as the assumption is that these schools will be rebrokered if they receive a second judgement less than good. This may lead to some trusts being less willing to take on schools which need support.
13. ASCL is particularly concerned that there is no legal definition or criteria of a 'strong trust'. We believe that this definition should be consulted on before a change to the coasting definition, and the Secretary of State's powers to intervene, is made.
14. ASCL is concerned that, by giving greater weight to the outcome of inspection judgements, the reliability of Ofsted inspections may be compromised. We would expect to see an independent impact analysis before these proposals are made.

Question 8: To what extent do you agree that the proposals should apply to alternative provision (AP) academies and pupil referral units (PRUs), as described above?

15. Disagree. We do not agree with the principle of intervening in schools which are rated RI by Ofsted and were less than good in their past inspection. We therefore don't support this being extended to AP academies and PRUs.

Question 9: To what extent do you agree that the proposals should apply to maintained special schools and special academies, as described above?

16. Disagree. We do not agree with the principle of intervening in schools which are rated RI by Ofsted and were less than good in their past inspection. We therefore don't support this being extended to special schools and academies.

Question 10: To what extent do you agree that the proposals should not apply to maintained nursery schools at this stage?

17. Agree. We do not agree with the principle of intervening in schools which are rated RI by Ofsted and were less than good in their past inspection. We therefore support this not being extended to maintained nursery schools.

Question 11: To what extent do you agree that the 'schools not making necessary improvements' measure should take account of judgements issued to predecessor schools when assessing whether a school is not making necessary improvements?

18. Disagree. The Academies Act 2010 confirms that upon becoming an academy, the school becomes a new legal entity. We do not believe that these proposals are compatible with the Act.

Question 12: To what extent do you agree that the intervention power should only be available in relation to schools which have been inspected since May 2021 with the exception of schools that have a long-term history of underperformance (5 consecutive below Good inspections or worse)?

19. Neither agree nor disagree. We do not agree with the principle of intervening in schools which are rated RI by Ofsted and were less than good in their past inspection. We therefore don't support using Ofsted grades from May 2021 onwards within the scope of this definition.

Question 13: To what extent do you agree that RDs should invite representations from the governing bodies of maintained schools and the management committees of PRUs that are not making necessary improvements, as well as consulting the relevant local authority, before deciding whether to make an academy order?

20. Strongly agree. We believe this is covered by section 4 and section 10 of the Education and Adoption Act 2016.

Question 14: To what extent do you agree that the department should adopt a presumption in favour of making an academy order to a maintained school or PRU that are not making necessary improvements? This means that cases will always be considered on their facts but that RDs will normally expect to issue an academy order compared to other intervention action.

21. Disagree. We do not think RDs should normally expect to issue an academy order based on the proposed definition of a coasting school. If this change is brought in, however, we agree that the issuing of an academy order should not be automatic, and that RDs could take an alternative approach if they believe this is the most appropriate course of action.

Question 15: To what extent do you agree that the department should adopt a presumption in favour of issuing a termination warning notice (TWN) to standalone academies that are not making necessary improvements? This means that cases will always be considered on their facts but that RDs will normally expect to issue a TWN compared to other intervention action.

22. Disagree. We do not think RDs should normally expect to issue a TWN based on the proposed definition of a coasting school. As above, however, if this change is brought in we agree that the issuing of a TWN should not be automatic, and that RDs could take an alternative approach if they believe this is the most appropriate course of action.

Question 16: To what extent do you agree that the department should issue a TWN where they are not satisfied that a trust has the capacity to improve an academy that is not making necessary improvements?

23. Disagree. We do not think the department should normally expect to issue a TWN based on the proposed definition of a coasting school.

Question 17: To what extent do you agree that intervention in schools that are not making necessary improvements should initially focus in Education Investment Areas?

24. Neither agree nor disagree. We do not support the proposed intervention. We agree that greater support for schools in Education Investment Areas is appropriate, but do not agree that this is the most effective or helpful way of providing that support.

D. Conclusion

25. ASCL does not support these proposals, which we believe will be damaging to the system.

26. We hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

Tom Middlehurst
Curriculum, Assessment and Inspection Specialist

Rob Robson
Trust Leadership Consultant

Association of School and College Leaders
23 May 2022